



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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DÁIL ÉIREANN

Déardaoin, 12 Nollaig 2013

Thursday, 12 December 2013

Chuaigh an Ceann Comhairle i gceannas ar 9.30 a.m.

Paidir.
Prayer.

Ceisteanna - Questions

Priority Questions

Rural Development Programme Funding

1. **Deputy Éamon Ó Cuív** asked the Minister for Agriculture, Food and the Marine the total projected spend under the Rural Development Programme 2007-13; the approximate spend that would occur under Pillar 2 of the rural development programme in the event of the Government only providing the minimum funding to draw down the full European Union allocation; and if he will make a statement on the matter. [53198/13]

Deputy Éamon Ó Cuív: I hope the Minister will answer to the point the questions I have asked today about the spend on Pillar 2 for 2007-13, and the minimum possible spend for 2014-2020, allowing for the full drawdown of EU funding.

Minister for Agriculture, Food and the Marine (Deputy Simon Coveney): Under the rural development programme for 2007-13, there is a total allocation of some €4.8 billion over the lifetime of the programme. Of this allocation, over €4 billion has been spent to date. The European Council agreement on the multi-annual financial framework provides some €313 million per year for the new rural development programme for the period 2014-20, or a total of €2.19 billion, for Ireland under Pillar 2 of the CAP. A general EU co-financing rate of 53% is set out in the draft rural development regulation but this rate may rise to a maximum of 80% for measures such as farm and business development, co-operation activities, and LEADER projects. Environmental type measures may be co-funded up to 75%. The total Exchequer funding that will be required to draw down the available European Agricultural Fund for Rural Development funding will depend on the types of measures included in the new rural development programme and on the co-financing rates applied to these measures.

Work is currently ongoing in my Department to design the new rural development pro-

gramme for the period 2014–20. In designing the new rural development programme, my Department must take account of the range of requirements set out in the draft rural development regulation and the need to support key policy aims for the agrifood sector in the light of the Food Harvest 2020 strategy. A number of *ex-ante* analyses are being undertaken and a public consultation process has also taken place.

If the Deputy is looking for an estimate on the minimum spend to get acceptance of a rural development programme from the Commission, I think we would have to be spending an average of about €430–450 million per year on average. That would involve providing minimum co-financing from the Exchequer for a full drawdown. I find that approach totally unacceptable and I have been working intensively with the Department of Public Expenditure and Reform for the last ten days to try to agree an approach to rural development will recognise the potential for growth and expansion in the rural, and which will give agriculture, agrifood and the rural economy the priority they deserve. However, that must happen within the context of the resources available to the Government, and I think people need to be ambitious but also realistic about what is possible.

Deputy Éamon Ó Cuív: I would like to thank the Minister for confirming that under the deal he negotiated, we could see Pillar 2 drop from €4.8 billion the last time to €3.1 billion this time, which is a drop of around 47%.

Deputy Simon Coveney: I would like to make a correction. The €4.8 billion figure is the wrong figure.

Deputy Éamon Ó Cuív: The Minister himself said €4.8 billion.

Deputy Michael McCarthy: It does not matter with him-----

An Leas-Cheann Comhairle: Please, Deputy Ó Cuív only has one minute.

Deputy Éamon Ó Cuív: The Minister said that the programme is worth €4.8 billion.

Deputy Simon Coveney: I said that the spend to date is €4 billion.

Deputy Éamon Ó Cuív: However, there is two years left to spend under this programme. The allocation for 2007–13 is €4.8 billion, and I presume that the Minister will have spent the €4.8 billion by the time we get to the end of the programme plus two years.

Deputy Simon Coveney: That is the intention.

Deputy Éamon Ó Cuív: For the next programme there could again be two years added on at the end, and the spend could be as low as €3.1 billion. Will the Minister accept that it was very poor negotiation on his behalf, as President of the European Council, to allow such low co-funding from member states? This is particularly the case when we take into account the fact that Pillar 1 is much larger and does not require any co-funding, and when we look at the multiplier effect in the rural economy of spending on agriculture.

Deputy Simon Coveney: I would not accept that thesis. Perhaps the Deputy has not noticed, but we now have 28 member states in the European Union and they all have different priorities. In order to get an agreement on the CAP, we had to take account of many of those priorities. What is different about the CAP is that member states have flexibility to design for themselves rural development programmes and take an approach to the CAP that suits their lev-

els of ambition to support the agrifood sector in their countries. We intend on being very ambitious for our rural development programme in Ireland, while at the same time recognising that we have significant budgetary constraints, particularly in 2015 and 2016. My job is to maximise the potential and the spend, within reason, for an ambitious rural development programme that can help us to deliver on the potential of Food Harvest 2020, and to support farmers who do not have the capacity to benefit from that plan, due to the conditions under which they are farming, and so on. We will do that and within the next ten days, as long as we can agree with the Department of Public Expenditure and Reform - I am hopeful that we will - the Deputy will see the figures and be able to debate them.

Deputy Éamon Ó Cuív: It is clear that this issue was not a priority with the Minister in the negotiations because he was boasting all the time that he managed to get all his priorities in the CAP package. Therefore, this was not a priority and we accept that. The Minister left himself totally open on this issue. Can he confirm whether he will be able to provide more than 45% co-funding under the Pillar 2 funding in the next round? That is 45% from the Government and 55% from the EU, or better.

Deputy Simon Coveney: With respect, I am not going to confirm anything today until I have concluded an agreement with the Minister for Public Expenditure and Reform who is working with me on this matter and has been very helpful on it. This issue was a priority under the Irish negotiations and there is nothing to prevent Ireland from designing the kind of rural development programme and the funding we need. We do not need the European Union mandating us to do that. Different countries want different options.

Deputy Éamon Ó Cuív: Yes.

Deputy Simon Coveney: The option that Ireland can and will take is an ambitious option. I do not know where the Deputy is coming from when he said that we did not achieve our goals. We did achieve our goals in the negotiations. Ireland now has the capacity to choose the level of co-funding we want and other countries that want to choose lesser co-funding, for whatever reason, if they are in bailouts or whatever, that is for them to decide. I would have thought the Deputy would have welcomed member states making their own decisions on these matters rather than being dictated to by the European Union in a very stringent way in terms of co-funding rates under rural development programmes.

Common Agricultural Policy Negotiations

2. **Deputy Martin Ferris** asked the Minister for Agriculture, Food and the Marine his plans to oppose cuts to quota in forthcoming negotiations for a new EU Common Fisheries Policy; and if he accepts that his acquiescence to the cutting of fishing quotas would damage small coastal communities around our coast. [53196/13]

Deputy Martin Ferris: The Minister's stated intention is to oppose cuts to quota in the forthcoming negotiations for a new EU Common Fisheries Policy. Does he accept that the proposed cuts, if implemented, will be detrimental to the Irish fishing fleet?

Deputy Simon Coveney: If the Deputy and the Leas-Cheann Comhairle will allow me, I would like to use the opportunity to correct the record on something I said a number of weeks ago in the House to Deputy Martin Ferris's colleague, Deputy Caoimhghin Ó Caoláin, where,

unintentionally, I misled the House when I suggested in reply to a private notice question that Deputy Ó Caoláin had not contacted me in relation to a specific case involving the special investigations unit. I was wrong in that. I have written to Deputy Ó Caoláin to clarify the issue but I also said that I would use the opportunity the next time I was on my feet in the House to clarify the issue.

In terms of the response to the question, our approach will be as predicted and as we did last year and the year before. I will try to derive the highest commercial return possible from fishing stocks in as sustainable a way as I can. There are some real challenges going into next week's negotiations, particularly in regard to whitefish, off the south coast of Ireland, and on stocks such as whiting and haddock. We also have some challenges in terms of prawns, which is Ireland's most important fishery in value terms, after mackerel but, in social terms, probably Ireland's most important fishery, where there are recommendations for quite dramatic cuts.

We are taking a team of people, including marine scientists from the Marine Institute, to the negotiations. I will attempt to construct arguments for minimising the effect of quota reductions, in other words, minimising those reductions if they have to take place. We have to take account of the state of fish stocks. There is no point in having a short-term popular decision that will significantly damage the health of fish stocks. Having said that, we also need to take account of the fact that we are moving into an entirely new phase when it comes to fishing in Ireland-----

An Leas-Cheann Comhairle: I thank the Minister.

Deputy Simon Coveney: -----whereby we are going to introduce an obligation to land everything the fishermen catch. Therefore, we need to balance the issues. If we simply have dramatic cuts to quotas, particularly for whitefish in mixed fisheries, we will increase the amount of discarding that takes place at a time when we are about to end the practice, through policy. This will be a very complex negotiation about trying to balance the ability to get the Common Fisheries Policy implemented in the next few years while at the same time deriving maximum commercial value within a sustainable plan for fishing in the next year.

An Leas-Cheann Comhairle: I call Deputy Martin Ferris.

Deputy Simon Coveney: There will be some very positive news on this, particularly on the pelagic side but there will also be some challenges on the whitefish side. We will certainly do our best for the industry.

Deputy Martin Ferris: I thank the Minister for his reply. Some of the proposals indicate a 34% reduction in the whitefish and prawn fleet in areas where practically all inshore fishing is dependent on it, such as Cloherhead, Howth, Dunmore East, Kilmore Quay, Dingle, Castle-townbere and Rossaveal. If that is to be the reduction in the fishermen's intake it would be detrimental from an economic and social perspective for those communities. All of us who live in coastal communities see the value of a reasonable income and the knock on effects in other sectors in that area. We heard a presentation yesterday on the issue and the cuts, if implemented, are frightening.

An Leas-Cheann Comhairle: A question, Deputy, please.

Deputy Martin Ferris: The Minister has our full support to try to ensure these cuts do not come about. Clearly I stress the necessity of ensuring these cuts will not be implemented, as

proposed.

Deputy Simon Coveney: I can understand where the Deputy is coming from on this issue. There is much concern in the fishing industry, particularly in the whitefish fleet. Last year and the previous year there was also much concern going into the negotiations and we managed to renegotiate on the back of science a much better deal for fishermen than many had expected.

I would issue a word of caution here. Sometimes people expect the Minister to perform some kind of Houdini act each year and to overturn the science. The negotiations next week will be difficult. In terms of the nephrops - prawn - stock, which is one of our priority stocks, there is a proposal to cut that quota by 24%. In terms of haddock stock in area 7, there is a proposal to cut that stock by 75% and in terms of cod stock, in area 7b-k, there is a proposal to cut it by 33% and in whiting stock a 13% cut has been proposed. These are large amounts.

An Leas-Cheann Comhairle: I thank the Minister.

Deputy Simon Coveney: We are working intensively to prepare for next week's negotiations and put a case together that stands up from a scientific point of view but which can get a better outcome for the fishing industry. We will do everything we can to achieve that objective.

An Leas-Cheann Comhairle: I call Deputy Martin Ferris.

Deputy Simon Coveney: May I come back in again?

An Leas-Cheann Comhairle: Of course. Deputy Ferris has one minute and the Minister has to reply.

Deputy Martin Ferris: The Scientific, Technical and Economic Committee for Fisheries works in this area. The Minister has a report from national independent scientists going forward. What is the input of the actual sector itself in the negotiations and in terms of stock density? Does the sector have a direct input? There has always been a difference of opinion between the scientists and those at the coalface in the industry. Coming from that background, I will always argue that the people who have most interest in preserving stocks are those involved in the industry. I am aware there are certain cowboys in the industry but, in general, most people involved in the industry know that it is in their interest to protect the stock. I do not detect anything otherwise from the fishing industry.

An Leas-Cheann Comhairle: I call the Minister for a final reply.

Deputy Simon Coveney: The Deputy is right on his last point. There is a perception among some people who, in my view, do not understand the fishing industry that all fishermen just want to go out and catch as much as they can, and that they will catch whatever they can get away with catching. That is not the case. In recent years we have seen the fishing industry take a very responsible approach towards a number of stocks. The results indicate that herring stock in the Celtic sea is the best example. There has been a dramatic increase and I hope that increase will continue into the future in terms of available quota. There is also the development of the boarfish fishery, of which Ireland has two-thirds. The industry developed that fishery and put its own money into the science around it.

The industry is very progressive in Ireland. Yes, there are some people who are breaking the rules and we need to enforce the rules and hold those people to account. Unfortunately, we have witnessed some of that in recent weeks. That reflects, I suspect, the pressures under which

the fishermen are operating.

Deputy Martin Ferris: Absolutely.

Deputy Simon Coveney: It is important to say that but regardless of the pressures we must have a level playing field for everybody. I need to enforce the rules in order to be fair to every fisherman in the same way. One of the proposals - the Deputy expressed concern about this previously - coming into the negotiations is that when stocks are data poor, in other words if we do not have sufficient data to draw proper conclusions, there is a proposal in the case of some stocks to apply an automatic reduction of 20%. That is something I will oppose. If we are to take the hard decisions to protect stocks on the back of science that suggests we need to do so, that is one matter, but we are certainly not going to ask fishermen to make significant commercial sacrifices by reducing quotas in the absence of science.

Single Payment Scheme Payments

3. **Deputy Tom Fleming** asked the Minister for Agriculture, Food and the Marine if he will outline his efforts to address the land eligibility problems farmers are facing; the concession he will apply; and the argument he has put to the EU Commissioner to prevent the imposition of retrospective single farm payment penalties on farmers as a result of the land eligibility issue. [53362/13]

Deputy Tom Fleming: Will the Minister outline his efforts to address the land eligibility problems farmers are facing, the concession he will apply, and the argument he has put to the EU Commissioner to prevent the imposition of retrospective single farm payment penalties on farmers as a result of the land eligibility issue?

Deputy Simon Coveney: I thank the Deputy for raising this issue. A number of farmers, particularly in the Deputy's county, are concerned about it. We have a problem we need to deal with. Since mid-summer, there has been a change to the way in which mapping is done technically. It allows us to be much more accurate in photographing land parcels across the country. As a consequence of this and the pressure the European Commission is under from external auditors, the Commission is demanding that every country in Europe assess whether payments have been drawn down on land parcels that have been ineligible. Unlike many other countries, Ireland has gone through an extraordinarily detailed process of trying to assess every single land parcel in the country so as to make a judgment on what areas are ineligible for payments. Obviously, we offer farmers an appeals system to test that. We are doing so because we are required to. The alternative is that the Commission would make an assessment of ineligible land in Ireland, multiply its figure probably by five and apply a fine or what is called a disallowance, for which every farmer would have to pay substantially. I cannot and will not allow that.

We have the capacity technologically to proceed accurately. I have no intention of penalising farmers but simply of asking them not to accept payments on land deemed ineligible in 2013. In some limited cases, we have asked farmers to return payments made over the past four years on ineligible land. That is how we minimise the exposure of Irish farming as a whole to penalties that the European Commission would otherwise supply. In case the Deputy thinks this is a bluff, he should consider the penalties that have applied to other countries. In France recently, there was a penalty of €246 million. I am open to correction on that. The United Kingdom and Italy have also received penalties, despite their economic muscle in the European

Union. We are trying to minimise the exposure of farmers and we will work with farmers who have a problem to make sure we can put repayment schedules in place for them.

Deputy Tom Fleming: It is totally unacceptable that the Department is now claiming retrospectively on lands that were approved as far back as 2008. What occurred was all done in good faith and on the basis of a good understanding between farmers and farm inspectors. We all know of the very challenging times farmers have experienced in recent years, particularly in the past three because of the weather conditions. What is occurring is imposing further hardship on farmers.

There is mixed land affected, particularly in the south west, which, being next to the western seaboard, bears the brunt of the bad weather coming in from the Atlantic. The mountain terrain breaks the cloud. The Minister will have to examine this seriously and review the penalties being imposed on farmers. They are trying to keep scrub off their land and wipe out the rushes, which is impossible. In many cases, the farmers have receipts. Where they have proof of charges and payments to contractors, it should be taken into account.

Deputy Simon Coveney: It is important to send some very clear messages to farmers. First, we are not asking for any retrospective payments from farmers who have had a big problem. The only payments we decided we would try to reclaim retrospectively this year, in an effort to try to solve the problem, are from some farmers whose ineligible land amounted to less than 3% of their holding. The average farmer in this category has a single farm payment of well over €11,000 and the retrospective payment, in total, is well under €400. Any of the farmers who have a significant problem with ineligible land that comprises more than 3% of their farm will be dealt with on a case-by-case basis next year. If we must put in place longer-term repayment schedules for farmers, we will do so.

I assure the Deputy that we are trying to work through this in as farmer-friendly a way as possible. Anybody who believes we will just put our head in the sand and ignore this issue, thus resulting in the imposition of significant fines and disallowances by the Commission, either does not understand the issue or is kidding himself. The proof of this is in other countries. We have worked with farm organisations on this in some detail. The vast majority of farmers are not affected at all. The percentage of those with a real issue is very much in single figures, and significantly fewer than 1% have a significant issue.

Deputy Tom Fleming: The great majority of affected farmers are family farmers working on poorer land, and many have grazing on commonages. They are the custodians of that land and keep it in as good a condition as possible agriculturally and environmentally.

Let me refer to the duplication of nitrates inspections by the Department of Agriculture, Food and the Marine and the Department of the Environment, Community and Local Government. It is very unfair that two Departments are carrying out overly officious nitrates inspections.

Recently I saw some receipts concerning penalties that were issued without explanation to farmers, particularly young farmers on very modest incomes. They concern financial discipline and modulation. I have tried to receive an explanation and would like the Minister to expand on this. The farmers affected are not even getting a letter, just a receipt. There are very substantial cuts.

Deputy Simon Coveney: If the Deputy is concerned about individual cases, he should let us

hear about them and we will consider them. On the broader issue, we have been working overtime since the summer to try to ensure that we can avoid the imposition on Ireland of significant penalties to which every farmer in the country would have to contribute, thus resulting in a quite dramatic reduction in my ability to spend and put schemes together. That is what would happen and what is happening in other countries that have not been able or are not willing to deal with the issue of ineligible land. We are trying to deal with it in a way that asks farmers to pay back, without penalty, only moneys drawn down on land ineligible for those payments. The Department is offering farmers an appeals system, and there is a second appeals system, the fast-track appeal system, external to the Department to ensure farmers feel they are being treated fairly in this instance. If anybody has any suggestion as to how we can be more helpful to farmers, I am all ears. We have worked to try to ensure the arrangement is as acceptable to farmers as possible. If farmers have significant problems with the repayment of money that should not have been drawn down, we will provide for long-term payment schedules to facilitate them.

10 o'clock

Fish Farming

4. **Deputy Éamon Ó Cuív** asked the Minister for Agriculture, Food and the Marine if the European Union has re-opened pilot investigation 764/09/ENVI; the reasons for same; the possible consequences for Ireland arising from this investigation; if any questions have been raised with his Department in relation to the adequacy of the information provided previously to the EU in relation to this investigation; and if he will make a statement on the matter. [53361/13]

Deputy Éamon Ó Cuív: Concerns have arisen that investigation 764/09/ENVI was re-opened because information was withheld or incorrect information was provided by the Department to the European Union. I ask the Minister to clarify the matter.

Deputy Simon Coveney: I hope the Deputy will understand that I am somewhat limited in what I can say in response to his question. It is not worth reading out the official reply because it does not provide any information. I will, however, read out an information note that has been provided. The matter under examination by the European Ombudsman relates to EU pilot case 764/09/ENVI. In this regard, the Department forwarded all relevant material to the European Commission, including material supplied by Inland Fisheries Ireland. In addition, the Commission arranged for Inland Fisheries Ireland to make a direct oral presentation of its position at a meeting with the Commission on 19 December 2011, at which officials from my Department were also present. Following consideration of the scientific facts underpinning the State's control protocols for the management of sea lice, the European Commission closed the case on 11 October 2012. Throughout the process, the Department maintained the closest engagement with the Department of Communications, Energy and Natural Resources, the parent Department of Inland Fisheries Ireland. At all times, my Department conducted its activities in an appropriate and efficient manner with due regard for the public interest, which was the Department's primary concern throughout.

It is not appropriate for me to provide any further detail. The Department is preparing a file for consideration by the European Ombudsman and Commission. I am confident both bodies will be satisfied with the file when it is presented. We will have an opportunity to address the

issue again when the file has been compiled.

Deputy Éamon Ó Cuív: Will the Minister confirm that the case has been reopened and requests for information about the case have been received from the European Union? In view of the reopening of the investigation, will further consideration of the fish farm licence application by Bord Iascaigh Mhara in Galway Bay be suspended until the investigation has been completed?

Deputy Simon Coveney: Two entirely separate issues arise. The first is the way in which Ireland manages its control protocols for sea lice. In my view, we do so to a very high standard. The second is a series of applications for aquaculture licences, which includes shellfish and salmon farm licences, and this is not confined to the application on which the Deputy continually focuses because it is politically heated. Legally, I may not arbitrarily decide to suspend a licensing process. Anyone may make an application for an aquaculture licence and all such applications are subject to a process. I do not have the power, nor do I intend, to suspend any application processes.

The Department will do what is required by the Commission to provide clarity on this issue. We will proceed in a proper, independent and rigorous manner to assess all outstanding aquaculture licence applications. The specific licence to which the Deputy refers has been part of a public process. I do not yet have a detailed file on my desk setting out recommendations in that case. I expect to receive a file in the not too distant future, at which point I will be in a position to make a balanced judgment on the application. Until then, the less said about the application, the better.

Deputy Éamon Ó Cuív: The Minister of State, Deputy Tom Hayes, who is seated beside the Minister, will be able to explain to him that forestry planting applications for grants have been held up by the Department pending the completion of work by the National Parks and Wildlife Service on planting permissions. Given that the Department is holding up applications in another area, it is possible for it do so in this case. I will rephrase my earlier question. Is it intended to suspend further consideration of or decisions on salmon farm applications pending the finalisation of the case to which I refer, which is entirely related to sea lice in farm salmon?

Deputy Simon Coveney: I expect this case to be clarified and closed in the next six or eight weeks and it is highly unlikely that I will make a decision on the licensing of any salmon farm in that period. As a former member of Cabinet, Deputy Ó Cuív will understand, or at least should understand, the legalities surrounding licensing processes and where responsibility and legal obligations lie. We are in the middle of a series of licensing applications for various aquaculture projects, both fin fish and shellfish farming. The applicants have a right to due process and they will receive due process. People who have made objections or commented during the consultation process also have a right to due process and are entitled to be heard. That process is under way. This is a particular issue on which we must provide clarity to the Commission. I am confident that when we provide such clarity, the Commission will be satisfied with the result.

Aquaculture Licences Applications

5. **Deputy Martin Ferris** asked the Minister for Agriculture, Food and the Marine if his attention has been drawn to the fact that the salmon farm proposed for the Aran Islands would have a capacity of 15,000 tonnes and that this size would make it the largest such facility in

Europe and more than seven times bigger than the largest facility in Scotland which has a 2,000 tonne capacity. [53197/13]

Deputy Martin Ferris: This question also relates to the licence application for a salmon farm off the Aran Islands. It is proposed that the facility will have a capacity of 15,000 tonnes, making it the largest salmon farm in Europe and more than seven times the size of the largest salmon farm in Scotland. I ask the Minister to make a statement on the matter, including the issues raised by many people in respect of size.

Deputy Simon Coveney: I am fully aware of what is proposed in the project in question. The proposal relates to a new type of salmon farming which would involve moving salmon cages further offshore into much deeper water. Based on this approach, it is proposed to allow larger-scale salmon farming to take place. The idea behind this type of salmon farming is to move projects out of special areas of conservation and Natura areas into open waters, albeit within reason as some degree of shelter is required. That is the policy thinking behind the proposal from the applicant's point of view.

My job is to assess whether the proposal holds up from a scientific, environmental and commercial point of view. I must also consider weather factors such as exposure to the elements on the west coast. I rely heavily on the scientists in my Department and the Marine Institute, with which my Department is linked, who are working hard on this issue. The process is taking time because they have not dealt with such an application previously. I am confident that when I receive a file and recommendation, the Department will be able to make a balanced judgment on whether the proposal is appropriate or needs to be downsized or rejected.

While the proposed salmon farm is larger than projects elsewhere in Europe, we have some large projects off the west coast. The salmon farm off Clare Island, for instance, is of a significant scale. I accept, however, that this proposal is bigger, bolder and more ambitious than anything we have seen previously. As the person with the legal responsibility to make a balanced judgment on whether to grant the licence, my job will be to approve or amend the licence and I will do so when I have received sufficient information to make an informed judgment. If people are not satisfied with my judgment, an independent appeals board will subsequently assess the matter.

Deputy Martin Ferris: I tabled this question following a visit to Scotland in recent weeks by members of the Joint Committee on Agriculture, Food and the Marine, including Deputy Ó Cuív and me. We met representatives of the industry and people involved in the scientific and political aspects of it. They expressed amazement of the proposed size of the farm off the coast of Galway and the weather and environmental factors. They asked about the consequence of a mass escape from the farm and the risks of sea lice. Compared with Ireland, Scotland has a huge farmed salmon industry over a total area of 400 hectares. I do not have the exact figures for the Galway proposal but it will be of a huge scale. Many of us are concerned about what could happen and two State agencies are giving different vibes on the matter.

Deputy Simon Coveney: I do not think people should be criticised for ambition. If this project is doable, we have an obligation to consider it. If it does not make sense from an environmental or management perspective or because of sea lice or other technical issues, I will not allow it to proceed. A high bar must be crossed to get a licence for a project of this scale, or anything around salmon farming, because we have a gold-plated licensing system for aquaculture.

12 December 2013

In regard to the exposure, I understand the benchmark for levels of exposure is the Clare Island site. The salmon farm there is well run and is considered to have levels of exposure with which we could work. Other sites in open water with the same or lower levels of exposure have been explored.

An Leas-Cheann Comhairle: I call Deputy Ferris.

Deputy Simon Coveney: On the final point-----

An Leas-Cheann Comhairle: I am trying to make time for other Deputies.

Deputy Martin Ferris: Nobody is criticising ambition or is opposed to developing the best possible industry. Those of us who come from coastal communities in the west would love to see something working at its maximum potential. My concern is that the presentation from Bord Iascaigh Mhara, which was excellent, was at odds with the position taken by another State agency. The maximum size in Scotland is 2,000 tonnes but we are proposing 15,000 tonnes. As elected representatives, we have an obligation to protect what is left of wild salmon. Some of the salmon coming up the rivers in Scotland have no historical connection to their spawning grounds. The Scottish experts were unable to explain that. Some of the salmon may have arrived due to cross-contamination or escapes. These issues must be taken into account.

Deputy Simon Coveney: I accept the Deputy has raised genuine concerns, which I share and which is why we must be rigorous in our assessment of proposals of this nature. It is important to put Scotland in context. Scotland may not have farms that produce more than 2,000 tonnes but it produces 140,000 tonnes of salmon per year. Ireland produces 12,000 tonnes. It may be in Scotland's commercial interest not to have significant development in Ireland. Its industry is growing rapidly, with approximately 40 cages put into the water this year. When one adds up all the farms, many of which are located close to each other, there is a significant industry. We have a relatively small industry and we are looking for the most sustainable ways to develop it. Perhaps this licence is not the way to go but we will have to await the assessment. I am sure we will have many more debates on the issue when I get an opportunity to make an informed decision on the licence. We have an obligation to keep an open mind both to the criticisms and to those promoting the project. I certainly have an open mind and will make an informed choice when I see the science behind it.

Other Questions

Question No. 6 replied to with Written Answers.

Live Exports

7. **Deputy Éamon Ó Cuív** asked the Minister for Agriculture, Food and the Marine the steps he has taken to ensure that live exports of cattle continue in view of the demise of TLT; the steps taken by him in the past two months to open the British market to Irish live exports of cattle; and if he will make a statement on the matter. [53073/13]

Deputy Éamon Ó Cuív: As the Minister will be aware, there is considerable concern about the lack of competition in the cattle and sheep sectors, the effect that the absence of a sufficient

quantity of live exports is having on trade, and the grip that factories seem to have on prices. I ask him what he is doing about it.

Deputy Simon Coveney: Deputy Ó Cuív's question pertained to TLT in particular. While TLT has been a significant player in the export of live cattle to the Continent, accounting for 20% of total exports, the export of live cattle from Ireland to Italy had declined significantly in recent years prior to TLT going into receivership. The decrease in live exports was mainly due to higher cattle prices in Ireland, which meant our cattle were less price competitive on the live export markets, including in Italy. The economic recession in Italy also impacted negatively on consumer demand for beef in that market and led to reduced demand for imports of live cattle into Italy.

Live cattle exports from Ireland amounted to 160,000 head in 2012 and were worth €143 million. To date this year, shipments have reached 202,000 head, which represents a very substantial increase on 2012 levels despite that cattle prices increased this year. Factors affecting volume from year to year include the number of calf births, stock carryover from previous years, the price competitiveness of domestic cattle, the euro-sterling exchange rate and transport costs.

Deputy Éamon Ó Cuív: In case those who are listening to Question Time think my question solely concerned TLT, the question asked what steps the Minister had taken in the past two months to open the British market to live exports of cattle. I will ask him my specific questions again. What is he doing to retain the Italian market for weanlings? As he knows, we had approximately 50% of that lucrative market. There is a considerable differential between prices here and in Britain. What is the Minister doing, particularly at the intergovernmental and EU level, to ensure free trade for our live animals with our nearest neighbours?

Deputy Simon Coveney: On the Deputy's first question, part of the problem in Italy is the level of demand and the price purchasers are willing to pay compared with the prices prevailing in the domestic market in Ireland. In terms of the UK, it is important that people examine the reasons behind the problems in live cattle exports to the UK. Roll on-roll off ferry services do not want to take live cattle.

Deputy Éamon Ó Cuív: They take them through Larne.

Deputy Simon Coveney: They do not take them because of previous experiences of protests against live cattle exports on roll on-roll off ferries. A technical labelling issue also arises in respect of country of origin labelling of Irish originating and UK finished beef, which I will address in more detail in the context of Deputy Naughten's question on this topic. Factories do not want live cattle coming from Ireland. They want Irish produced and processed beef. That is a huge and successful market for us but it give rise to issues with the labelling of British beef which has been produced in Ireland but finished in the UK. I respectfully suggest that the Deputy should study the details of that issue because it is a genuine problem and will not be easy to overcome from an Irish domestic policy perspective.

Deputy Éamon Ó Cuív: I am glad the Minister raised the issue of country of origin because I understand it is now being discussed at EU level. Will the Minister be ensuring that all cattle raised and slaughtered on this island will, under European law, be allowed to be labelled with Ireland as the country of origin, thus facilitating competition between all of the meat factors north and south of the Border? Can he confirm that if we do not achieve that status, cattle raised and bred here but slaughtered in factories in the North of Ireland would effectively have

no country of origin?

Deputy Simon Coveney: That is a valid question and is an issue we are working on currently. I have spoken to my Northern Ireland counterpart, the Minister for Agriculture and Rural Development, Michelle O'Neill, who is also anxious to progress this issue. A technical discussion has commenced at a very senior level in both Departments to determine how we can facilitate this. However, it is not as simple as one might think. There are potential problems with us supporting Northern Ireland in putting an Irish label on the food it produces because I, as an Irish Minister, must stand over Irish food in terms of its integrity, safety and so forth. If we have a food safety problem that emanates in Northern Ireland, over which I have absolutely no control in terms of supervision, veterinary standards and so on, the Irish food industry could be significantly damaged. This is a genuine problem but we are working to solve it so that food produced in Northern Ireland can be labelled as Irish. Currently such food can be labelled as coming from the island of Ireland, but producers in Northern Ireland want to be able to label it as Irish. They also want to be able to label it as British, depending on the market they are supplying. It is a bit of a having-one's-cake-and-eating-it situation but having said that-----

Deputy Éamon Ó Cuív: That stems from the Good Friday Agreement.

Deputy Simon Coveney: Having said that, I am supportive of-----

Deputy Éamon Ó Cuív: It is based on the concept of dual identity.

Deputy Simon Coveney: I am supportive of trying to facilitate a situation whereby food producers in Northern Ireland, who are Irish people and are producing Irish produce, can label it as Irish. However, protocols must be in place to allow my Department and its inspection teams to be part of the rigours of the necessary inspection process in Northern Ireland, with all of the checks and balances that we insist upon for Irish-produced goods, so that we can stand over produce from Northern Ireland which is labelled as Irish.

Live Exports

8. **Deputy Denis Naughten** asked the Minister for Agriculture, Food and the Marine the steps he is taking to develop the live export trade to the UK; and if he will make a statement on the matter. [52931/13]

Deputy Denis Naughten: I tabled this question on the issue of labelling in the context of the fallout from the TLT collapse. The key issue is that a chicken fillet can be imported from Thailand, breadcrumbs put on it in the European Union and then marketed it as a product of the particular EU country. At the same time, Irish cattle cannot be processed in the United Kingdom and sold in that market.

Deputy Simon Coveney: The Deputy makes a fair point but both pork and poultry products on sale in Ireland and across the EU will have a country of origin label requirement in future, in the same way as beef products do at the moment, which will be a very welcome development when it happens. The ground is moving on this issue.

On the issue of Irish-grown, British-finished beef and the labelling system around that, there is a genuine problem with the labelling, marketing and selling of that product in the UK. That is why beef that is being sold in the UK is generally either British beef which is grown, slaugh-

tered and processed in the UK or Irish beef, grown, slaughtered and processed here. Moving live cattle from Ireland to finish them in the UK would be welcome from a competition point of view and would also be very beneficial to live cattle exporters from a cost perspective, given the proximity of the market. This issue has been under the spotlight this year in particular because British beef prices have been higher than Irish prices, particularly for steer beef but less so for heifers. That is because of a very strong demand for British beef in Britain. However, it is also true that the prices of Irish beef have been above the EU average for most of this year. They are now slightly below the average for the first time in approximately two years.

There is a particular labelling issue in play here. Harmonised EU rules require mandatory traceability and origin labelling for beef from slaughterhouse to point of sale to consumers with the objective of providing maximum transparency for the marketing of beef. Compulsory beef labelling requires food business operators to label fresh, frozen or minced beef with specific information to enable the product to be traced back to the animals from which it was derived and must include details of the slaughterhouse and de-boning hall in which the animal was processed as well as the country in which it was born and reared.

The problem is confusion for the consumer around cattle born and raised here but finished and processed in the United Kingdom. That is why a lot of those involved in the beef industry in Britain do not want live cattle from Ireland

Additional information not given on the floor of the House

The mandatory labelling rules prevent final retailers from describing any beef products derived from animals born in Ireland but exported live for finishing and processing in Britain as either British or Irish. Labelling of such product has to state the country of birth as Ireland, the country of rearing as Ireland and the country of slaughter as the United Kingdom. As the Irish-born but UK-finished proposition is regarded as difficult to communicate to consumers and likely to cause unnecessary labelling complications, retailers prefer to market British and Irish beef separately as part of their product mix. This effectively means, as a matter of policy, they prefer beef to be sourced from animals originating in one country only. Furthermore, meat from such animals would not be eligible for the UK's Red Tractor scheme which guarantees the UK prevalence of the meat to consumers. In addition, logistical difficulties arise when a small number of Irish-born animals are slaughtered in a UK meat plant. These carcasses have to be deboned in a separate batch, packaged and labelled accordingly, thereby incurring additional costs for the processor.

Bord Bia actively supports the development of the live export trade through the provision of market information, developing market access and promotional activity. Although Bord Bia has repeatedly raised the labelling issue in discussions with the British retail sector, the multiples are unlikely to change their stance as they seek to shorten their supply chains in the wake of the equine DNA issue. Nevertheless, Bord Bia will continue to pursue all opportunities to maximise the value and volume of our beef and livestock exports to the UK.

Deputy Denis Naughten: I would point out that the labelling law in the UK is the same as that in every other EU member state. We are shipping live cattle to other EU states with no difficulty whatsoever.

One of the issues that arose as a result of TLT going into receivership was how one retains title of ownership across EU member states. The Department has washed its hands of the is-

sue as it relates to TLT, as has the Italian Government. In the context of the question I tabled, we can ship cattle to Benghazi but cannot ship cattle to Birmingham. It is far easier to collect outstanding money from Manchester than Milan. That is the context for my question. What can we do to retain ownership of shipped cattle and how can we deal with the labelling issue?

Deputy Simon Coveney: This is about supplying what the market wants. It is not about what we want. We must provide product that the market will pay for. In Italy there has been a demand for a certain age and quality of animal because that is what Italians want. The beef industry in Italy had a shortage of such animals. In the United Kingdom, the market wants something different. Regardless of what we want or what suits Ireland, the British beef industry has made a judgment call that British consumers want clarity in terms of labelling. Consumers want to know they are buying either British beef or Irish beef. They do not want the confusion of having both countries on the label. That is my understanding of the issue.

We must respond to the market. We export between 85% and 90% of all of the food produced on this island. We target markets where we can make a profit on the basis of what those markets want. The Libyans wanted Irish produce and so we worked hard with live cattle exporters to facilitate that in the earlier part of last year. That was welcomed strongly by the farming community because it happened at the right time and set the trend in terms of beef pricing as the year went on.

There are genuine issues in terms of what the market wants in the United Kingdom, which is the biggest market for Irish beef by a long mile. It is not, however, the biggest market for live Irish cattle. That is because of decisions being made in the UK, not decisions being made here.

Deputy Denis Naughten: The Minister is missing the point. I am seeking answers to two separate questions. First, how do we retain ownership of live animals across EU borders? The Department is washing its hands of this issue and the Italian authorities are doing likewise.

Deputy Simon Coveney: I do not understand what the Deputy means when he says my Department is washing its hands of it.

Deputy Denis Naughten: The Department has said that these animals are not its problem. Once animals leave the island of Ireland, their ownership is not a problem for the Department to solve. Representatives of the Italian Government are saying exactly the same. Who actually owns those animals? They have not been paid for. It is legally possible to put movement restrictions in place until they are paid for but no one is prepared to invoke that power.

I fully accept the ethos and motivation behind the UK's Red Tractor labelling scheme. If we had a big domestic market, we would do the same thing. The fundamental problem with the UK red tractor label is that it is restricting the Common Market. That has EU implications. The issue that needs to be addressed is the restriction of the Common Market because of the label.

Deputy Mick Wallace: Obviously, the export of live cattle is driven by the current price difference of approximately €1 per kilo. The average price is approximately €3.80 here and approximately €4.80 over there. Rather than promoting live cattle exports, maybe the State should do something about the probable existence of a cartel in the factory beef industry. Surely live cattle exports are a quick fix rather than a long-term solution. The collapse of TLT should serve as a warning rather than a way forward. I put it to the Minister that we need to focus on finding markets for finished products.

Deputy Simon Coveney: I agree.

Deputy Mick Wallace: That would keep jobs in Ireland. It can be done by challenging the cartel.

Deputy Simon Coveney: I want cattle to be slaughtered and processed in Ireland. There are jobs in these value-adding activities. The same thing applies in the case of seafood. It is important for farmers who do not feel the factories are giving them value for money for their cattle to have an alternative outlet - to keep the factories honest, as many people describe it. That is why we welcomed the opening of the Libyan market to cattle and sheep available earlier this year. I would like the option of a live cattle trade to the UK to exist, but the market has to be given what it is looking for. I remind those who think our access to the UK market has been damaged that we will export €4 billion worth of food and drink, significantly more than we have ever done in the past, to the UK this year. Beef is a major part of that. The value of beef exports to the UK has increased in percentage terms by a double-digit figure in the last 12 months. This issue must be considered in the appropriate context. The UK is by far our biggest export market for food and drink. It accounts for 42% of our food and drink exports, which will be worth almost €10 billion this year. We are building that market. In response to the point that was made about the retention of ownership of animals being transported, I remind Deputy Naughten that we are in a receivership situation. Is he suggesting that the Department should step into the middle of a receivership situation deliberately to frustrate the process? Is he suggesting that an effort should be made to get people to hand over money to certain people who are owed money while others are ignored?

Deputy Denis Naughten: No. That is not what I am suggesting. I am suggesting that the Department should assist the receiver's efforts to get as much money as possible from Italy. The Department is not prepared to facilitate that. The Italian authorities are not prepared to facilitate that.

Deputy Simon Coveney: The Department has not been asked by the receiver-----

Deputy Denis Naughten: The powers are there within the EU to ensure those animals are not slaughtered until the money is paid.

Agriculture Schemes Data

9. **Deputy Seán Kyne** asked the Minister for Agriculture, Food and the Marine if the mapping and digitisation of uplands takes account of the fact that hill areas contain inclines and slopes that cannot be correctly measured by a mapping system which has regard only for the base area of the mapped area; if he will describe the procedure for mapping elevated lands; and if he will make a statement on the matter. [53141/13]

Deputy Seán Kyne: I am asking the Minister whether the procedure within the mapping system for measuring gross area is different in the case of mountain or elevated land, as opposed to flat land.

Deputy Simon Coveney: One of the challenges faced by those involved with the mapping system is that they have to rely on an image from space. The move from getting images from high-flying aircraft to getting images from satellites has allowed us to be much more precise.

The imagery now available to us allows us to see the animals in the fields. I understand some challenges are encountered when photographs are taken from above. There can be some uncertainty regarding contours, etc. That is why some of the imagery has to be backed up with physical inspections. I encourage farmers who feel the new mapping system has in some way treated them unfairly, in terms of land eligibility or anything else, to submit appeals. If there are any question marks in that regard, we will send inspectors out to make judgment calls. There may be genuine problems in cases of lands with significant contours etc. We are aware of this issue. We are open to checking satellite imagery. Images that are crystal clear might not take account of significant contours in mountainous areas. I am sure Deputy Kyne is familiar with cases that may require individual inspections at farm level.

Deputy Seán Kyne: I am not talking about any particular case. I often drive past large mountainous commonage areas that are sloped. Penalties are being imposed on many farmers who are thought to have over-claimed. They are losing money because of this. I think it is a genuine issue. Farmers could be losing a certain number of hectares on the basis of assessments involving the mapping system that is used at present. If the lands in question were assessed by an engineer, it might be found that the gross area is actually higher in some cases.

Deputy Simon Coveney: The measurement of land area within the land parcel identification system respects all national surveying conventions with regard to slopes or hill land. The area quoted on Ordnance Survey Ireland maps, on which much of the land parcel identification system database is built, is based on the principle of measuring the horizontal or two-dimensional area. In cases of sloped land, this is the area of land measured on the flat or plain area. This convention extends to the purchase of agricultural land as well, whereby a purchaser would only pay for the horizontal area within the holding and not the sloped area. This procedure is the same as the method used during the single farm payment reference period. We are doing everything we can, in light of all the information available to us, to try to take account of contours and slopes. Farmers who feel they are being hard done by as a result of the use of this system should seek appeals to ensure their land holdings are accurately measured.

Deputy Denis Naughten: I compliment Deputy Kyne on tabling this very good question. I presume the same thing applies in drumlin areas. The fact that the slope is not continuous probably makes it far more difficult to measure the land area. The Department's systems have become far more accurate. It is able to remove narrow tracks from its calculations. Are there any plans to improve the software system in recognition of the problem that has been raised by Deputy Kyne?

Deputy Simon Coveney: We are changing our software systems all the time. We have practically designed a new system.

Deputy Denis Naughten: I know.

Deputy Simon Coveney: It is working, by the way.

Deputy Denis Naughten: We are receiving the brunt of it in our offices.

Deputy Simon Coveney: That may be so, but it is because we are in the middle of a correction period. Other countries in the EU that are far bigger than Ireland are unable to do what we are doing. Since the middle of the summer, we have reassessed practically every one of the hundreds of thousands of land parcels in this country. I regard the judgment that has been made of the amount of land that is potentially ineligible as pretty accurate. We have put systems in

place to allow farmers to submit appeals if they feel the measurements are inaccurate. I would say the accuracy of our system is pretty good, by and large. The current reform process, which essentially involves a correction of the inaccuracies of the last system, is difficult for farmers who are seeing some of their lands deemed ineligible. By the time the process has been fully corrected, within the next six months or so, Ireland will be one of a few countries in the EU to have done that. Significant disallowances and fines, which would be multiples of the value of the correction figure we are now going to deliver, will be avoided as a result.

Departmental Publications

10. **Deputy Éamon Ó Cuív** asked the Minister for Agriculture, Food and the Marine the amount of staff time and the estimated cost, including staff time, associated with the production of ministerial newsletters since he became Minister; the grounds on which he believes this expenditure of taxpayers' money is justified; and if he will make a statement on the matter. [53072/13]

Deputy Éamon Ó Cuív: They say that time is money. No doubt it takes time to prepare the newsletters issued by the Department. This is taxpayers' money. I ask the Minister not to tell me it is impossible to quantify the precise cost of this exercise because the officials involved are also doing other related work. The Minister will appreciate that the private sector is able to value things like this every day of the week.

Deputy Simon Coveney: While this is a valid question, I think it is a strange one. The Department issues newsletters on a reasonably regular basis to update farmers who want to get that information. They are sent out in as cost-effective a way as possible. This is essentially an online service. Nobody in my Department is being paid anything extra for this and we are not bringing in any extra staff for it. People are doing it as part of their function within the Department to inform farmers as best we can about the changes in agrifood which are positive and encouraging. If we were not to publish e-newsletters for farmers to access, we would be rightly criticised for not using technology to its maximum effect. At the National Ploughing Championships last year and this year we asked farmers to sign up to the database on a voluntary basis in order that they could get this information, and thousands of them did so. There is interest from my clients, the farmers, in getting this information. They are getting it at no extra cost to the taxpayer. It provides good value for money and interesting reading for many farmers who want to understand what is happening in the Department.

Deputy Éamon Ó Cuív: We all agree with the idea of informing the public. However, are these newsletters political propaganda or informing the public? I have a very simple, specific question. Two newsletters were put out in October. How many pictures of the Minister and the Minister of State appeared in the newsletters?

Deputy Tom Hayes: It must be upsetting the Deputy.

Deputy Éamon Ó Cuív: How many pictures in total were in the two newsletters?

Deputy Tom Hayes: We will go back and count them for the Deputy.

Deputy Simon Coveney: I have no idea. I trust my Department to put these newsletters together. It is my job to be the political face of Irish agriculture and I have no intention of shying

away from that. It is my job to encourage, inspire and lead people in an ambitious new direction in terms of building an industry. That is working and it is working on the back of a plan that, to be fair, the previous Government prepared, namely, Food Harvest 2020, which we have built on and are implementing. It is nonsense to suggest I should shy away from that because it is somehow perceived as party political. I spend most weeks travelling the country talking farmers and encouraging them, and introducing new policy to help build the industry. We will continue to do that and I will continue to do that as long as I am in this position.

Part of any newsletter will give coverage to what we are doing. If the Deputy dismisses that as party politics, that is fine, but I do not see it as party politics. I see it as me doing my job as Minister for Agriculture, Food and the Marine. Similarly, it is the job of the Minister of State, Deputy Tom Hayes, to represent and advocate for the sectors for which he is responsible. If we can do it at no additional cost to the Department and make it interesting to the many farmers who want to get this newsletter, that is a positive thing.

Deputy Éamon Ó Cuív: I will give the Minister the information. There were 11 pictures in the two newsletters, seven of which featured the Minister and four of which featured the Minister of State. That means 11 out of 11 featured one of the two Ministers. It would appear that the Minister's opinion is that nothing happens in the Department of interest that does not have the Ministers in it.

Has the Minister or his Department consulted the Standards in Public Office Commission about the appropriateness of this newsletter in its present form? At what level is the draft signed off in the Department before it is presented to the Minister?

Deputy Simon Coveney: I trust the corporate affairs division in my Department to put together a newsletter that is non-party political but unapologetically advocates for our sector and informs people of what we are doing. I am involved in practically everything the Department does that is new and is newsworthy. Of course I am because I am the head of the Department. I do not see why I should shy away from that or be apologetic for it.

This year has been an extraordinary year for agriculture. We have had to deal with a horse-meat crisis and a fodder crisis. We have designed and delivered a new Common Agricultural Policy and a new Common Fisheries Policy. We have had a great summer for grass growth. We have had strong pricing, particularly on the dairy side. Many positive things are happening. As I said earlier, exports this year will be close to €10 billion. Two and a half years ago that was considerably below €8 billion. Farmers want to know about that and they want to see that their political advocate for this growth and expansion plan is out there advocating for them. That is all I am doing in this newsletter

Deputy Éamon Ó Cuív: Will the Minister answer the question?

Deputy Simon Coveney: I am confident there are no issues here.

Deputy Éamon Ó Cuív: I asked the Minister two very specific questions.

An Leas-Cheann Comhairle: Let the Minister speak.

Deputy Simon Coveney: If the Deputy wants to challenge that with SIPO, he is more than welcome to do so.

Deputy Éamon Ó Cuív: I asked the Minister if he asked SIPO.

An Leas-Cheann Comhairle: That concludes-----

Deputy Éamon Ó Cuív: My second question was the level in the Department the version the Minister signs off is at.

An Leas-Cheann Comhairle: We are out of time now.

Deputy Éamon Ó Cuív: The Minister knows the procedure as well as I do.

An Leas-Cheann Comhairle: That concludes Question Time.

Deputy Éamon Ó Cuív: By the way, I will pick up on the Minister's suggestion about SIPO.

Written Answers follow Adjournment.

Companies (Miscellaneous Provisions) Bill 2013 [Seanad]: Order for Report Stage

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): I move: "That Report Stage be taken now."

Question put and agreed to.

Companies (Miscellaneous Provisions) Bill 2013 [Seanad]: Report and Final Stages

Deputy Lucinda Creighton: I move amendment No. 1:

In page 5, between lines 11 and 12, to insert the following:

"(3) The Companies (Amendment) Act 1990 is further amended—

(a) in section 29 by amending subsection (4) to read:

"(4) The functions of an examiner should be performed with the maximum use of the services of the staff and facilities of the company to which he has been appointed to assist him in the performance of his functions, save for exceptional circumstances where the assistance of persons appointed or employed by him for that purpose may be used.",

(b) in section 29(5) by adding the following sentence:

", to the proviso to subsection (6), to the Court before which the proceedings is brought, to the value of the work done for the company, its employees, secured creditors and unsecured creditors.",

(c) in section 29 by adding the following subsection (6) after subsection (5):

"(6) A nominated examiner must provide an estimate of the remuneration, costs and expenses of the examiner to the Court when presenting the petition."."

I compliment the Minister on choosing to fast-track this element of the overall companies

consolidation legislation, which is overdue and needed. I appreciate the urgency the Minister has afforded to this Bill.

I have consulted very widely with the SME sector and particularly with the small number of companies that carry out examinership. We have a very small pool of people with the expertise, and as the Minister knows, it is an extremely costly process. Part of the purpose of the legislation is to try to reduce cost, reduce the jurisdiction, and afford the opportunity to smaller companies to move from the assumed and normal practice of applying for examinership in the High Court and moving it into the Circuit Court. I do not dispute that the likelihood is that by moving the jurisdiction, legal fees can be reduced and can be contained to some extent. The difficulty is that the vast bulk of the cost of examinership is not the legal fees involved but rather the examinership fees themselves. This is proving very off-putting to all companies, especially small and medium-sized companies, in applying for examinership.

The Minister will be well aware of another problem. The majority of small accountancy firms do not have the skillset to carry out examinership which is why such a small pool of people are involved. To highlight the importance of this to the real economy and the Minister's agenda of job creation, 60% of those employed in this country are employed in the indigenous SME sector. Only 10% are employed by foreign direct investment, FDI, companies. Many people are not aware of that. There is a perception that most employment is generated by the large multinationals. The Minister knows as well as I do that is not the case.

Small businesses are struggling. They face enormous challenges. A RED C survey by the Department of Finance on SME credit gives a very good picture of the challenges facing SMEs: credit demand from SMEs has declined to 36% and 80% of that 36% were granted the credit; and half of SMEs now agree that banks are lending, which is up from 39% this time last year and is a positive sign. There is a sense of confidence emerging. There is a big opportunity for small businesses, particularly those focused on exports and which are trying to expand. The difficulty is that many small businesses are still in financial distress. I recently met with the examiner who deals with 50% of all examinerships in the country. He told me that in his experience 99% of companies in distress do not opt for restructuring through examinership because they do not have the resources. When they meet the examiners, the upfront costs seem too onerous and the expertise does not necessarily exist around the country to help them.

My amendment is very simple and straightforward. It could drive transparency and oblige professional examiners and accountants to set out to the court upon petition the estimated costs of the examinership process. They would be obliged to give an estimated figure for which they would then have to account before the court in the later stages of examinership. It is a very simple amendment, one that I am sure the Minister will be minded to accept because it does not alter the nature of the legislation. It would make it far more effective and user-friendly and would oblige examiners to introduce a much greater degree of transparency in terms of how costs are arrived at and present a much clearer picture of what is involved and how much the examinership process will cost them to companies availing of this process, as is the Minister's intention

The other crucial aspect of the amendment is that it obliges the examiners, other than in exceptional circumstances, to use the professional expertise within the company itself. These are small companies with between 20 and 40 employees, many of which have in-house legal and accounting expertise upon which the examiner can draw. Depending on the examiner and the practices of a particular company it can be but it is not always the case that the examiners

already use the professional expertise within a company. My amendment would oblige the examiner to avail of that in-house expertise to avoid bringing in very expensive outside expertise in the form of accountants and so on. This would help to minimise the cost of the examinership process. My amendment provides for an obligation on the examiner to explain to the court, if and when he or she chooses not to use in-house expertise, why he or she has gone outside the company and brought in external, expensive practitioners. This is a very simple and practical change which would improve and enhance the legislation and would certainly keep the costs down for the companies involved which are in distress and ensure that fees and the cost of the overall examinership process are contained, which I think is the Minister's objective and it is certainly mine.

I am very pleased to say that I have been in touch with several of the concerned agencies which represent employers and the companies that are in distress. I have secured the endorsement of retail excellence Ireland, REI, the Irish Small and Medium Enterprises Association, ISME, the Small Firms Association, SFA, and the Restaurants Association of Ireland, all of whom in the past 24 hours have said that they are happy to publicly endorse the amendment I have tabled here today. They see it as a practical way to make this legislation more user-friendly and affordable and to help it achieve its objective, to ensure that companies in financial distress which require restructuring do not wind up or go into liquidation or bankruptcy. Those companies can stay in operation, continue trading and provide jobs.

Earlier this week in an appeal to the Supreme Court a company in Limerick was saved from going bust and because of a successful examinership application, the 33 employees in that company will have their jobs this Christmas and they and their families will not have to go through the distress and trauma of being made redundant two weeks before Christmas. That is a fantastic outcome. I want to see more companies, employees and families protected by the examinership process. That is what this legislation is intended to do and by accepting the amendments that I have laid before the House the Minister can help to enhance the legislation and ensure that it has a better chance of fulfilling that objective.

Deputy Dara Calleary: I support Deputy Creighton's amendment. I tabled similar amendments on Committee Stage. This Bill is welcome. Its proposals are excellent but if we do not put some sort of framework on the cost element, its benefits will be severely diminished as are the prospects of many companies availing of its provisions and it will not save businesses and employment. I expressed concerns on Second and Committee Stages about the Circuit Court and the need to ramp up the skill set there. This is a practical amendment that tries to prevent people making a lot of money through fees on the back of small companies in this process.

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): I thank Deputy Creighton for her amendment and comments. We are united in the desire to see companies avail of examinership, which has been successful, albeit only for large companies. Of the 80 or so examinerships each year, 75% are successful. It is an instrument that we need to make accessible to small companies and that is what this legislation sets out to do. By making it accessible to more companies, we will develop the capabilities of the accountancy profession to provide skilled and effective examinerships.

I agree that we need a framework to manage the costs but I do not accept the Deputy's proposals as representing an improvement on what we already provide here. Section 29 of the Companies (Amendment) Act 1990 prescribes that "an examiner shall, insofar as is reasonably possible, make use of the services of the staff and facilities of the company to which he has been

appointed to assist him in the performance of his functions”.

11 o'clock

What the Deputy is proposing is to replace the phrase “insofar as is reasonably possible” with the phrase “with the maximum use of”. My view is there is greater legal clarity in the use of “insofar as is reasonably possible” than in the use of terms such as “maximum” or in “exceptional circumstances”. We have looked at this but the view is that this is subjective rather than objective, and that the current text is more objective and is one to which the court must have particular regard. In that sense, it is a better and more robust approach.

The other issue the amendment provides for is that a “nominated examiner must provide an estimate of the remuneration, costs and expenses of the examiner to the Court when presenting the petition.” As of now, it is not the examiner who presents the petition; it is the company or the creditor who presents it and nominates the examiner, while the court appoints. Clearly, it is for the company to seek to work out with the examiner the approach that will be taken. The company is in a better position to do that with a nominated examiner than presenting in advance some fee schedule.

The other point the Deputy makes is on the need to ensure costs are contained. The rules of the court set out the procedure for an application of an examiner under section 29 of the Act for “payment of the remuneration and costs of, and reasonable expenses properly incurred by, an examiner.” The examiner in looking for those costs must in an affidavit “set forth a full account of the work carried out by him to the date of the application and a full account of the costs and expenses incurred by him and shall vouch same and of the basis for the proposed remuneration which he is seeking to be paid.” This will be against the backdrop of the examiner having to show he or she “shall, insofar as is reasonably possible, make use of the services of the staff and facilities of the company” to the most reasonable extent he or she can. In addition, “[t]he Court may, where it thinks fit, order that notice of the application be given to all such persons as the Court may direct, and may give directions as to the service of the said notice”. The court will vigilantly scrutinise the examiner’s application for payment and disallow items, or allow a lower charge-out rate than the examiner has claimed. In that regard, the court will seek to ensure that the examiner and his staff are only remunerated for work properly falling within the powers of the examiner.

We have inserted a framework, to use Deputy Calleary’s word, that seeks to minimise costs, and the allocation of the responsibilities and how the process works is sensible. On the wider issue that one would seek to insist that only company resources be used, the difficulty, which I believe Deputy Creighton acknowledges in her comments, is that the expertise is not generally within the companies to manage the whole of the examinership, which is why the skills in this area are being brought to bear. The proposed amendment would seek to restrict severely the ability of the examiner to employ expertise external to the company to assist him or her in the performance of his or her functions. The appointing of an examiner to a company does not usurp the functions of the board of directors, which will continue to manage the affairs of the company during the period under the protection of the court. Hence, the staff of the company are not answerable to the examiner. Further, in the case of small private companies in particular, the company may not have the staff with the necessary skills to assist in the formulation of proposals for a compromise or scheme of arrangements. There is, in addition, the potential for conflicts of interest, for example, under section 22 of the Companies Act the examiner’s proposals for a scheme of arrangement may, if the examiner considers it desirable

to do so to facilitate the survival of the company, specify whatever changes should be made to the management or direction of the company. There could also be potential conflicts of interest between the interests of the staff in the company and other creditors.

For all of those reasons, while I understand the motivation of Deputy Creighton's amendment, and it is a motivation I share, I believe the framework here is balanced and proportionate and is designed to achieve the outcome. With regard to using the phrase "insofar as is reasonably possible", given the understanding that the examiner is intended to bring new expertise and may have to take a view of the future of the company that is at odds with the view of those who are directing the company, we need to have the flexibility within the framework that is now provided for in the way we have set in the text of the Bill as it stands. That is why I cannot accept the amendment.

On the wider issue the Deputy raises, I am acutely conscious of the challenges for SMEs. The RED C survey was, as they say, a mixed bag. It showed a declining demand for credit but it also showed a falling refusal rate. At 20%, that refusal rate is still too high and would put us in the top third of European figures, but I must acknowledge it was a 30% refusal rate when those surveys started and has come down to 20%. We are working hard with the Credit Review Office. We have extended its remit to loans of €3 million and are trying to drive more cases to its office to try to reduce further that rate.

It is worth recording here, because people do not get the message often enough, that the Credit Review Office is a very valuable tool in the hands of people who have been turned down for credit. Its head, Mr. John Trethowan, is at present turning over nearly 60% of those cases that are appealed to him, so it is not that the bank's refusal should be regarded as the end of the road. The Credit Review Office is very successful at turning over decisions. We would like to see more decisions coming Mr. Trethowan's way, and that is why, during the course of the budget, the Minister announced the raising of the threshold from €500,000 to €3 million.

I know the Deputies encourage people to use these services, which are a way of improving access to credit. In addition, €2.5 billion has been provided from non-bank sources that are put out into the marketplace for SMEs across the whole suite of Government-backed lending measures. While those have still to prove their value and are in their various stages of development, looking back at the history of the seed and venture capital fund, which also started small, it is now a very established and strong element of the SME funding environment. We certainly hope that the development finance, microfinance loan guarantee and the various equity and lending funds from the NPRF will similarly build to become an important part of the non-bank finance infrastructure. We will have to develop a much stronger element of non-bank sources against a background of more constrained rules of credit from bank sources, even if the banks are fully healthy.

Deputy Lucinda Creighton: I appreciate that, at this point, it is difficult for the Minister to accept amendments to legislation. The practice in this House is to be not all that interested in accepting amendments from the Opposition or from backbenchers, which is unfortunate. We are all essentially trying to paddle in the same direction. Some of the Minister's logic for declining to entertain this amendment is a little thin, to say the least. The bottom line is that 99% of companies which find themselves in financial difficulty end up going bust. That is a far higher percentage than in other EU member states. If one compares it to the US, it is pretty incomparable. What we are essentially saying is that we want entrepreneurship, innovation and companies to establish but when they find themselves in difficulty, we are not really prepared to

help them to restructure, become more fit for purpose, survive, stay in business and keep people in employment, which is the crucial point in all of this. That is really unfortunate.

The Minister's statistics are correct. A total of 75% of examinerships are successful but it is a minute number of companies. When it comes to small companies, the number is even more minute. We are talking about dozens of companies every year rather than the thousands that should be going through the examinership process. The sad thing is that from speaking to business owners and the people who conduct examinerships in this country, we know that this is not likely to change substantially with this legislation, which is a missed opportunity. To give the Minister a flavour of it, I was surprised to learn that the small handful of companies that carry out all of the examinerships in the country were not consulted by the Department in framing this legislation. I asked all of them and none of them had been consulted. That in itself is quite extraordinary but when I spoke to them, what was very interesting was that the one examiner which conducts over 50% of examinerships for small companies in this country estimated the cost of examinership at about €50,000. He pre-negotiates fees with the legal profession, accountants etc., and estimates that all in, the amount is about €50,000. When I spoke to the other companies which specialise far more in examinerships involving big companies rather than SMEs, although they do some SME examinerships, they estimated the cost at €100,000 as a minimum so there is a big distinction even in the approach of examiners coming from the big firms and small firms.

The Minister may have misinterpreted my point about SMEs and their capacity to provide skills internally. I was not saying that small companies do not contain professional skills. Many of them do have these skills and what my amendment would do is simply oblige the examiner from the outset to use all of those professional skills within those companies before turning to junior associates in the big companies. That is what is happening at the moment and that is why those fees are estimated up-front at €100,000, which is off-putting for a small company with a small turnover. The idea that these are onerous obligations on an examiner that would not somehow fit the process is mistaken.

Another element of my amendment is to oblige the examiner to take into account the jurisdiction of the court. There is no obligation in the legislation for the examiner to take into account the jurisdiction of the Circuit Court *vis-à-vis* the High Court. That is something that the Minister, unfortunately, does not seem willing to accept, which is very disappointing.

Deputy Billy Timmins: I support the amendment put forward by Deputy Creighton. While the Minister gave a very plausible explanation as to why he would not accept it, I disagree with him. We continually extol the virtues of SMEs in this country yet there is a perception, much of it based on experience, that much effort is put into facilitating foreign direct investment and other industries but SMEs are not facilitated in their operations. I know the Minister in the past couple of days made an announcement about data analysis research and the investment into it but at the same time, a company in north Wicklow had to take on various arms of the State and met frustration at every hand's corner. Fortunately, it worked out for the company but telling it that the State is assisting SMEs certainly would not wash. I encountered an individual in recent days who had a very successful company. Three-quarters of the company was very profitable and one-quarter brought it down. He did not have the opportunity to save the three-quarters and felt he did not have the money to take on the authorities to try to hold on to that section of his company that was profitable.

Deputy Creighton's amendment tries to facilitate SMEs in meeting the intention in this Bill.

I certainly welcome this Bill. The intention behind it and the Minister's motivation for it are very welcome. However, I believe there is a weakness in it that Deputy Creighton's amendment seeks to address. She said she realises it is difficult for Ministers to take on amendments but I do not believe that should be the case. It is not difficult for a Minister to take on an amendment. Surely the case put forward and the fact that the stakeholders are supportive of it should make the Minister at least reflect on it.

The Minister mentioned the Credit Review Office and the 60% turnover, if I heard him correctly. While that is welcome, does it not tell us something about the banks that they are turning down so many cases in the first instance? How many small companies or individuals do not have the wherewithal or are basically afraid to approach the Credit Review Office? We must look again at banks being more amenable. Yes, there must be responsible lending and correct business plans but a 60% turnover shows a clear breakdown in policy between what the Government wants and what banks are actually doing.

Deputy Mick Wallace: I also support Deputy Creighton's amendment which I think is sensible and rational. This is a difficult country for a small business. The turnover must be very dramatic in terms of businesses starting up and closing down every year. I would like to see comparisons with Europe. Not long ago, just short of 20% of restaurants in Dublin were closing down each year although, obviously, new ones were starting up as well. That is a dramatic figure. The State needs to consider facilitating small businesses more and helping them stay in business in a more proactive way.

The Minister made two points with regard to allowing companies to provide some of the expertise. He said that many of them do not have it and that if they were directors, they would obviously be biased regarding how the process would proceed. There is merit in those two points, particularly the second. Some companies employing between 20 and 100 people do not have the expertise but more of them do. Some of the companies that do not have expertise have access to it. A company using its own auditor for ten or 15 years will have built a relationship with him. That professional would very likely be keen for the company to survive because there is business in it for him. I am sure he would be prepared to work for a smaller fee than some stranger the examiner might bring in. Giving the company in trouble an opportunity to supply some expertise, be it inhouse or through an independent professional with whom it has a relationship, would be a very helpful addition to the Bill.

Most of us agree with Deputy Timmins that we are better at helping larger companies than smaller ones, as has been borne out in recent years. I ask the Minister to take Deputy Creighton's amendment on board.

Deputy Richard Bruton: To address Deputy Timmins, it is beside the point that we are favouring foreign direct investment, FDI, over small to medium-sized enterprises, SMEs. Virtually all of the initiatives in the Action Plan for Jobs are aimed at SMEs, for example, micro-finance, the loan guarantee, the reform of the wage settlement mechanisms, the establishment of local enterprise offices, LEOs, the creation of funds worth €2.5 billion for SMEs, the establishment and extension of the Credit Review Office, CRO, and the simplification of company registration. These initiatives are aimed at making it easier to start and manage a business. Contrary to Deputy Wallace's comments, we are in the top ten easiest countries in which to start a business.

Deputy Mick Wallace: We are also diminished.

Deputy Richard Bruton: Leaving aside *Forbes* magazine, we are one of the best countries in the world for start-ups thanks to the strong business and tax environment that we have created. Through Enterprise Ireland, we have support mechanisms that SMEs in many European countries would give their right arms to have. They do not have substantial state agencies that invest in hundreds of companies at the seed and emerging phases. We have a good network for supporting SMEs and cannot let it go. The figures support this. Of the 58,000 extra people at work in the past 12 months, 6,500 come from FDI whereas the other 51,500 come from Irish-owned sectors, which are dominated by SMEs. It is not true to say that there is some sort of a bias towards FDI.

The purpose of this provision is to bring examinership within reach. Under the Bill, an examiner shall, as far as is reasonably possible, make use of the services of the staff and facilities of the company to which he or she has been appointed to assist him or her in the performance of his or her functions. We are providing that the examiner must use those facilities. It would only be sensible for him or her to do so, as an examiner has knowledge of the business, trends, how a company is doing, what its customer base is and who its creditors are. However, the purpose of appointing an examiner is to bring additional expertise to bear. We are not going to insert legislative provisions that would seek to minimise the necessary use of such resources, but an examiner must justify those costs to a scrutineer at the end of the process.

Reverting to Deputy Calleary's point, the framework seeks to minimise the costs. While I agree with the motivation behind Deputy Creighton's amendment, for the reasons I have outlined it does not add to the Bill. However, I accept that we need to do more in this space. Bringing the process to the Circuit Court is a first move. The Company Law Review Group, CLRG, has indicated the need to examine the possibility of less formal processes to bring companies out of difficulty. We will do so, but the CLRG recommended that we make this provision straightaway, which we are doing.

There has been wide consultation. This formed part of the large Companies Bill, in respect of which there was tremendous opportunity for consultation. Business organisations, some of which have been mentioned, are keen that we proceed. We have not failed to consult widely. There has been-----

Deputy Lucinda Creighton: None of the examiners has been consulted.

Deputy Richard Bruton: They certainly had the opportunity. We asked the CLRG, which involves business organisations as well as congress, trade unions and people in the legal profession, to consider this specific matter and revert to us with proposals. An effort was made to ensure that everyone with relevant expertise got an opportunity to be involved.

We have not been inundated by complaints about the structure that is being put in place. There is broad support. We all want this to be a cheaper and more effective resource. While I do not criticise the motivation behind the amendment, the route we are taking is sensible, reasonable and proportionate and will improve the environment, given the reasons that I outlined. However, it is not the end of the challenge that we face in this regard.

Deputy Lucinda Creighton: I might be pushing my luck, but I wish to make two points. First, all of the examiners with whom I spoke stated that they had not been consulted, although I am sure the stakeholders were.

Second, if I am interpreting the Minister correctly, he stated that the idea of an estimate of

upfront fees would almost exclude the company from entering into a negotiating process and close collaboration with the examiner. However, this is precisely how receiverships and liquidations work, in that an estimate must be laid before the court at the beginning of the process. I cannot understand why examinerships should be different. It makes no sense. I am not referring to a prescriptive fee estimate, but it would be an estimate none the less that would guide the court at a later point in determining whether the fees ultimately presented to it were reasonable. This sensible and logical proposal is already the standard practice in receiverships.

Amendment put and declared lost.

Deputy Richard Bruton: I move amendment No. 2:

In page 13, between lines 26 and 27, to insert the following:

“(3) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything done previously thereunder.”.

This amendment provides that the regulation that the Minister is empowered to make under section 8(2) will be laid before the Houses of the Oireachtas. I am tabling this amendment in response to an amendment proposed by Senator Barrett on Report Stage in the Seanad that could not be facilitated then. It is appropriate to include this amendment, which will allow for the laying of regulations made under this section before the Houses.

Amendment agreed to.

Bill, as amended, received for final consideration.

Question proposed: “That the Bill do now pass.”

Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton): I wish to take this opportunity to thank Deputies for their support in passing this legislation quickly. It was justifiable to remove this element from the much larger Bill that we are considering.

Question put and agreed to.

Acting Chairman (Deputy Bernard J. Durkan): The Bill which is considered to be a Bill initiated in Dáil Éireann in accordance with Article 20.2.2° of the Constitution will be sent to the Seanad.

Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013: Instruction to Committee

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move:

That, pursuant to Standing Order 177, Standing Order 131 is modified to permit an instruction to the committee on the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013, that it has power to make provision in the Bill for a new Part 7A in relation to sick leave remuneration, empowering the Minister for Public Expendi-

ture and Reform to make regulations concerning the payment of remuneration to public servants during sick leave, and to make necessary consequential amendments to the Long Title.

I am tabling this motion of instruction to enable some amendments to be included in the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013, which will allow the Minister for Public Expenditure and Reform to provide, through ministerial regulations, for a new sick leave scheme for the public service. As the current Long Title of the Bill suggests, it amends the 2004 recruitment Act to provide for redeployment of public servants. The amendments being brought forward are beyond the scope of the current Title of the Bill, so it is proposed to amend the Title to provide for regulations concerning sick leave in the public service. It is also my intention to accept, in essence, the suggestion of Deputy Fleming to lay such regulations before the House.

Deputies will recall that when we were dealing with Second Stage of this Bill in late September, I advised the House of my intention to bring forward provisions relating to sick leave on Report Stage. I thank the House for its co-operation in facilitating the bringing forward of this motion to include these amendments on Report Stage of the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013. The amendments, which will be inserted as Part 7A of the Bill, will enable the Minister for Public Expenditure and Reform to provide for a sick leave scheme that will apply to all public servants based on important principles and policies set out in the legislation.

Before turning to the detail of the proposed new Part, I will provide the House with some background information on the new public service sick leave scheme and the rationale for the proposed changes. As Deputies will be aware, the new public service sick leave scheme is being introduced following a binding 2012 Labour Court recommendation concerning sick pay in the public service. The rationale for the new scheme was the need to reduce the unsustainable cost of sick leave for the public service overall. This is to be achieved through a substantial reduction in the period of time for which paid sick leave will generally be available from the one year period available at present, comprising six months full pay and six months half pay, to three months full pay and three months half pay.

We know that in many areas of the public service absenteeism levels are high compared to best practice benchmarks, ranging from 4% to 5%. The direct pay bill cost of this absenteeism has been estimated at approximately €500 million and necessary substitution of staff in some sectors attracts additional costs. This is unsustainable given the severe fiscal pressures that the State continues to face. While the amendments being introduced today are enabling provisions, which will allow the Minister for Public Expenditure and Reform to provide for the new scheme by ministerial regulations, it is the binding recommendations from the Labour Court which define the parameters of the new sick leave scheme. Although the new sick leave arrangements could be applied in some sectors, such as the Civil Service, by administrative circulars, the Office of the Attorney General has advised that legislation is required to ensure that the new public service sick leave scheme can be applied across the public service, particularly as many public servants have employment contracts that are governed by contract law. In addition, and in accordance with the Labour Court recommendation, a review of the operation of the new scheme is to be carried out after a full year of its operation. Given the extent of the changes being implemented across multiple organisations and multiple sectors it is important that there is potential to make adjustments to enhance the operation of the scheme in light of operational experience.

Public servants have been aware of the intended changes to the sick leave scheme since the Labour Court recommendation in 2012. For most public servants, the recommendation of the Labour Court as set out in the new scheme will mean a reduction in access to paid sick leave in normal circumstances. The Labour Court recommendation provides for a reduction of access to paid sick leave for non-critical illness from “6 months full pay and 6 months half pay” to “3 months full pay and 3 months half pay”. Having exhausted sick leave on both full and half pay, in certain circumstances an individual can apply to be given access to a payment that equates to what they might receive by way of a pension payment were they to retire. This is referred to as “pension rate of pay”. I intend to replace this provision with “temporary rehabilitation pay” which is calculated and awarded in the same way and is only paid when an individual has a reasonable prospect of returning to work.

In addition, the Labour Court recommended that special arrangements were to be put in place, through the development of a critical illness protocol, under which staff with serious illnesses or injury of a specified severity might be able to benefit from extended paid sick leave on an exceptional and normally non-recurring basis. In effect this means that staff covered by the critical illness protocol would continue to have the same level of support that is available under the current sick leave scheme. This protocol, which is at an advanced stage of development, is the subject of ongoing consultation with the public service unions and has been referred back to the Labour Court for a binding recommendation on a limited number of issues. I understand that recommendation is imminent.

While the introduction of the new sick leave arrangements is very important, it is obviously vitally important that sick absences and workplace rehabilitation are managed properly, both for the benefit of the individual and the organisation. In addition to reducing the financial costs associated with sick leave, long-term absence from work due to sickness is associated with a poor prognosis for return to work. Indeed, the likelihood of successfully returning to work may be reduced after an extended sick leave absence. There is much medical evidence that being out of work for an extended period of time is associated with poor health. In general, rehabilitating people back to work after illness or when they have a disability is likely to benefit their long-term health.

I assure Deputies that the new scheme, as recommended by the Labour Court recommendation in 2012 and which will be provided for in the regulations, will ensure a balanced and reasonable approach to supporting staff while they are ill and unable to attend work, particularly in circumstances where they have a serious illness and medical condition which falls under the critical illness protocol, and at the same time to trying to reduce the significant and unsustainable costs of sick leave which I indicated. It is important to note that in overall terms, the new scheme will provide access to some form of income for public service employees who find themselves out of work due to illness or injury for a period of two years in total.

As we move through the Report Stage of the proposed amendments and the inclusion of the new Part 7A to the Bill, I will deal with each of the new provisions relating to the new sick leave arrangements in detail for the House. The central part of the proposed amendments are contained in sections 58(A) and 58(B), which provide the Minister for Public Expenditure and Reform with the basis for drawing up regulations for sick leave in the public service.

The regulations that will be made under this Bill will provide for access to the amount of sick leave as set out in the binding recommendation of the Labour Court and identify the public service bodies that will be covered by the new scheme. It is my intention to cover all areas

of the public service in the first instance. Specifically, that will include public servants in the health sector, the local government sector, the Civil Service, An Garda Síochána and the non-commercial semi-State bodies. The education sector will be joining the scheme at the start of the new school year in September 2014. This is the approach that makes the most sense for that sector from an administrative perspective as its arrangements relate to the school year rather than the calendar year.

The Permanent Defence Forces will not be included in the new scheme as there are specific issues arising in respect of the nature of the work in the Defence Forces. Notwithstanding this there will, however, be reductions in the access to sick pay in the Defence Forces. The Defence Forces regulations are the appropriate vehicle for the amendment of their sick leave arrangements.

As I have already told the House, the policy objective, which is consistent with the Labour Court's binding recommendation, is that all of the public service would be covered by the new scheme. In any circumstances where there are bodies that are not explicitly covered by the new regulations, reflecting the complexity of introducing new terms and conditions across multiple and hugely varied sectors and organisations, this can be addressed through an amendment of the regulations in order to widen coverage of the new scheme where that is deemed appropriate in the future.

Although it had been intended to put the scheme in place by 1 January 2014 - I have indicated that publicly - in accordance with the Labour Court's recommendation, this would mean that I would not be able to lay the regulations before the Houses of the Oireachtas. In the interests of transparency and equity, I think that it is important that I do so. On that basis, I am delaying the commencement of the scheme until the regulations have been laid before the Houses of the Oireachtas.

Deputies will appreciate that the State is not in a position to continue to meet a sick leave bill of over €500 million a year. A cost of this magnitude is unsustainable. Nor can the public service be expected to absorb the associated loss in productivity in light of the consequential impact on the provision of public services. The reform of sick leave across the public service as a whole is, therefore, a fundamental reform priority that I set out early in my tenure as Minister for Public Expenditure and Reform. I seek the support of the House for this motion, in the first instance, to provide a legislative basis for a reformed sick leave arrangement for the public service.

Deputy Sean Fleming: I welcome the opportunity to speak on this motion which is to introduce a new sick leave scheme in the public service. The scheme is being included in the Public Service Management (Recruitment and Appointment) (Amendment) Bill 2013. Everybody should accept that the cost of sick leave is a major issue for the Irish taxpayer. The cost of sick leave in the public service is higher than in the private sector and the taxpayer pays the bill. It is important, therefore, that, in line with everything in Irish society, there should be cost reductions in this excessive bill. I do not know where the Minister got his estimate but it is substantial in any event.

Before dealing with the main points I have prepared, I wish to raise some of the points from the Minister's contribution a few minutes ago when he said:

Although the new sick leave arrangements could be applied in some sectors, such as the

Civil Service, by administrative circulars, the Office of the Attorney General has advised that legislation is required to ensure that the new public service sick leave scheme can be applied across the public service, particularly as many public servants have employment contracts that are governed by contract law.

The Attorney General, therefore, has advised that legislation is required. Towards the end of his contribution, the Minister said that “in the interests of transparency and equity” it is important that he prepare the regulations. He is doing so, however, because the Attorney General said it is the appropriate way to go. I do not accept the Minister’s attempt to make a virtue out of the fact that he is doing something, to quote his words, “in the interests of transparency and equity” when he is being forced to do it on legal advice from the Attorney General. The Minister’s script is contradictory on that issue because while he says it is in the interests of transparency and equity, he is doing this for sound legal reasons. That is why I said, in the first place, that there should be regulations to deal with this matter.

There is a two year period in total during which people will be able to receive some pay at the end of the temporary rehabilitative payment, which comes in lieu of pension pay. Is that two year period a new figure? I understand the Minister is talking about excluding the Defence Forces from these regulations because these matters will be dealt with under the Defence Forces regulations, and I accept that. However, members of the Garda Síochána understood that they would also be excluded, but I see no mention of it in the Minister’s script. They made a strong case for exclusion and some of them understood that their case had been accepted.

In essence, the arrangements before us are to make changes to the sick leave mechanism across the public service from six months of full pay to six months on half pay. After that period, people will go on to what was known as the pension rate of pay, but is now to be called rehabilitation pay. There is general support for this measure which aims to reduce costs. One way of achieving this is to reduce the amount of payments from six months of full pay to three months on full pay and three months on half pay. That is a major, significant and substantial change. I support the general principle involved. It would be less than honest, and it would be unfair to the Irish taxpayer, if I were to oppose the principle of some reduction in the public sector sick pay bill. Every private company is doing it, so there is nothing new in this. Nobody in Irish society is exempt from trying to make some cost savings, so I support the principle involved. These savings for the taxpayer are to be achieved by the change from six months to three months. However, it is important that a small number of limited, exceptional, critical-illness cases can still be dealt with in the system. I will revert to that point later.

I wish to thank the Minister’s departmental officials for the excellent briefing they provided to me on this matter on Tuesday afternoon. I will now deal with some of the reasons that I have difficulties with the motion before us. First of all, as the Minister has said, the issue is going to the Labour Court next week over some minor aspects. However, this was before the Labour Court ruling on 19 July 2012 when Mr. Kevin Duffy, the court’s chairman, signed the agreement. At the time, Mr. Duffy said that subject to the necessary legislation being enacted, the proposals and recommendations should take effect from 1 January 2014. The Minister has had 18 months to get his act together and get this measure in place in a more open and transparent way through the Oireachtas, instead of bringing in a motion at this late stage. Clearly, this motion is not in order with the original legislation. It is rushing things to come here at this stage, a week before Christmas, with this legislation.

Deputy Brendan Howlin: I told the Deputy about this in September.

Deputy Sean Fleming: Yes, I accept that but we have all known about this issue since 19 July 2012. I recall that circulars were issued across Government Departments in September 2012.

Deputy Brendan Howlin: I have not been idle since then.

Deputy Sean Fleming: My point is that the Minister is only coming here now, 18 months after the Labour Court ruling. The original intentions in going to the Labour Court were good, but the Minister has mismanaged the situation in the past 18 months. There is confusion about aspects of the measure and there have been delays. In addition, the Labour Court will sit next week on specific items relating to this matter. Some 18 months ago, the Labour Court recommended that the proposals should take effect from 1 January 2014. In addition, I tabled a parliamentary question on this matter on 28 November, which is only two weeks ago. In his written reply, the Minister said that the finalisation of the protocol was recently the subject of conciliation talks at the Labour Relations Commission, which were aimed at securing agreement as soon as possible to facilitate the introduction of the new sick leave arrangements from 1 January 2014. The Minister put that on the Dáil record only a fortnight ago.

When these amendments were being announced last week, the briefing note from the Government Whip's office to the Opposition Whips was prepared on 4 December. Just last week, the Government Chief Whip told us that the new measures were being introduced on 1 January 2014. He said they were a key deliverable of the Government's reform programme.

The 1 January 2014 date has been announced three times. We had it as recently as last week from the Chief Whip's office and from the Minister's written reply two weeks ago, yet we now find that this is not the case. We are now told that the Labour Court will be dealing with the issue next week. The Minister expects us to pass legislation today in respect of rules and conditions on sick pay for 290,000 public servants and their families while these matters have yet to be decided in the Labour Court next week. Not only is it disrespectful to the Labour Court for us to be doing this today, before it has finished its considerations, but it is also disrespectful to ask the Houses of the Oireachtas to pass regulations which the Minister cannot be specific about until the Labour Court has fully adjudicated. I understand it is dealing with issues such as critical, disability, pregnancy-related and mental health illness.

On mental health, the opening paragraph of the Department's critical illness protocol, to which the Minister, Deputy Howlin referred, states: "Therefore, when an individual becomes incapacitated as a result of critical illness or serious physical injury and has supporting medical evidence.....". While "physical injury" is specifically mentioned in the protocol no mention is made of mental illness. I do not believe adequate provision is being made in this regard. It would have been far more appropriate to be more inclusive in the terminology dealing with this issue. It is no wonder, when this is the line being taken by the Department, that this matter is back before the Labour Court.

Neither the Minister nor I know what will happen in the Labour Court next week. The Minister in ramming the legislation through this House during the next few hours is asking us to support something in regard to which we do not yet know the outcome. I have tabled an amendment to the Bill to the effect that some of these matters be addressed by way of regulation. As everybody knows a regulation does not come into effect until 21 days after it has been laid before the Houses. I acknowledge that the Minister has accepted the principle of my amendment and has tabled his own amendment in this regard. The Government Chief Whip in

saying last week that the scheme would come into effect on 1 January next obviously does not understand the regulatory process. The Minister in reply to a parliamentary question tabled by me on 28 November also said this scheme would come into effect on 1 January, which means he thought he could rush this through by way of circular without the need for regulation. He now knows this cannot be done. The regulations cannot come into effect until 21 sitting days after they had been laid before the Houses, which equates to seven weeks in terms of Dáil sittings. If they are not published until some time in the New Year it will be well into March before the scheme comes into effect.

I do not have a problem with the date on which the scheme will come into effect. However, I do have a problem with the fact that up to recently the Department of Public Expenditure and Reform and parliamentary system were indicating it would come into effect on 1 January next when they should have known that this was physically and legally not possible, which meant everybody was being led astray. As the scheme will not come into effect on 1 January next there is no rush in terms of the passage of the legislation. The Minister should await the outcome of the Labour Court process, at which time we will all know the full implications in this regard. I ask that the Minister defer this motion and the legislation until we know the outcome of the Labour Court process. I cannot support the hamfisted manner in which the Minister is pushing this through.

The Minister has made a virtue of pre-legislative scrutiny. There has been no pre-legislative scrutiny on this matter which affects sick pay entitlements for 290,000 public servants and their families. The Department should have engaged with Members on it in advance of its publication and representatives of the public sector trade unions and of the taxpayer who is paying for this should have come before the a committee to brief us on it. This is another example of rushed legislation in terms of the few hours being allowed for debate on it. This may explain the reason this legislation was not gender, equality or poverty proofed. I would expect nothing more from a Labour Party Minister who supported the decision earlier this year in the budget to reduce maternity benefit and to, for the first time, tax maternity benefit. The Government is now attacking low paid workers in the public service, in particular women.

Deputy Brendan Howlin: We are not attacking them.

Deputy Sean Fleming: Women in the public sector are being attacked in that some of these measures will not impact on male workers. We all know that there are far more women employed at the lower pay grade rate in the public sector. The measures being introduced will have a greater impact on people on lower incomes. This legislation has not been gender proofed. The Minister would have noticed this had there not been a rush to have it passed.

The legislation provides that pay in respect of a person on half pay should not be less than the social welfare rate of €188 per week. However, there are many women in the public service who are now the sole bread winner within households. The social welfare entitlement of a woman not working in the public sector, who is the sole bread winner and whose husband has lost his job and may be back in education and has three children, is €402 per week yet provision is made in the legislation for only €188 per week in this regard. Will the Minister guarantee that the wage of a family, the main bread winner of which is a public sector worker who is on half pay will be equivalent to the social welfare payment to which the family would be entitled? The legislation provides only for the single rate of €188. Under the legislation a person in receipt of this money will be required to provide signed certificates to his or her employer. This measure is anti-women.

Another issue not addressed in the legislation is pregnancy-related illness. A woman who has had an illness in the past may suffer a pregnancy-related illness. As only women can have a pregnancy related illness, they will be hit by the reduction to half pay despite that the illness may be no fault of their own. This measure hits only women. This is a further example of a lack of gender proofing of the legislation. The legislation will affect low paid workers and women. The Minister should have considered this measure in greater detail.

I also object to the retrospection aspect of the sick leave arrangements. The Minister is aware that when it comes to sick leave one is counting backwards. While I understand the need for some element of retrospection I do not agree with what is provided for in the circular issued across the public sector which states: "Because we calculate sick leave on the basis of a four year rolling period, i.e, counting backwards from the latest day of absence, the changes to be introduced on 1 January 2014.....". In counting backwards retrospective effect is being given to this measure. The original proposal was more reasonable. I was prepared to support the Minister in that regard. Fianna Fáil also put forward proposals in regard to these issues in its budget submission last year.

I ask that the Minister wait until after the Labour Court has issued its ruling to deal with the legislation. It has been already delayed for more than a year and half but is now being rushed through the Dáil. The 290,000 public servants and their families deserve better. There was no pre-legislative scrutiny on this matter. It is possible to delay debate on the Bill because the regulations cannot come into effect until March. The more I examine the detail of the legislation the more I believe it has the potential to be anti-women and anti-low paid workers. It is blatant discrimination, as evidenced by the examples I have given. The measures being introduced under the legislation should have been given greater consideration. I ask that the Minister go back to the drawing board on it. I will be opposing this motion.

Deputy Mary Lou McDonald: The rushed manner in which this measure is being introduced has been already referred to. In essence, it is a substantive legislative measure in its own right. The Minister is correct in saying that he gave us notice in September that he would be bringing this matter forward. However, we did not envisage it would be done at the tail-end of this session in such a hurried and rushed fashion. Given the nature and novelty of the legislation, it deserves proper Committee Stage scrutiny and consideration.

There is currently no legislation on the books in regard to the sick pay regime. As such, this is a new departure, one which, as in the case of the financial emergency measures in the public interest, FEMPI, legislation places substantial new powers in the hands of the Minister. The legislation will have serious consequences for public sector workers and in terms of industrial relations and the power of negotiation and collective bargaining across the public sector.

I do not think anybody disagrees that savings must be made in respect of the sick leave bill in the public sector. The Minister will be aware it was noted in the LRC recommendations and agreement that the unions understood and subscribed to the envisaged €25 million savings to be achieved in this area. It is important as part of this debate to say that it was their view, and reasonably their view, that savings of this magnitude could have been achieved under the current scheme by way of, as reflected in the recommendations, "more active control".

I share the concern in regard to the critical illness protocol. It is worrying that disability, mental health and pregnancy-related illness are not specifically mentioned in this regard. I appreciate that pregnant workers are protected by other legislative tools. None the less, it is

critical in respect of sick leave arrangements that because women workers can become pregnant several times in the course of their working lives, long-term illness and recurring illness are captured in that protocol.

Debate adjourned.

12 o'clock

Leaders' Questions

Deputy Michael McGrath: The members of the Committee of Public Accounts are to be commended on the manner in which they conducted yesterday's hearing with the Central Remedial Clinic. Some of the practices that were revealed during yesterday's hearing are unacceptable. These include the use of charitable donations to top-up lavish executive salaries and pension payouts, the highly irregular recruitment process for the chief executive and the mystery annual payment of €660,000 to the Mater hospital. The saddest part of all this is that the children and adults with physical disabilities who rely on the services of the CRC will potentially suffer as public donations inevitably fall off. There is also a growing concern now that public trust and confidence in charities generally will be negatively affected by this controversy.

If we want people to continue to support charities as generously as they always have done, they need to be assured that their hard-earned money will be spent on those for whom it is intended. We would be naive to think that the issues at the CRC pertain only to that organisation and that it is the only publicly funded body to operate in this manner. The Minister for Health said late last month that of the 44 so-called section 38 bodies contacted by the HSE, more than half, 24 of them, stated they did not comply with public sector pay policy. A further eight did not even bother to reply to the HSE. What about the 2,000 or so section 39 bodies that also receive substantial funding from the HSE? Do we know what is going on within these organisations?

We await the implementation of the Charities Act 2009. The Act expressly provides for the Minister for Justice and Equality to regulate for narrative and financial disclosure standards. Were these standards in force they would require every charity of any significant scale to provide a report on the sources of its revenues, the pay bands of its highest paid employees, the costs of governance and the specific uses to which it puts income and assets. Will the Tánaiste advise the House when this legislation will be enacted? In the meantime, will the Tánaiste ensure the statement of recommended practice of charities, which is mandatory in England, Wales and Scotland, becomes mandatory in Ireland for the largest organisations funded by the HSE?

The Tánaiste: I agree with Deputy McGrath that it is important public confidence is retained and renewed in charitable organisations and that people who contribute to charities can have confidence their contributions are used for the purposes for which they are intended, in other words, that they go to front-line services. That is why the measures being taken to deal with the issues of top-up payments and transparency in the section 38 organisations are so important. The bottom line is that the agencies and organisations which are substantially funded from the public purse should adhere to stated pay policy.

The chairman and members of the board of the CRC and the former chief executive appeared before the Committee of Public Accounts yesterday together with the HSE and the Department of Public Expenditure and Reform. On foot of calls for the board of the CRC to resign, the chairman indicated he would call a meeting of the members of the board to consider their position. It is regrettable that the former chief executive of the CRC, who resigned this week, decided not to attend the Committee of Public Accounts hearing. The HSE will be following up urgently on the governance deficits identified in the CRC and the issues that arose relating to pension arrangements. I understand that arising from the PAC hearing yesterday the HSE has been asked to appear again before the Committee of Public Accounts on Thursday, 19 December together with representatives from the Mater hospital, which has a role in respect of superannuation arrangements in the CRC. Officials from the Department of Health and the Department of Public Expenditure and Reform will also attend at that committee hearing.

Deputy McGrath referred to the general subject of top-up payments and section 38 agencies. The HSE has a team of senior managers following up with individual agencies in respect of non-compliance with public pay policy. The reason these breaches of policy came to light in the first place was on foot of an audit of the section 38 agencies. As part of this process, the director general of the HSE is meeting the chairpersons of all section 38 organisations today. This meeting will focus on the requirement of the board of each agency to strengthen governance standards further and will set out the need to furnish the HSE with a compliance statement from the current financial year and for each year thereafter. This statement will be required to be approved by the board of each agency on an annual basis and signed by the chairman and another director on behalf of the board. It will be submitted to the HSE together with the organisation's annual audited accounts. This annual compliance statement will be required in addition to the annual service agreement between the agency and the HSE.

Further and separate meetings will be held by senior HSE managers with all of the disability organisations and hospitals concerned in the week commencing 16 December to ensure appropriate steps are taken to bring these organisations into compliance with public pay policy and that any governance deficits are rectified immediately.

Deputy McGrath asked me specifically about the commencement of the Charities Act. I understand it is intended to commence that early in the new year.

Deputy Michael McGrath: I thank the Tánaiste for his reply. The key issue is the lack of accountability and transparency and the inevitable consequence for public trust and confidence in charities. It is inevitable that donations will fall off. The people who will suffer and bear the brunt will be those who rely on the services. That is the sad part about what is going to unfold at the CRC. I hope other issues of a comparable nature will not emerge in other organisations, but that may well be the case. We know the HSE identified these issues in its internal audit report dating back to March of this year. It is scandalous that 24 of the 44 section 38 organisations have openly admitted to the HSE that they are not in compliance with public sector pay policy. That position is untenable. I want to know specifically what the HSE is going to do about that in terms of signing up to new service level agreements with those organisations. What is the ultimate power the HSE has at its disposal and is prepared to use to ensure all those organisations fully comply with public pay policy?

I welcome the Tánaiste's commitment on the Charities Act. In November 2011 the Minister for Justice and Equality, Deputy Shatter, said the Government was postponing the establishment of a charities regulator on budgetary grounds. That was the wrong decision. We are now

seeing some of the fall-out from the lack of standards applying across the 8,000 charities in the country. I hope the regulator and all the associated provisions in terms of financial disclosures and standards can be put in place without any further delay.

The Tánaiste: The first thing I wish to deal with is the issue of public confidence in charities. It needs to be made clear to people who contribute to charities or people who are contemplating contributing to charities that the act is being cleaned up and that the problems identified in respect of top-ups or excessive payments - whatever we call it - to senior management staff and senior executives in charitable organisations are being dealt with. They are being dealt with at the initiative of the Minister for Health, who asked the HSE to conduct an audit of these organisations following the Health Information Quality Authority report on Tallaght hospital in 2012. It was the audit of the section 38 agencies which identified the problems and which brought to light the various top-up payments, pension arrangements and all the other matters that have come into the public domain. That audit now is being followed up by meetings that are being conducted by senior managers from the HSE with the agencies concerned. The chief executive officer of the HSE is meeting the chairpersons of the section 38 agencies to make clear to them what is expected of them in respect of compliance with public pay policy. As I stated earlier, the mechanism it is intended to use is to require each of the section 38 agencies to sign a compliance statement. In other words, the chairman of the board of each agency, as well as another director of the board, will be obliged to sign a compliance statement that will be submitted to the HSE making clear that the agency in question is complying with public pay policy. As a consequence, members of the public can have confidence that when they donate their money, they know where their money is going and that there is transparency in respect of the administration, the management and the payment of senior executives in such organisations.

Deputy Mary Lou McDonald: Everyone agrees the testimony given yesterday to the Committee of Public Accounts by former and current members of the board of the CRC was both shocking in content and arrogant in its delivery. Members now have it that in addition to paying top-ups to senior executives, there also are gold-plated retirement packages being doled out and appointments being made in open defiance of HSE guidelines. As someone who sits on that committee, I must state that as matters unfolded, I was minded of Myles na gCopaleen, because one literally could not have made up the story the committee was told. Perhaps the Tánaiste and his colleagues in government are now almost breathing a sigh of relief because in a way, the CRC being at the eye of the storm takes the eye off the Government and in particular, away from the Minister for Health and his shambolic stewardship of the portfolio. I caught sight of the Minister, Deputy Reilly, on television commenting on this matter and it struck me that he looked like a disinterested observer or as someone who had been vox popped while out Christmas shopping. The truth is that these top-ups in the CRC have been known about by the system since 2009. Incidentally, Members should remember that Fianna Fáil was in charge at the time. Senior HSE management was ignored and was virtually told to get lost by the board of the CRC. Notwithstanding the audit carried out in March of this year, in December Members still do not know the full extent of the top-ups in the system or of other breaches. While it is commendable of the Tánaiste to recognise the work of the Committee of Public Accounts, it is not enough.

An Ceann Comhairle: Can we have a question please?

Deputy Mary Lou McDonald: One should bear in mind that the Government, and in particular, the Minister for Health, are the people in charge. What precisely does the Government intend to do to bring full clarity on this matter and to end the practices, some of which have been

uncovered? It is only by doing this, by taking charge of the situation, that the Government has any hope of re-establishing that confidence in charities of which the Tánaiste spoke.

The Tánaiste: First, the Government already has taken in charge of it. In May 2012, the Health Information and Quality Authority, HIQA, published a report on the governance of Tal-laght hospital. It emerged from that report that an employee in that hospital was receiving additional payments since 2005. On foot of that report, the Minister for Health asked the HSE to carry out an audit of all the section 38 agencies. The HSE approached each agency and asked it to revert with what was being paid, what additional payments, if any, were being paid, what was the nature of and basis for them and so on.

Deputy Mary Lou McDonald: I am aware of that.

The Tánaiste: While the Deputy now states she is aware of that, as that was not clear from her question, let me explain it to her. As a result of that audit, each agency was asked to revert to the HSE. Some came back very quickly showing that they were complying, others came back showing they were not and in the case of some others, it was necessary to follow through with them. However, this was an exercise the HSE conducted at the direction of the Minister for Health. That process now is coming to a conclusion. The Government has information that has been submitted by the different agencies and it is being followed through. At present, 17 senior managers of the HSE are pursuing this matter with the various agencies concerned in order to drill down into what payments are being made, what is their nature and so on. The chief executive officer of the HSE is meeting the chairperson of each section 38 agency, first, to clarify all of the facts and, second, to make it absolutely clear to them what is expected of them with regard to pay policy. There will be transparency in this regard and there will be compliance with public pay policy. This will be structured in such a way that each agency will be required to sign a compliance statement each year. This compliance statement will be part and parcel of the arrangements and will be separate from the service agreement that such agencies must sign with the HSE in any event. The Deputy asked what recourse is open to the HSE if such agencies are not compliant. If an agency cannot sign the compliance agreement, there are consequences in terms of the portions of public funding that go to the payment of salaries and, certainly, that go to the payment of any of these top-up arrangements. Consequently, there are options that will be open to the HSE but it will centre on the compliance statement being signed by each agency. This is a matter on which the Government already has taken action. The information that now is in the public domain is as a result of the audit conducted by the HSE. It is being followed through by the HSE management and by the Minister for Health and I am glad it also is being dealt with by the Committee of Public Accounts.

Deputy Mary Lou McDonald: If the Tánaiste followed yesterday's meeting, he would know that at the tail end of the exchange with the Committee of Public Accounts, the information regarding the payments to the Mater hospital was unearthed. He also might have noticed, were he tuned in, that the HSE knew absolutely nothing about that. The top human resources person in the HSE was left dumbfounded by that revelation. Not alone was he unaware of that relationship between the CRC and the Mater in respect of pensions, he could not tell committee members whether other section 38 organisations had a similar arrangement. This is the level of attention that has been paid in real terms to the detail and the proper governance of the €1.6 billion that goes annually to section 38 organisations. Moreover, the Government has not been sure-footed on this matter.

An Ceann Comhairle: A question, please.

Deputy Mary Lou McDonald: The HIQA report was published in May 2012 and the audit took place almost one year later, in March 2013. It is now December 2013 and all the time, the Government seeks to put at arm's length, through HIQA-----

An Ceann Comhairle: A question, please.

Deputy Mary Lou McDonald: -----and through the HSE, the sole responsibility for dealing with this issue and that is not good enough. This leads me to suspect-----

An Ceann Comhairle: No, it does not lead you anywhere. It leads you to a supplementary question, please.

Deputy Mary Lou McDonald: -----there may be an ambivalence on the Government's part in respect of top-up payments and breaching of pay caps.

An Ceann Comhairle: Deputy, you are over time. Thank you.

Deputy Mary Lou McDonald: After all, the Tánaiste's own record is not terribly good on that matter. I put it to the Tánaiste again, what will the Government and the Minister for Health do directly to ensure that no one in the HSE can be told to get lost by any section 38 organisation?

The Tánaiste: I note Deputy McDonald herself was hard enough to find last week to be vox popped on matters in which there might have been some public interest. This exchange this morning is quite interesting, in that there used to be a time when the Opposition would come into the Chamber and would raise issues with the Government regarding things the Government was not doing. It must be extraordinary that the Opposition, certainly this Deputy in particular, now is complaining about things the Government is doing.

Deputy Finian McGrath: The Tánaiste is a gas man.

The Tánaiste: To be clear, the issue of the top-up payments in the section 38 agencies is a matter with which the Government already has dealt and continues to deal. I understand that the representatives of the Mater hospital - which has a role in the superannuation arrangements with the CRC - are due to appear before the Committee of Public Accounts on 19 December.

Deputy Mary Lou McDonald: The HSE knew nothing about it.

The Tánaiste: Let us be clear on this matter. The HSE conducted the audit and established that the top-up payments were being paid. That was done at the request of the Minister for Health. The Government and the Minister for Health are determined to ensure that there will be transparency on these payments so that the public, who contribute to charities, can have confidence that their money is going where it is supposed to go. The Government and the Minister are also determined that the agencies concerned will comply with public pay policy. Each of these agencies will be required each year to sign a statement of compliance which will be part of any arrangement for the continued funding between these agencies and the HSE.

Deputy Stephen S. Donnelly: This morning I received a letter from 66 pensioners in Carnew, County Wicklow.

Deputy Patrick O'Donovan: The Deputy probably got it from Deputy Micheál Martin.

Deputy Stephen S. Donnelly: They were writing to express their outrage at the scrapping

of the telephone rental allowance, as a result of which many are being forced to cancel their land lines. Not only will this cut them off from friends and family but it will also cut them off from their community-based alarm system.

Benny Conaghan said: “They shouldn’t have taken it from us in the first place because it means so much to us with no family. We rely on it for emergency response”. Lil Kilbride said: “I am very annoyed over the telephone cuts. I only have a certain amount to live on. I have had a stroke, making it hard to use a mobile phone”. Pat Sheppard said: “I am upset and angry. The pension is small enough to live on. It annoys me immensely to hear them say they haven’t touched the pension but there are so many other things like the prescription charges and the increase in fuel”.

Deputy Paul Kehoe: The Leader’s allowance.

An Ceann Comhairle: Quiet, please.

Deputy Stephen S. Donnelly: Unfortunately, the full impact of the budget on Mr. Sheppard or the other pensioners is unknown. During Leaders’ Questions on an occasion before the budget was introduced I asked the Tánaiste to inform the Dáil how the burden of the budget would be distributed across society. He refused to do so. Now we know. This morning, one week after the Finance Bill was voted through the House, the ESRI has presented that analysis. Here is what happened in budget 2014-----

An Ceann Comhairle: We do not have time now for the whole budget.

Deputy Stephen S. Donnelly: The poorest 10% of people in the country are being asked to give up the most. The next poorest 10% in the country are being asked to give up the next amount. A study of 80% of the population will show a correlation between poverty and how much budget 2014 takes from the poorest.

We all know the budget has to be closed but it does not have to be closed in this way. I bet the Tánaiste could not find a single Fine Gael or Labour Party Deputy willing to go on television to defend the budget and explain why it is right and proper that the poorest people in this country are being asked to give up the most in this budget.

An Ceann Comhairle: A question, please, Deputy.

Deputy Paul Kehoe: What about the Deputy’s own top-up?

Deputy Stephen S. Donnelly: That is exactly what this budget does and what this Government has done through the Social Welfare and Pensions Bill and the Finance Bill.

Deputy Patrick O’Donovan: Some €50,000 a year, tax-free.

Deputy John Halligan: The Government is getting €1 million.

Deputy Paul Kehoe: We vouch for it.

An Ceann Comhairle: Stay quiet, please.

Deputy Stephen S. Donnelly: When the Tánaiste ordered Labour Party Deputies to vote through the Finance Bill last week, did he know that he was asking them to vote for something that would take the most amount from the poorest people in this country?

Deputy Patrick O'Donovan: Keep the good seats vacant.

An Ceann Comhairle: Please stay quiet on the backbenches. This is between the Tánaiste and the questioner. We do not need your help either, Deputy Finian McGrath. I appreciate your assistance. I must put you on the Acting Chairman panel, if you are interested.

A Deputy: Bertie Ahern-----

Deputy Finian McGrath: They are provoking me.

An Ceann Comhairle: I suggest you suck a sweet or something, Deputy.

The Tánaiste: The ESRI published two reports yesterday although Deputy Donnelly referred to only one of them. Every year it publishes a report on what it terms the distributional impact of the budget measures, based on what it calls the Switch model. The ESRI also published a second report which studied the impact of social transfers on people at risk of poverty.

In the report on the distributional analysis the ESRI acknowledges that it is having difficulties with the Switch model. I acknowledge it is making some progress in expanding the coverage of that model. However, the ESRI accepts in the report that it is still experiencing difficulties in incorporating all of the budget measures within the model, particularly in assessing the impact on higher incomes. The ESRI has acknowledged that the model exaggerates the scale of the actual losses in the budget as it assumes more income is taxed and welfare payments fall behind average incomes. No one doubts, however, that all recent budgets have had a serious impact on the incomes of people in all parts of the country. Despite those difficulties we have managed to maintain core social welfare rates. There have been no cuts in the old age pension and we have not increased taxes-----

A Deputy: Jobseeker's and respite care.

The Tánaiste: -----on working people. We managed to take 330,000 people out of the universal social charge. We reversed the cut in the minimum wage and in this year's budget we are providing free GP care to children aged under six years.

The second ESRI report looked at the impact of social transfers in reducing the risk of poverty and the findings are unambiguous. Social transfers, including pensions, have reduced the at-risk-of-poverty rate by 71%. In other words, seven out of every ten people in society would be regarded as being at increased risk of poverty without the redistribution provided for by the social protection system. The report shows that Ireland is in the top section of 15 EU member states for the effectiveness of social transfers in reducing poverty and that the welfare system is playing a pivotal role in alleviating poverty in Ireland.

No one is attempting to argue that the budget measures can be sugar-coated. The main issue is that we have now reached a point where we know that the Government's approach is working. Jobs are being created again and this creation of employment and the growth in the economy will generate the revenues to enable us ensure that people can have hope of a better future and allow us to consider making improvements.

Deputy Stephen S. Donnelly: The Tánaiste says it is working. Who is it working for? It is not working for the poorest people in the country. What he is espousing is old-fashioned Thatcherite-Reagan economics which says, "Take care of the rich and the benefits will trickle down".

(Interruptions).

An Ceann Comhairle: Settle down, please.

Deputy John Halligan: You sit comfortably with Thatcher on this.

An Ceann Comhairle: Resume your seat, Deputy. You are wasting your time shouting. Nobody can hear because there are so many people shouting. Please allow Deputy Donnelly to put his question because he has one minute in which to put it. I appreciate Deputy Finian McGrath's help but I do not need it.

Deputy Stephen S. Donnelly: It seems we have hit on a sensitive issue because the analysis is unambiguous. Of course there are always errors in analysis but the ESRI analysis is the best we have. I discussed it with them this morning on the telephone. It is a solid analysis which states unambiguously that this Government in budget 2014 is asking the poorest people in the country to take the greatest share of the correction. That is a fact and it is a disgrace.

An Ceann Comhairle: A question, please, Deputy.

Deputy Stephen S. Donnelly: It is bad social policy and bad economic policy. It leads to a rise in inequality and inequality is bad for everybody. The Tánaiste, of all people, knows that but it is what he is doing. Why is this happening? Why are Labour Deputies voting through a budget that hits the poorest hardest? I believe part of the reason is that none of us knows what we are voting for because we do not have the analysis when we vote. Maybe I am being naive but I believe that if the Deputies in the Tánaiste's party, for whom I have great respect, had the analysis before the vote we will have today, they would have demanded changes to the measures for which they have to vote. That is why the analysis is so important.

An Ceann Comhairle: Thank you, Deputy.

Deputy Stephen S. Donnelly: I am missing my child's Christmas play to be here to ask the Tánaiste this question so I ask him to do me a favour-----

(Interruptions).

Deputy Stephen S. Donnelly: -----and answer the question.

An Ceann Comhairle: I will get the Deputy back to his Christmas party quicker if he sits down.

Deputy Stephen S. Donnelly: My question to the Tánaiste is simple. Last week, when he instructed the Labour-----

An Ceann Comhairle: Sorry, Deputy. You do not understand there is a time limit. Will you listen to me?

Deputy Stephen S. Donnelly: Last week, when the Tánaiste instructed his party to vote through the Finance Bill-----

An Ceann Comhairle: You are way over time.

Deputy Stephen S. Donnelly: -----did he know that the Bill would take the most from the poorest in the country? That is the question.

Deputy Bernard J. Durkan: A poor performance.

The Tánaiste: I am sorry the Deputy is missing his child's Christmas play but can I predict what the Deputy will not miss? I think he will not miss the Fianna Fáil Parliamentary Party away day in 2015 before the general election because I predict that-----

Deputy Mattie McGrath: What about the Christmas bonus?

The Tánaiste: -----that is where he is heading.

(Interruptions).

Deputy Stephen S. Donnelly: Answer the question.

The Tánaiste: I predict that Deputy Donnelly will be wearing the Fianna Fáil jersey at the next general election and between now and then-----

Deputy Bernard J. Durkan: Hear, hear.

Deputy Stephen S. Donnelly: The Tánaiste should not believe everything he reads in the papers.

(Interruptions).

The Tánaiste: -----he will do Fianna Fáil's work for them by coming in here and saying, "I am an Independent and I am quoting a very worthwhile independent document in order to criticise the Government".

Deputy Stephen S. Donnelly: Is questioning the Tánaiste not my job?

Deputy Sean Fleming: How many parties was the Tánaiste in? How many parties did he change from? Was it five or six?

The Tánaiste: I have the answer for Deputy Donnelly. The party that I believe he will be a candidate for in the next general election cut social welfare rates, cut the minimum wage-----

(Interruptions).

The Tánaiste: -----and put low paid people into the universal social charge. This is the Government that has taken low paid people out of the universal social charge, reversed the cut in the minimum wage, reinstated the joint labour committees and protected people on core social welfare rates.

Deputy John Halligan: The Tánaiste did not answer the question.

Deputy Stephen S. Donnelly: Answer the question. It is a disgrace.

Deputy John Halligan: What is the point in having Leaders' Questions if the Tánaiste will not answer the questions?

(Interruptions).

An Ceann Comhairle: This is not "Ballymagash". We are in the Houses of Parliament.

Deputy Mattie McGrath: A Cheann Comhairle, is there any chance you could restrain the

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Government Whip? He is always insulting and taunting people.

An Ceann Comhairle: The sooner you get your holidays, the better. I think you all need a break.

Order of Business

The Tánaiste: The Order of Business is No. 10*a*, Supplementary Estimates for Public Services [Vote 3] - back from committee; No. 10, the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013 [Seanad] – motion to instruct committee (resumed); and No. 21, Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013 [Seanad] - Report and Final Stages (resumed).

It is proposed, notwithstanding anything in Standing Orders, that No. 10*a* shall be decided without debate and any division demanded thereon shall be taken forthwith.

An Ceann Comhairle: There is one proposal to be put to the House. Is the proposal for dealing with No. 10*a*, Supplementary Estimates for Public Services, without debate agreed to?

Deputy Michael McGrath: It is not agreed. I acknowledge that this issue was debated this morning at the health committee but it would have been preferable if we had the service plan for 2014 before us when discussing the Supplementary Estimates for 2013. I raise one issue with the Tánaiste. The Estimate is for €219 million. I understand the Tánaiste is saying there are other savings which will net off about €20 million.

An Ceann Comhairle: We cannot have a discussion on it here now.

Deputy Michael McGrath: If we can clarify one issue it might make it a bit more straightforward. The Estimate is €219 million as opposed to €199 million. Can the Tánaiste clarify that matter please?

An Ceann Comhairle: No, he cannot. We cannot have a debate on the issue here. This is a technical issue, whether we do it without debate or not.

Deputy Mary Lou McDonald: The difficulty with all of this is more than just technical, a Cheann Comhairle-----

An Ceann Comhairle: No. It is purely a technical issue-----

Deputy Mary Lou McDonald: -----in terms of how we proceed.

An Ceann Comhairle: -----whether we have a debate or we do not; it is as simple as that.

Deputy Mary Lou McDonald: Can I suggest that a debate is badly needed because-----

An Ceann Comhairle: Okay. Vote against the proposal.

Deputy Mary Lou McDonald: -----on the one hand we are bringing forward a Supplementary Estimate, which is a recognition that the health budget has overrun or fallen short, and on the other we have not had sight of the plan that proposes €666 million of cuts? I ask the Tánaiste to square that circle if he can.

An Ceann Comhairle: Tánaiste, this is without debate.

The Tánaiste: Yes. This issue was dealt with at the health committee this morning. I believe the discussion lasted over an hour and a half.

Deputy Mary Lou McDonald: In the absence of the service plan.

The Tánaiste: The issue here-----

Deputy Barry Cowen: No service plan.

The Tánaiste: -----as is normally the case when issues like this come back from committee, is that they are taken without debate on the floor of the House.

Question, “That the proposal for dealing with No. 10a, Supplementary Estimates for Public Services, without debate be agreed to”, put and declared carried.

Deputy Michael McGrath: I wish to raise two issues with the Tánaiste, first, in the area of health and the budgetary promise to introduce free GP care for all children under the age of six. Can the Tánaiste give a specific timeline as to when we will see that legislation, and when does the Government intend to make that facility available to families?

Second, when we will have the National Treasury Management Agency (No. 1) Bill, which relates to the strategic investment fund and the National Pensions Reserve Fund and putting the investment fund on a statutory basis to get at least some of the more than €6 billion awaiting deployment for viable commercial projects up and running as quickly as possible?

The Tánaiste: The legislation in respect of the introduction of free GP care for children under the age of six is being prepared by the Minister of State, Deputy White, and by the Minister, Deputy Reilly. We expect to have that legislation before Government in the very near future.

In respect of the National Treasury Management Agency (No. 1) Bill, the intention is to publish that this session. We expect to see it published before the House returns in the new year.

Deputy Mary Lou McDonald: On the issue of the Health Service Executive service plan, can the Tánaiste give us more definitive information on that? I know it was raised yesterday but when might we see this service plan that has been delayed?

In respect of the Charities Act on the Statue Book since 2009, when will we see the oversight and enhanced accountability mechanisms? The Tánaiste indicated earlier that it will be early in the new year. If the Tánaiste can be more precise than that, I would appreciate it.

The Tánaiste: First, the HSE service plan is not delayed. There is a process for considering the HSE service plan, that is, it is submitted to the Minister for Health. That has been done. There is a period of 21 days within which the Minister for Health considers the plan. That 21 days runs to Monday next, 16 December, and the Minister for Health will have made his decision on the service plan by then.

Deputy Mary Lou McDonald: Do we see it then? Is it published?

The Tánaiste: It is laid before the House. There is a formal process for doing it.

Second, the Deputy asked about the Charities Bill and the establishment of the charities

regulation authority. The full implementation of the Charities Act, including the establishment of the authority and the register of charities, had resource implications and had to be examined in the context of the urgent need to reduce Government expenditure. The Minister did not bring the legislation into force to consider how best to achieve the objectives of the Act in that context but it is Government policy to strengthen the regulation of the charitable sector in an effective and proportionate way. The Minister is looking at the commencement of the various sections of the Act and my understanding is that he will do that next year.

Deputy Brian Stanley: The Water Services (No. 2) Bill is going through the Seanad at the moment. The Government gave a commitment that the legislation would be circulated to the relevant committees but this Bill has not been circulated to the Joint Committee on Environment, Culture and the Gaeltacht. Will it be guillotined when it comes before the House next week? There is a deadline on this. The transfer of assets will happen on 1 January next.

An Ceann Comhairle: That is a matter for the Whips.

Deputy Brian Stanley: Will the Tánaiste give a commitment that it will not be guillotined and that, if necessary, we will sit next Friday to complete the debate on the Bill and to give the Opposition time to go through it? It is major legislation.

Deputy Thomas P. Broughan: I support Deputy Stanley. I understand from the Whips that all Stages of the Bill will go through the House on Wednesday and that it will be guillotined. The pyrite legislation will be guillotined on Thursday. We talked earlier about the appalling Fianna Fáil record, and rightly so.

An Ceann Comhairle: Hold on a second. Nobody has seen-----

Deputy Thomas P. Broughan: When the Tánaiste sat beside me on this side of the House, he used to lambaste Fianna Fáil for guillotining major Bills like the Water Services (No. 2) Bill and the pyrite legislation.

An Ceann Comhairle: We are talking in a vacuum. Nobody knows what next week's business is yet.

Deputy Thomas P. Broughan: I understand both Bills are being guillotined.

An Ceann Comhairle: Will the Tánaiste answer the question, if he can? I do not know quite what the question is.

The Tánaiste: My understanding is that the Water Services (No. 2) Bill is in the Seanad. It is expected it will be completed in the Seanad early next week and that it will come into this House. The issue of the taking of the Bill in the House is something to be considered by the Whips.

Deputy Barry Cowen: Would the Tánaiste agree with it?

The Tánaiste: I have heard the submission which Deputies Broughan and Stanley have made about sitting on Friday and the Whips will consider that.

Deputy Catherine Murphy: The Tánaiste said the policing plan was laid before the House about two weeks ago. Approximately 80% of it is the same as last year. The number one goal is securing the nation but I can tell the Tánaiste that people in my constituency might as well leave

their keys in their doors given the number of burglaries. We need to talk about where resources are deployed. When will we get an opportunity to have a proper debate on this policing plan?

The Tánaiste: Arrangements for a debate on the policing plan can be discussed by the Whips-----

Deputy Catherine Murphy: I already asked.

The Tánaiste: -----and at the Joint Committee on Justice, Defence and Equality. I am sure the Deputy and the House will welcome that this Government, after a long number of years, has recommenced the recruitment of gardaí.

Deputy Charlie McConalogue: Has the value for money review of small schools gone before, and been discussed by, the Cabinet? Why has it not yet been published? I understand the Minister for Education and Skills has the review for more than nine months. This is important in light of the fact that since the Government took office, it has increased the pupil-teacher ratio by four points for schools with 85 students or fewer. There is concern about what is in this value for money review, and rightly so. Has it gone to the Cabinet and why does the Government continue to sit on it, so to speak?

An Ceann Comhairle: Is there agreement to discuss this?

The Tánaiste: It would be more appropriate to raise this issue with the Minister for Education and Skills. There is no legislation on this issue.

Deputy Charlie McConalogue: The review should be laid before the House.

The Tánaiste: If it is laid before the House, there are ways-----

Deputy Brendan Howlin: Discuss it at the Joint Committee on Education and Social Protection.

An Ceann Comhairle: Maybe Deputy McConalogue could ask his Whip-----

The Tánaiste: There are ample ways in which this can be discussed, including at Question Time with the Minister for Education and Skills and at the Joint Committee on Education and Social Protection. That is the appropriate way to deal with it.

(Interruptions).

An Ceann Comhairle: Could we get back to dealing with matters which can be raised on the Order of Business? I do not like telling people to stay quiet all the time but they should stick to the rules and then we can get on with it. I call Deputy Fleming and hope he is within the rules.

(Interruptions).

An Ceann Comhairle: We do not need any comments.

Deputy Sean Fleming: In view of the call by many members of both Government parties to give legislative effect to the planning rules for wind turbines and the document issued by the Minister, is there a timescale for legislation to give effect to those guidelines for wind turbines? There has been much comment about proposals by the Department of Arts, Heritage and the

Gaeltacht in regard to renting national monuments to private interests. A monuments Bill is scheduled to deal with the protection and regulation of our national archaeological heritage. Will this legislation include protocols to deal with renting these premises to the private sector?

The Tánaiste: The monuments Bill is due next year. In regard to wind turbines, the Minister of State with responsibility for housing and planning has draft planning guidelines on that matter and is inviting submissions on them. She is very willing to consider the submissions made to her on the matter. She wants a very open and full public consultation on this issue because she is very aware of the concerns many communities have about this issue.

Deputy Mattie McGrath: I refer to a provision in the Companies (Miscellaneous Provisions) Bill 2013 to allow for simplification of the filing system and the removal of a true copy. Many businesses are not computer literate, so will the Government ensure that is recognised? Not everybody has e-mail.

My next question relates to the Department of Communications, Energy and Natural Resources. I introduced a Scrap and Precious Metal Dealers Bill more than two years ago and the Minister promised his own Bill. Damage is being done daily to aviation-----

An Ceann Comhairle: What does that have to do with energy legislation?

Deputy Mattie McGrath: The Minister for Communications, Energy and Natural Resources promised legislation. Aeroplanes will fall out of the sky with the amount of theft of metal taking place.

An Ceann Comhairle: Table a question.

Deputy Mattie McGrath: I tabled a question. It is like the gardaí in Templemore. When will we see the Bill?

(Interruptions).

An Ceann Comhairle: We have four minutes left and other Deputies have questions which I hope are in order and which they are entitled to ask.

The Tánaiste: The Companies (Miscellaneous Provisions) Bill 2013 was passed earlier today. I recommend that Deputy McGrath gets up a bit earlier in the morning and attend to business.

(Interruptions).

The Tánaiste: I do not see any legislation to prevent aeroplanes falling out of the sky.

Deputy Brendan Howlin: Deputy McGrath has done a bit of jumping himself.

Deputy Mattie McGrath: A small bit. I am in the ha'penny place compared to him.

Deputy Patrick O'Donovan: Deputy Donnelly will be waiting for Deputy McGrath.

The Tánaiste: I do not see any legislation that will prevent aeroplanes from falling out of the sky.

Deputy Mattie McGrath: What about the metal Bill?

An Ceann Comhairle: That is a Private Members' Bill. It cannot be dealt with here.

The Tánaiste: There is not any metal Bill.

Deputy Mattie McGrath: The Minister promised to introduce his own Bill to deal with scrap metal.

An Ceann Comhairle: I do not know about that. The Deputy had better ask the Minister.

Deputy Mattie McGrath: I know there will be a great deal of scrap after the next general election.

An Ceann Comhairle: I advise the Deputy to table a question to the Minister.

Deputy Paul Kehoe: He should keep looking up at the sky to make sure it does not fall on him.

Deputy Brendan Griffin: I would like to ask the Tánaiste, in the context of the common arrangements for gas Bill, whether he will give his personal attention to the Shannon liquified natural gas project.

An Ceann Comhairle: That is not in order on the Order of Business.

Deputy Brendan Griffin: In the context of the Bill I have mentioned, could I express my disappointment about the failure to select this matter for discussion during Topical Issues this afternoon even though it has been raised by five Deputies?

An Ceann Comhairle: Would you please resume your seat?

Deputy Brendan Griffin: Some 700 jobs and a €1 billion investment are in jeopardy in County Kerry. I appeal to the Ceann Comhairle to select this matter on Tuesday.

An Ceann Comhairle: No. You are not doing your case any good by being so smart and standing up on the Order of Business. It has nothing to do with the Order of Business.

Deputy Brendan Griffin: This is an issue of urgent importance for the county and the region.

An Ceann Comhairle: Perhaps you could have contacted my office and been told the reason, instead of trying to make a play here in the Chamber.

Deputy Brendan Griffin: I did contact your office but I was not given a reason.

The Tánaiste: The common arrangements for gas Bill, which will amend the Electricity Regulation (Act) 1999 and allow for arrangements to be put in place to facilitate the development of an all-island gas market, is due for publication next year.

Deputy Dan Neville: When will the promised amendment to the Mental Health Act 2001 be introduced?

The Tánaiste: I understand the Minister of State, Deputy Kathleen Lynch, is carrying out a review of this whole area. She will come back to the Government with her proposals when they are ready.

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Deputy Bernard J. Durkan: When is the National Economic and Social Development Office Bill, which will place the National Economic and Social Council on a statutory basis, likely to come before the House? I seem to recall that a debate on the Smithwick report was promised in the House in the past couple of weeks. Has any time been allocated for such a debate? Is it envisaged that it will take place before Christmas?

The Tánaiste: The National Economic and Social Development Office (amendment) Bill is due to be published next year. It is intended that a debate on the report of the Smithwick tribunal, which has been submitted to the House, will take place in the new year.

Deputy Barry Cowen: Can the Tánaiste enlighten the Dáil on when we can expect the housing Bill to be introduced to address the housing crisis that exists in Dublin and throughout the country? We have been waiting for three years for this Government to introduce legislation to deal with the lack of available funding for schemes and programmes.

The Tánaiste: The heads of the housing (miscellaneous provisions) Bill are expected shortly. The Bill is due to be published next year. As the Deputy is aware-----

Deputy Barry Cowen: Everything is next year.

Deputy Brendan Howlin: We are in mid-December of this year.

Deputy Barry Cowen: What part of next year are we talking about?

The Tánaiste: The heads of the Bill are expected shortly, as I have said. It will be published after it has been drafted. The intention is to publish it next year. We are not waiting for legislation. In the meantime, the Minister of State with responsibility for housing has announced a €100 million housing programme for next year.

Deputy Barry Cowen: That will not build much.

Deputy Brendan Howlin: It will build more than the Deputy's party built.

Deputy Barry Cowen: We used to have that done by January.

Deputy Eamonn Maloney: What is the timeframe in the coming year for the Legal Services Regulation Bill 2011?

The Tánaiste: The Bill in question is still at Committee Stage. I understand that some amendments to that Bill are to be made. I understand the Minister for Justice and Equality will circulate those amendments in the near future.

Visit of UPC Delegation

An Ceann Comhairle: I welcome to the Distinguished Visitors Gallery Mr. Magnus Ternsjö, who is the chief executive officer of UPC, our partners in public service broadcasting. He is very welcome.

Supplementary Estimate for Public Services 2013: Message from Select Sub-Committee

An Ceann Comhairle: The Select Sub-Committee on Health has completed its consideration of the following Supplementary Estimate for Public Services for the service of the year ending on 31 December 2013 - Vote 39.

Assisted Decision-Making (Capacity) Bill 2013: Referral to Select Committee

An Ceann Comhairle: We completed Second Stage of the Assisted Decision-Making (Capacity) Bill 2013 yesterday. It has been requested that the Bill be referred to the Select Committee on Justice, Defence and Equality.

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move:

That the Bill be referred to the Select Committee on Justice, Defence and Equality pursuant to Standing Orders 82A(3)(a) and (6)(a) and 126(1) of the Standing Orders relative to Public Business and paragraph (8) of the Orders of Reference of Select Committees.

Question put and agreed to.

Estimates for Public Services 2013

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move the following Supplementary Estimate:

Vote 39 - Health Service Executive (Supplementary)

That a supplementary sum not exceeding €219,000,000 be granted to defray the charge which will come in course of payment during the year ending on the 31st day of December, 2013, for the salaries and expenses of the Health Service Executive and certain other services administered by the Executive, including miscellaneous grants.

Vote put and agreed to.

**Public Service Management (Recruitment and Appointments)(Amendment) Bill 2013:
Instruction to Committee (resumed)**

The following motion was moved by the Minister for Public Expenditure and Reform (Deputy Brendan Howlin) today:

That, pursuant to Standing Order 177, Standing Order 131 is modified to permit an instruction to the committee on the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013, that it has power to make provision in the Bill for a new Part 7A in relation to sick leave remuneration, empowering the Minister for Public Expenditure and Reform to make regulations concerning the payment of remuneration to public servants during sick leave, and to make necessary consequential amendments to the Long Title.

Deputy Mary Lou McDonald: I believe the objective of making savings in this area is shared across the board. While I presume it remains the view among workers and unions that those savings could have been achieved by means of more active control of the current system, the binding Labour Court recommendation must be enforced. As I said earlier, I am concerned about the critical illness protocol. While I appreciate that pregnant workers are covered by other legal mechanisms and forms of legislation, any regulation dealing with this matter must acknowledge the circumstances, which are fortunately not common, in which such a worker may find herself needing long-term sick leave. That might not happen on a once-off basis. It is unfortunate that this matter was not fully ironed out before we were asked to consider this legislation. There will be an appearance in the Labour Court on 16 December next. Ideally, the regulations would be completed, the discussions between employers and workers would be concluded and agreement would be reached before we would be asked to pass this ground-breaking legislation. During today's debate, the Minister might put my mind, and more importantly, the minds of public servants, to rest on that issue.

I would like to speak about the issue of retrospection, which was raised earlier. I tabled some questions on this matter to the Department of Public Expenditure and Reform, which kindly supplied me with answers. I asked whether these regulations will include a provision to retrospectively apply the new certified sick leave arrangements. In its response, the Department recounted the necessity to give public service employees advance notice of the new scheme and make provision for a transitional period, etc., and informed me that access to the new reduced limits of sick leave is not being applied retrospectively. I thought that was fairly clearcut until I read the rest of the response. The Department went on to explain that individual sick leave records will remain unchanged following this legislation and will continue to be used to determine whether an individual has access to paid sick leave and at what rate. It pointed out that when an individual is absent from work due to sick leave, his or her record over the previous four-year rolling period will be examined to see if the sick leave limits have been exhausted. The Department claims that this is in line with the Labour Court recommendation.

1 o'clock

When is retrospection not retrospective? Despite the initial line that I read out, this answer actually concedes that the new regime will be retrospective. For instance, when this new scheme is introduced if a worker has reason to take sick leave, his or her past record will be taken into account and weighed and measured. That person's entitlement to future sick leave will be on the basis not of the sick leave arrangement which existed two or three years ago when he or she took the leave but in line with the new mechanisms and standards set in place by this change.

I envisage that causing some difficulties. For many workers it has caused a degree of alarm. Public sector workers who are concerned about this matter have contacted my office and I am sure other Deputies' offices. The Minister has said from time to time on the record that the new sick-pay scheme would be retrospective. He has cited the Labour Court recommendation to support that position. I have in my hand recommendation LCR 20335 with the direction that the new scheme should take effect from 1 January 2014. I do not see in this recommendation that the instruction is to be applied retrospectively. The Minister will need to enlighten us on the matter because it is causing considerable concern for many workers who have contacted me.

I raised this issue when we debated the Financial Emergency Measures in the Public Interest Bill. I understand we need to cut our cloth according to our measure. That is a reality of our

times and should, in fact, be a prevailing reality in good times or in bad. I accept that savings can and should be made from what is a very substantial sick leave bill. However, by introducing legislation such as this - I appreciate the advice the Minister received from the Attorney General - and conferring upon not just the present Minister but any future holder of that office the power and capacity to make regulations in respect of public servants' entitlement to sick leave, be it certified or uncertified, short-term or long-term, represents a very radical departure from the established practice.

I am concerned that that type of authority would rest in the hands of a Minister because we cannot predict the bias or world-view any future Minister might have. It establishes a trend for the Minister, Deputy Howlin, of moving away - incrementally but nonetheless measurably - from a system of established industrial relations and bargaining positions within the public sector to a much more centralised ministerially controlled and therefore management-weighted approach to the terms and conditions of public servants. He is obviously minded to do this.

In his earlier contribution the Minister cited the Attorney General's advice and stated: "Although the new sick leave arrangements could be applied in some sectors, such as the Civil Service, by administrative circulars, the Office of the Attorney General has advised that legislation is required to ensure that the new public service sick leave scheme can be applied across the public service". I strongly favour sticking to the established norms of bargaining between public sector workers and their employer - a very powerful employer as things stand. I am anxious and uncomfortable with those powers resting in the office of the Minister. I do not direct that personally at the Minister, Deputy Howlin, because, as he knows, he may come and go but these powers will endure.

I hope that this trend of last-minute introduction of fairly complicated and important issues in respect of legislation coming from the Department of Public Expenditure and Reform does not continue. On the watch of the Minister, Deputy Howlin, all of us had expected and continue to expect that during pre-legislative scrutiny and on Committee Stage room for consideration would be taken seriously so that we do not get bounced or rushed into dealing with very serious and substantive issues at the last minute. I do not believe that is the way to do business.

Acting Chairman (Deputy Peter Mathews): I call Deputy Healy, who is sharing time with Deputy Boyd Barrett.

Deputy Seamus Healy: The amendment before us to cut the sick leave arrangements for public sector workers is a savage attack on those workers. In his contribution the Minister mentioned that this was a Labour Court recommendation and is supported by some of the trade unions involved. We must never forget that these changes were demanded by the Government under threat and indeed under a bullying regime. However, I am still amazed that some public service unions agreed to these measures. Trade unions exist to protect and improve the pay and conditions of their members. This is certainly not an improvement in pay or conditions. Clearly we not only need a change of government but also need radical changes in the trade union movement.

The new section 7 is an enabling section, enabling the Minister to cut sick-leave entitlements across the public service. While it does not specify the details of the cuts, they are widely known and were mentioned by the Minister in his contribution. From one year on full pay in the preceding four years, sick leave is to be reduced to 13 weeks on full pay with the next 13 weeks on half pay in the preceding four-year period. This represents a reduction to three eighths

- less than half - of the previous entitlement. This is a massive cut affecting sick public sector workers. It is another example of the Government's hostility to public servants who have suffered several rounds of cuts to pay and pensions and the imposition of more onerous conditions of service.

Public sector workers competed for careers in the public service based on the pay, conditions and pensions that existed at the time. Now, having given many years of satisfactory public service the Government is moving the goalposts. While by far the worst impact is on sick people, this new cut will in effect reduce the pay of all. The cost of income continuance insurance, normally deducted from salary, will more than double. Many public service workers, across the sector, teachers, nurses, gardaí, social workers and many others, work in very stressful situations and have a high incidence of work-related illness. There is objective evidence of this in their income continuance schemes. These changes being made by the Minister are a savage blow to public sector workers who suffer work-related illnesses.

Probably the most regressive and disturbing measure in this amendment is its retrospective aspect. A person who has been sick for more than 26 weeks in the past four years will have no sick leave entitlement from the day that these measures come into effect. The retrospective aspect of this legislation is unconstitutional. I have had sight of strong legal advice to this effect. There are several areas in which this legislation can be challenged on a constitutional basis, for instant retrospective legislation is *prima facie* unconstitutional pursuant to Article 15. The retrospective effect of the legislation amounts to an unjust attack on property rights. The retrospective effect of the legislation amounts to an attack on that individual's constitutional guarantee of equality pursuant to Article 40.1. Pursuant to private contract law the employer is stopped from unilaterally varying the terms of the contract of employment retrospectively so as to include past periods of sick leave lawfully availed of at the material time when prospectively applying the new reduced sick leave scheme. This amendment seriously affects serving public servants. It has a particularly obnoxious retrospective aspect which I believe is unconstitutional and I believe that the Minister should withdraw this section immediately.

Deputy Richard Boyd Barrett: In my naïveté I used to think that public sector reform had something to do with improving the quality of public services. I have learnt definitively with this Government that it means nothing of the sort. This amendment seeks to slash the illness entitlement of public sector workers and amend a Bill that has already carved up the conditions of public sector workers. It comes on the back of a relentless and in many cases vitriolic assault on ordinary low and middle earning public sector workers who have become scapegoats for the economic crisis created by others. It is inevitably justified by the narrative of setting the private sector worker against the public sector worker. It is a completely bogus narrative although it is as predictable as the clock ticking that certain newspapers will wheel out articles assaulting public sector workers in their constant tirade attacking low and middle income workers. For the record, not that it will make any difference to the narrative that we hear here or read in the tabloid or rag media that passes for proper reporting, this distinction between public and private is utterly bogus. The real distinction is between low and middle income workers who, whether in the public or private sectors, have been slaughtered in the current recession, and those at the top of the public and private sectors who have been completely insulated and have continued to line their pockets, give themselves bonuses, pay themselves obscene salaries and are never subject to the caps or strictures put on the ordinary worker. Even when certain strictures are put in place they are flagrantly disregarded by the Government and the top executives in the health service or wherever the hell it might be in the banks.

It is clear that what reform really means is making ordinary workers work harder, longer and for less, and relentlessly battering them with cuts. The result is that public services deteriorate and are seriously degraded. The Government said that it had successfully redeployed 10,000 people, which sounds wonderful but we need to see an example of how this works. The centralisation of medical card services, the redeployment of people to the centre in Finglas, has been a disaster for people applying for medical cards. It has been the mechanism through which, as a matter of default in a bureaucratic box-ticking exercise, people are denied the right to their medical cards and cannot find a human being to talk to because there is no local office any more where one can speak to a human being and state one's case. That is so-called public sector reform and is nothing other than a systematic degrading of our public services and of those who work in them. The Government deems it entirely appropriate and logical to take the sick and illness entitlement from public sector workers while demoralising them and causing them more stress and almost certainly making them more ill more frequently. What else would the Government do when that is the direction of policy?

The highest level of absenteeism is in the health service. Is there any wonder about that when the Government has taken 10,000 health workers and €3 billion out of the system and workers are absolutely traumatised by what they must deal with, an impossible situation that they face when they go to work day in, day out? Is it any wonder that they get sick more often? Other workers have been mentioned, such as gardaí and firemen. What about community welfare officers who have to deal with desperate people coming in day after day begging them for money that the Government does not give them? The list goes on. The Government is slashing their entitlements and disgracefully, it is doing it retrospectively. Is it not absolutely amazing that we cannot retrospectively vary the pensions of previous Taoisigh, Ministers and all the rest with their massive pensions? We can do nothing about the disgrace that is going on with executives in the Central Remedial Clinic because they had contracts but we can retrospectively vary the sick leave entitlements of ordinary workers and be damned to their constitutional or legal rights. Those are the disgraceful double standards that operate in this country.

The distinction is made between critical and non-critical illness. How exactly is critical illness going to be defined in these arbitrary powers now being given to the Minister to lay down the specifics of the new regulations for sick leave entitlements and so on? Will cancer treatments, which could be strung out over six or nine months, or a year, be defined as critical? I certainly hope they will but I strongly fear they will not. What about mental health issues? This is a major problem but there is an attitude among certain people on the Government benches that mental or stress-related illness is not real illness. The attitude is that we just need to put measures in place that will force people to go to work even when they are not fit to do so, and even though their unfitness to do so is often related to what this Government has done to their working conditions, pay and so on. If we were interested in actually taking a reform measure that might improve the stress that is put on ordinary workers at the front line of our public services, why do we not bring in a regulation giving people a voluntary opportunity to work near where they live, so they do not have to travel long distances across the city in congested traffic? Would that not boost their morale a little and improve the situation of absenteeism, make services more local and so on? That is a rational approach to public sector reform. Of course, this has nothing to do with public reform. It is just another assault, this time on workers who are sick and often on those who were made sick by the activities of this Government in raining down relentless cuts on their pay, conditions and resources.

Acting Chairman (Deputy Peter Mathews): Deputy Nulty indicated he wanted to speak.

The order does not accommodate the Deputy's request.

Deputy Patrick Nulty: Would the Chair exercise his discretion and allow me to make a brief contribution?

Acting Chairman (Deputy Peter Mathews): Given two minutes of Deputy Healy's time were not used, I will ask the House to agree to two minutes for Deputy Nulty. Is that agreed? Agreed.

Deputy Patrick Nulty: I thank the Acting Chairman for his wisdom, which is welcome.

Acting Chairman (Deputy Peter Mathews): It is the wisdom of the House.

Deputy Patrick Nulty: I commend the Psychiatric Nurses Association and other trade unions for their campaign on this issue. What is remarkable about their campaign is that they are incredibly reasonable. They are not even opposing the Minister's amendment, which, incidentally, I am opposed to on principle due to its reduction in sick leave entitlements. They are specifically zoning in on the retrospective aspect because it means people are being placed in an invidious position. The proposal is also particularly anti-women, which all of the trade unions I have met have highlighted.

I would like the Minister to explain the rationale for this. There is no clamour, no public campaign and no drive to have this done. It is a political choice the Minister has made. I saw him being lauded at the recent Labour Party conference in a speech by his party leader. I find this quite remarkable, given he has slaughtered public services, stood over 10,000 job losses in the public sector, refused to lift the recruitment embargo in areas like nursing and speech and language therapy, and is now going for people's sick leave entitlements. It is part of a gradual and continued erosion of the pay, conditions and entitlements of workers across the public and private sectors. This is neither good economics, good business or good public policy.

I urge the Minister to withdraw the amendment. I guarantee him there will not be one single objection from any Deputy in this House if he withdraws it. The reality is the Minister no longer has a bottom line. He will agree to anything. He can prove me wrong and withdraw the amendment.

Deputy Brendan Howlin: The Deputy has a brass neck.

Acting Chairman (Deputy Peter Mathews): I invite the Minister to make a short reply as we are running out of time.

Deputy Brendan Howlin: I will do my best to address the real issues raised by Deputies. Deputy Fleming, in his opening comments, said he was supportive of the approach and of saving the money, but he was against this proposal. He willed the end but denied the means, in what is now becoming a feature of Fianna Fáil, in that it is for and against most things.

Deputy Fleming raised a number of issues with which I want to deal. In terms of the advice I have from the Office of the Attorney General, it was felt that because there were contractual issues for some public servants, it would be better to have formal legislation. This is simply an enabling Bill that will allow me to do no more than I intend to do, which is to put in legal force the binding recommendations of the Labour Court. There was a time when people of the left had respect for the Labour Court, but obviously that has now gone beyond the ken of some.

The Deputy mentioned there was an understanding that the Garda Síochána would be excluded. There was no such understanding. There was a timing issue in regard to this. I am not now going to bring it in on 1 January because I gave careful regard to the Deputy's reasonable proposal that we should do it by regulation. I did not have to do it by regulation and I could simply have issued a circular on foot of the legal authority I would have under the Act. However, I thought it would be better to do it by way of regulation and lay it before the House. I thought the Deputy had made a fair suggestion, which is why I accepted it. However, a consequence of that is that it will delay the implementation-----

Deputy Sean Fleming: I accept that.

Deputy Brendan Howlin: -----which I consider reasonable in all the circumstances.

There are two levels. There is the sick leave issue and, bluntly, as I have said repeatedly, the volume of sick leave in the public service is not sustainable. It is costing €500 million this year. It is all right to have a little rant about these things, and some people have the recorded rant.

Deputy Patrick Nulty: Does the Minister think they are lying?

Deputy Brendan Howlin: I listened carefully to what the Deputy said so he might listen to me. There is a requirement for those of us who want to have a future for the public service, and to have decent quality public services, to have regard for the norms that apply across the working environment and to try to make these adjustments. That is why we engaged with all the public sector unions and why we have taken a very long time to bring these matters to the Labour Court. The Labour Court has had very careful deliberation on all these matters.

The Deputy made a point on the specific issue of gender proofing. The idea is that it does not refer to any gender. It refers to the degree of sickness. On the important point made about equality proofing, under the proposed scheme there is no differentiation between different groups of workers and we do not differentiate between workers as women and men. There are, as Deputy Fleming rightly said, significant bodies of law protecting pregnant women in the workplace and elsewhere, which is important. We fully recognise and support the need to protect women during pregnancy. The public service will continue to operate the provisions of pregnancy related illness in accordance with all the relevant European Court of Justice rulings and Labour Court rulings. In fact, the public service in Ireland is one of the best places for women to work in regard to terms and conditions. That will remain the case and I am determined it will be so.

In terms of this being draconian, it is hardly worthwhile to comment on the remarks of Deputy Fleming or Deputy Boyd Barrett because they have a continuous similar rant on every issue we bring forward. We want to cure a broken economic situation in order that we have quality public services we can pay for, not allow them to collapse, and that we have security of terms of employment for workers in the public service in order that they can have a future.

Let me quote from the Labour Court recommendation-----

Deputy Seamus Healy: What about the wealthy? What about a wealth tax?

Deputy Brendan Howlin: The Deputy might listen.

Deputy Seamus Healy: Why is it always the workers?

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Deputy Brendan Howlin: Shout me down.

Deputy Seamus Healy: I am not shouting him down.

Acting Chairman (Deputy Peter Mathews): Order, please.

Deputy Brendan Howlin: The Deputy wants to overturn the Government and overturn the leadership of the trade union movement. Is it not great to be so perfect and that he is better than all? Let me quote from-----

Deputy Seamus Healy: I want the Minister to be fair to everybody, not to allow the wealthy off scot free.

Acting Chairman (Deputy Peter Mathews): We have just over a minute left for the Minister. I ask for order.

Deputy Brendan Howlin: The Deputy is much better at ranting as if he were on the back of a lorry than listening.

Deputy Seamus Healy: The Minister has reneged on every commitment he made in the general election.

Deputy Brendan Howlin: The Labour Court stated that these new arrangements, in the context of an entitlement over a four year period, are both reasonable and modest relative to sick pay arrangements applicable in other employments. The trade union movement is engaging with this and it understands these changes are necessary. They are part of a negotiating process involving the representatives of workers. However, there are individuals in this House who would like to set aside the elected representatives of workers, set aside the democratically elected Government and who know from their own personal demeanour and personal position what is the right and proper thing to be done.

Deputy Seamus Healy: The Minister is talking about himself.

Deputy Mary Lou McDonald: That was enlightening.

Question put:

<i>The Dáil divided: Tá, 63; Níl, 33.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Barry, Tom.</i>	<i>Boyd Barrett, Richard.</i>
<i>Breen, Pat.</i>	<i>Broughan, Thomas P.</i>
<i>Buttimer, Jerry.</i>	<i>Browne, John.</i>
<i>Carey, Joe.</i>	<i>Calleary, Dara.</i>
<i>Coffey, Paudie.</i>	<i>Colreavy, Michael.</i>
<i>Collins, Áine.</i>	<i>Cowen, Barry.</i>
<i>Conlan, Seán.</i>	<i>Crowe, Seán.</i>
<i>Connaughton, Paul J.</i>	<i>Doherty, Pearse.</i>
<i>Conway, Ciara.</i>	<i>Donnelly, Stephen S.</i>
<i>Corcoran Kennedy, Marcella.</i>	<i>Ferris, Martin.</i>
<i>Creed, Michael.</i>	<i>Flanagan, Luke 'Ming'.</i>

<i>Daly, Jim.</i>	<i>Fleming, Sean.</i>
<i>Deasy, John.</i>	<i>Fleming, Tom.</i>
<i>Deenihan, Jimmy.</i>	<i>Healy, Seamus.</i>
<i>Donohoe, Paschal.</i>	<i>Higgins, Joe.</i>
<i>Dowds, Robert.</i>	<i>Keaveney, Colm.</i>
<i>Doyle, Andrew.</i>	<i>Mac Lochlainn, Pádraig.</i>
<i>Durkan, Bernard J.</i>	<i>McDonald, Mary Lou.</i>
<i>Farrell, Alan.</i>	<i>McGrath, Finian.</i>
<i>Feighan, Frank.</i>	<i>McGrath, Mattie.</i>
<i>Ferris, Anne.</i>	<i>McGrath, Michael.</i>
<i>Fitzpatrick, Peter.</i>	<i>McLellan, Sandra.</i>
<i>Griffin, Brendan.</i>	<i>Mathews, Peter.</i>
<i>Harrington, Noel.</i>	<i>Murphy, Catherine.</i>
<i>Harris, Simon.</i>	<i>Nulty, Patrick.</i>
<i>Heydon, Martin.</i>	<i>Ó Caoláin, Caoimhghín.</i>
<i>Hogan, Phil.</i>	<i>Ó Cuív, Éamon.</i>
<i>Howlin, Brendan.</i>	<i>Ó Feargháil, Seán.</i>
<i>Humphreys, Heather.</i>	<i>Ross, Shane.</i>
<i>Humphreys, Kevin.</i>	<i>Shortall, Róisín.</i>
<i>Keating, Derek.</i>	<i>Smith, Brendan.</i>
<i>Kehoe, Paul.</i>	<i>Stanley, Brian.</i>
<i>Kenny, Seán.</i>	<i>Tóibín, Peadar.</i>
<i>Kyne, Seán.</i>	
<i>Lawlor, Anthony.</i>	
<i>Lyons, John.</i>	
<i>McCarthy, Michael.</i>	
<i>McGinley, Dinny.</i>	
<i>McHugh, Joe.</i>	
<i>McLoughlin, Tony.</i>	
<i>Maloney, Eamonn.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Dara.</i>	
<i>Nash, Gerald.</i>	
<i>Neville, Dan.</i>	
<i>Nolan, Derek.</i>	
<i>Ó Ríordáin, Aodhán.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	
<i>O'Reilly, Joe.</i>	
<i>Phelan, Ann.</i>	

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<i>Phelan, John Paul.</i>	
<i>Quinn, Ruairí.</i>	
<i>Reilly, James.</i>	
<i>Ring, Michael.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>Varadkar, Leo.</i>	
<i>Wall, Jack.</i>	

Tellers: Tá, Deputies Paul Kehoe and Emmet Stagg; Níl, Deputies Seán Ó Fearghaíl and Martin Ferris.

Question declared carried.

Public Service Management (Recruitment and Appointment) (Amendment) Bill 2013
[Seanad]: Order for Report Stage

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move: “That Report Stage be taken now.”

Question put and agreed to.

Public Service Management (Recruitment and Appointment) (Amendment) Bill 2013
[Seanad]: Report and Final Stages

Acting Chairman (Deputy Peter Mathews): Recommittal is necessary in respect of amendment No. 1 and related amendments, as they relate to the instruction to committee motion.

Bill recommitted in respect of amendment No. 1.

Minister for Public Expenditure and Reform (Deputy Brendan Howlin): I move amendment No. 1:

In page 3, line 11, after “SECTORS);” to insert the following:

“TO PROVIDE FOR REGULATIONS CONCERNING SICK LEAVE IN THE PUBLIC SERVICE;”.

I understand that amendments Nos. 1 and 16 and amendments Nos. 2 and 3 to amendment No. 16 are being taken together.

Acting Chairman (Deputy Peter Mathews): I thank the Minister. That should have been

my job. I am sorry for the hiatus, but the Minister filled it beautifully.

Deputy Brendan Howlin: It is all the time I spent in the Chair. Forgive me.

These amendments relate to the insertion of a new Part 7A concerning sick leave remuneration into the principal Act, as we have discussed at some length. The amendment provides for the insertion of a new sentence into the Long Title to reflect that fact. As the Long Title suggests, the Bill amends the 2004 recruitment Act to provide for the redeployment of public servants. The amendments being tabled are beyond the scope of the current Long Title. As such, it is proposed to amend the Long Title to provide for regulations concerning sick leave in the public service.

As Deputies are aware, the rationale for the new scheme was the need to reduce the unsustainable cost of sick leave in the public service. This is to be achieved through a substantial reduction in the period of time for which sick leave will be available. I want to be clear that the reduction in paid sick leave under the new scheme will reflect exactly the binding recommendation of the Labour Court. Under that recommendation, special arrangements are being put in place through the development of a critical illnesses protocol under which staff with serious illnesses of specific severity might benefit from extended sick leave on an exceptional basis. I did not have much time to respond on this point previously, but we will deal with it in some detail during our toing and froing. We are moving away from a single sick leave arrangement to a sick leave arrangement and a critical illness protocol to cover many of the issues raised by the Deputies opposite, including mental health issues. This was understood in our discussions.

The new Part 7A empowers the Minister for Public Expenditure and Reform to make regulations providing for the payment of sick leave remuneration for public sector workers. The provisions in Part 7A will underpin the introduction of a new sick leave scheme, which was recommended by the Labour Court in 2012, across the public service. It is also a key deliverable in the Government's reform programme. The single sick leave arrangement will help mobility in the public service.

Amendment No. 16 seeks to insert the new Part 7A, comprising sections 58A to 58C, into the principal Act. The overall purpose of Part 7A is to make legislative provision for a sick leave scheme for the public service and to give the Minister for Public Expenditure and Reform the statutory authority to set out the scheme in detailed regulations, having regard to certain principles and policies. A new Part is being inserted to avoid confusion by distinguishing between the provisions that relate to sick leave remuneration, redeployment and the existing provisions in the principal Act that relate to recruitment and appointments. This new provision empowers the Minister to provide for a definition of "condition" in ministerial regulations to be made under this Part. The term "condition" includes a condition which has been certified and prevents a public servant from attending to his or her duties due to illness or injury. The word "condition" does not refer to a medical condition, but is a condition that will get the public servant into the critical illness protocol. The inclusion of this definition means that the Minister can include in the regulations that in order to be allowed access to the levels of remuneration and the limit times in the paid sick leave scheme specified in those regulations, a medical practitioner must certify in writing that the public servant concerned is unable to attend to his or her duties due to illness or injury.

Rather than me reading out a great deal of information, it would probably be preferable if the Members asked their questions and I respond to them.

Deputy Sean Fleming: I look forward to working our way through this hybrid of Committee Stage and Report Stage. I hope the Chair will bear with us as it is a little confusing. First, we have the Bill which has been passed by the Seanad. Then there are the proposed amendments to the Bill, and the green sheet of paper is what would normally be in front of us. Subsequently, however, we received the first additional list of amendments containing a substitute amendment, printed on white paper. I am obliged to move from the green sheet of paper for some amendments to the substitute list of amendments; I do not have a composite list of amendments.

Acting Chairman (Deputy Peter Mathews): We are in a multi-layer situation.

Deputy Sean Fleming: I am trying to multi-task.

The substantive amendment on sick leave runs to approximately six pages and I had to go through that to find the single paragraph which is different in the Minister's substitute amendment from the Minister's amendment on the green list. It inserts a new subsection (9) which deals with making the regulations. I had tabled an amendment providing that these matters should be dealt with by regulation, and the Minister agrees with that principle. I am happy with that. I prefer that this be copper-fastened by way of secondary legislation than by way of circular, and the Minister and I agree on that. The inevitable consequence is that it will delay it by a couple of months, but it is better to have it on a sure footing in any event.

We are discussing four amendments. No. 1 relates to the Title, and I have no comment to make on that. Amendment No. 16 is the substantive amendment and we are also discussing amendments Nos. 2 and 3 to the substitute amendment, which are the amendments I tabled to call for this to be done by way of regulation. The Minister is doing that, so there is no need for me to say anything on my amendments in this group. I will return to the Minister's amendment.

The difference between what is contained in subsection (9) in amendment No. 16 and my amendment relating to the statutory instrument is in the final phrase, which the Minister might explain. He agrees that each regulation under the section should be laid before the Houses, and the subsection continues with the standard provision that the regulation will come into force unless there is a resolution of the Houses to annul it. If that were to happen, which would be unique, the provision continues "but without prejudice to the validity of anything previously done thereunder".

Deputy Brendan Howlin: That is also standard.

Deputy Sean Fleming: I presume that if the Minister had taken action and commenced some procedure on the basis of the presumption that the statutory instrument would not be annulled by the Houses and it happened to be annulled, this means that what was done will not be undone. I think that is what it means in English, so we will not argue about it. It is unlikely to happen anyway.

We come now to the substantive issue in the legislation before us, the amendment regarding sick leave. After the debate we had earlier the Minister will understand the arguments of different Members because we are essentially dealing with the same point. I might differ with other Members of the Opposition but I agree with the Minister on the need to curtail the sick leave bill and to bring it into line with what is the norm in Irish society. It should not be a standard thing for people to say, "I feel like doing a few sickies". That phrase should not be part of the Irish lexicon from now on. In addition, even though the Opposition should not necessarily look

for trouble, I support cutting the six month period to three months for both full pay and half pay. The difficulty I have is with some of the details about it.

The retrospection is a big issue. I refer to it as retrospection, but many people would disagree with me on this. It is unusual for the House to pass a measure that has a retrospective effect. However, it is to do with the nature of the sick leave scheme. I have a copy of the circular issued last July to personnel officers containing a notification of the changes. It states: "Because we calculate sick leave on the basis of a 4 year rolling period (i.e. counting backwards from the latest day of absence) the changes being introduced from 1 January 2014 may result in staff being on half pay on their next sick absence if they have had more than 3 months absence on full pay in the previous 4 years." That introduces an element of retrospection. It counts back for the number of sick leave days.

Some people would say this House should not pass anything with retrospective effect. The essence of every legislative measure is that it is the law from when it is passed, but one cannot go back and change the law that previously existed. However, in effect, this measure has a retrospective impact. The Minister might be surprised to find that I agree with the principle that there must be some retrospective impact with this. Some would say there should not be, but there should be some look back. Otherwise, one would essentially be wiping everybody's previous sick leave record clean, with it starting again from next year under the new regulations. It would be four years before the four year rolling clock would catch up to reach the current position and it would be four years before the full potential savings could be achieved. Some Members will respond by saying "So be it", but we are in a difficult financial situation and there must be some recognition of the sick leave taken prior to the commencement of this new legislation. To ignore it would be unfair to the taxpayer and to the hundreds of thousands of people in employment in the private sector who do not have a similar four year rolling arrangement for the amount of paid sick leave they receive. The Minister might not like it but I can see the logic in him doing that.

I will now turn to my difficulties with the section as amended by this amendment. I do not think the Minister grasped what I meant - perhaps he was not listening carefully - when I said the legislation was not gender proofed. Of course, there is no phrase in the legislation singling out females for special treatment as opposed to males, or vice versa. There cannot be. Gender proofing means assessing the impact legislation will have on the genders. Without reference to gender in the legislation, the practical implementation of this legislation will have a greater and more disproportionate impact on women than on men. It is not written in the legislation but that will be the effect, as sure as night follows day.

Deputy Brendan Howlin: Why?

Deputy Sean Fleming: I will explain. The reason I raise this is the complicated cases I encounter in my constituency clinic, and I am speaking from personal experience of dealing with those cases. Where I believe this measure discriminates against women is at the jump from full pay after three months to half pay. The Minister has a mechanism in place for people who are going onto the rehabilitative arrangement whereby their payment does not go lower than the social welfare rate at that point. That is not the point at issue. I am also not referring to the pre-1995 people but to the people in the public service who are relatively young with young families and are paying and have been paying the full PRSI rate.

2 o'clock

The Minister will say that no change, other than the reduction from six months to three months in respect of half pay, is being made. However, as a result of this change more people will be on half pay sooner than was previously the case, which means many more people will be impacted by it.

Reference is made in the legislation to linkages with the Social Welfare Acts. Up to 30,000 people in the public service are in the lower paid grades. The statistics indicate that there are more females than males in the lower pay grades in the public service and that there are many more females than males at clerical officer level in the Civil Service, HSE, local authorities and so on. As a result of the new arrangements, staff will now drop to half pay much sooner than heretofore. A female public sector worker earning €30,000 per annum who is the sole bread winner in a household, whose husband or partner has lost his job and has three children would be entitled in terms of illness benefit to the single person allowance of €188 per week, €124.80 in terms of the qualified adult allowance and €29.40 for each child, which amounts to €402 per week. However, when her salary of €30,000 is reduced by half she will have an income of only €15,000 per annum, which equates to only €300 per week. That family would be far better off on illness benefit. As per the circulars issued across the public sector, staff are obliged to sign a certificate instructing the Department of Social Protection to forward information in relation to illness payments to their employer and to fill out the required forms promptly after going on illness benefit. They do not have the option of having the cheque forwarded directly to them as they will have already signed up to an arrangement whereby it is sent to the employer. As I said, there are more women than men on low pay. While this measure was not designed to hit women the fact that more women than men are on low pay means women are more likely to be impacted by it.

I have had extensive discussions in recent days, including again this morning with officials in the Department of Social Protection, on the general theme of this measure, which is that nobody will be on lower pay than their social welfare entitlement, which I accept. The legislation does not deal specifically with the reduction to half pay after three months but to what happens at the end of the half pay period of entitlement. I presume there is a presumption in the legislation in this regard, even though I have not been able to locate it. Under the legislation, after three months on sick pay a person will be entitled to €188 per week in illness benefit. While it is valid to say that a single person is entitled under social welfare legislation to €188 per week in illness benefit, for social welfare payment purposes the household income of a person on illness benefit is taken into account but for employment purposes a person is classified as an individual. This means an individualised approach is being taken in terms of salary and a family approach is being taken in terms of social protection. While the intention is that a person's pay will not be lower than his or her basic social welfare entitlement, as I understand it, this is only the case in respect of the person but he or she may be entitled to claim for other people.

I discussed the following issue earlier with officials in the Department of Social Protection. The top-up payment for the qualified adult and child allowance for a person on illness benefit is means-tested. If the husband is in receipt of jobseeker's allowance he may be able to have the balance made up through his claim. However, if the husband, because he has lost his job is back in education, he may not be eligible for jobseeker's allowance and may also have no other entitlements because he is not available for work. The Minister will probably say that this has always been the case. However, more people will be affected a lot sooner because of this change. When the people on high incomes of €80,000 or €90,000 are reduced to half pay they will still be receiving payments well above illness benefit and social protection payments but

the person on the salary of €30,000 will when reduced to half pay be receiving less than their social welfare entitlement. I accept it will be difficult to deal with this issue.

Deputy Brendan Howlin: It is a social welfare issue.

Deputy Sean Fleming: It will require employers to liaise with the Department of Social Protection in regard to each individual's entitlement. I accept that currently when a person goes onto half pay this is automatically calculated on a computer and that as no two situations will be the same, depending on the family situation, this will be difficult to deal with. However, as I stated earlier this measure will in terms of the statistics in regard to the number of people in the lower pay grades affect women more than men.

Another issue not addressed but by which women will be affected is pregnancy-related illness. I believe the current arrangements should be reconfigured to exempt pregnancy-related illness from this scheme, although I do not know if it is possible to do so at this stage. As the Minister is aware only females get pregnant. I know he will say that there is nothing in the legislation that discriminates against women but the practical implications of it, because only women can get pregnant, is that it will have an impact on women that it cannot possibly have on men. This is further evidence that this legislation was not gender proofed.

Some women have a couple of children. A woman who becomes pregnant and acquires a pregnancy related illness, who has been already previously absent from work with an illness, will because of the counting backwards aspect of the sick leave calculation aspect, be moved from full to half pay sooner than would otherwise be the case if she had not acquired the pregnancy related illness. I am not seeking an exemption for women in respect of non-pregnancy related illness. However, where an illness is defined by a consultant or doctor as a pregnancy related illness this illness should be exempted in the context of the reduction to half pay. The Minister might consider this matter when drawing up the regulations. It would be only fair that he do so. I do not propose to get into the politics of cuts in maternity leave and so on. The Minister should try to do something to address that issue.

As stated earlier, I am not happy that the Bill has had to be recommitted in respect of these amendments. The Minister has made a virtue of pre-legislative scrutiny. This aspect of the legislation is far more fundamental than what was provided for in the original legislation. In time, this aspect of the legislation is what people will rely on. Most public servants will get sick at some stage during their 40 year working career. This legislation will greatly impact on them. Issues such as redeployment will not necessarily affect many people during the course of their employment. As this is a bigger issue it would have been useful if it had been brought forward earlier in the year. I know the Minister will say it is before the Labour Court and that negotiations are ongoing and so forth. I understand that and I made those points earlier in the day.

I read line by line the document the Minister has issued on critical illness. I am satisfied with all of it, by and large, bar the exclusion of mental illness. The Minister specifically referred to physical injury. I realise the Minister will say that it can come in under critical illness but the Minister has stipulated physical injury. People will ask why he has excluded the other category. Since the Minister went to the trouble of listing physical injury, he could have referred to mental illness. Some of the examples are given at the back and I follow the logic in all of those. They refer to people being out in various circumstances. Some of them are clear, for example, the case of someone who has schizophrenia. The Minister gave the example of how such a person would be entitled to be included under critical illness. Another situation might

involve someone who perhaps had a difficult family situation on a once-off basis and for whom, perhaps, an early return to work might not be good, either for him or his colleagues. Perhaps he may need extra time. I am impressed generally with the document, except for the omission that I would have preferred to see included. The Minister will tell me it is covered in any event.

I may think of some more points during the debate. The Minister can see the way I am coming at it. If he cannot change a great deal today, perhaps he can when it comes to the regulations. When the Minister is publishing the regulations, will he send the committee members a copy? I realise they will be laid before the Oireachtas but we get so many e-mails that we could easily miss them. Will the Minister make a point of sending the document to the committee secretariat in order that we can see a copy and read it? The Minister might consider the matter of pregnancy related illness when he is making the regulations.

Acting Chairman (Deputy Peter Mathews): Deputy McDonald is next.

Deputy Mary Lou McDonald: It may be better if we deal with those points first and then I can come back in later.

Deputy Brendan Howlin: I am happy to do that.

Deputy Mary Lou McDonald: We are dealing with this in committee.

Acting Chairman (Deputy Peter Mathews): I will accommodate your wishes.

Deputy Brendan Howlin: I am happy to deal with it. There were four substantial points made by Deputy Fleming and I will deal with those in sequence. We debated the regulation issue earlier. Deputy Fleming has tabled an amendment to it. I have before me as many pieces of paper as Deputy Fleming. I am trying to find the note on Deputy Fleming's amendment on the regulation. The Deputy proposes the insertion of a new section 58B(9) which would require the Minister to lay draft regulations made under Part 7A before each House of the Oireachtas. Either House would be able to annul the regulation by resolution. I accept that. On the strong advice of the Attorney General, I have reworded it in a way such that the Office of the Attorney General is satisfied, but I do not believe there is an issue with it. That is the way we should go.

The second point Deputy Fleming made relates to what I term the fail-safe measure. It is normal to put in a proviso so that even in the unlikely event of the Oireachtas annulling regulations, nothing purported to have been done up to that point is nullified. That is simply a fail-safe that is included. I assure Deputy Fleming that nothing will be done in advance of the regulations coming formally into effect. That is why I am delaying the implementation of the scheme until whenever that point is arrived at.

The Deputy referred to two more meaty issues. The first was the retrospection issue. Deputy Fleming is perfectly right. The word "retrospection" is not an appropriate word really, because one must have some snapshot or period to make an evaluation. It would be bizarre to decide to start now with a new scheme. That would work counter to what we want to do. We want to reduce expenditure but if we ignored what is happening now, that is, the four year envelope that is applied at the moment, and decided that we would start a new clock regardless of what a person's record was to date, then we would be pushing things back four years. In the first instance, that would not be fair to public sector workers who become sick from whatever date this legislation becomes operable. They would have a legitimate grievance in respect of their work colleagues who had been out of work, perhaps, for a protracted period, in the past

two or three years. That is a reasonable point.

It is important to be clear about what is meant by the new scheme being applied retrospectively. The question of retrospection arises in respect of reviewing an individual's sick leave record over the past four years and then using that to determine access to paid sick leave under the new scheme. When an individual is absent on sick leave, two things are relevant. First is the number of days of sick leave in the past four years, that is, all the days of sick leave in the past four years added up. Second is the number of sick leave days in the past 12 months. The first decision made is whether an individual should have any access to paid sick leave. To do this, a person's sick leave record is examined in respect of the previous four years. This will determine whether he can have access to paid sick leave provided he has not exhausted the limits. Currently, the limit on pay during absence from work is 12 months but this will be reduced to six months for non-critical illnesses under the new scheme.

The second decision to be made is how much an individual can be paid. This is dependent on the sick leave record of the individual over the past 12 months. The individual's sick leave record is examined over the previous year to determine whether he can receive full or half pay or whether he should be considered for an award of temporary rehabilitation pay. This is the new phrase we are using relating to when a person is coming back to work. The look-back arrangement has always been in place in respect of the calculation of sick leave pay and will continue under the new scheme as set out in the Labour Court recommendation. There is nothing new in this. We have always taken a four year time envelope and it is appropriate that this is maintained. The notion that we are introducing a new element of retrospection is not right. We are simply changing the arrangements in future having regard to the work patterns and sick leave of the previous four years. When the new scheme is implemented, an individual's sick leave record will continue to be reviewed with regard to the previous four years where a person has taken sick leave previously. I hope that is clear enough in respect of the so-called retrospection issue. In fact, Deputy Fleming has made a compelling case in support of what I am suggesting and I have no issue with him in that regard.

Deputy Fleming went on to amplify the charge he made about gender proofing. The legislation is deliberately constructed in order that it is not gender specific. We treat all workers in the public sector equally. Deputy Fleming says it has a disproportionate effect and he has given the example of pregnancy related illnesses. We did not disaggregate pregnancy and certainly pregnancy is not regarded as an illness. However, there are complications that can arise in pregnancy that are gender specific. They can and will be captured in the work. This was a clear point made by the public sector unions. It is absolutely accepted by the employer, by me. I must be careful what I say because the Labour Court is seized of this matter at present but we hope the court will help us find an acceptable and reasonable approach to protect women when they are pregnant while maintaining the integrity of the scheme and, more especially, the critical illness protocol.

For clarity I emphasise that we are moving away from a single sick leave scheme to a reduced sick leave scheme but with a new critical illness protocol which will capture matters such as complications in pregnancy, acute bouts of mental health, cancer or illnesses that are critical and ongoing. We must define the conditionality in order that it is not an abused protocol that will undermine the basis of the fundamental sick leave arrangement.

All the fears that the public sector unions and the Deputies opposite have genuinely placed on the table are understood by the management side and they can be well captured. As part of

the reasoning, I have put within the legislation and I will put within the regulation a 12 month review clause. We we will see how this works in 12 months. I will be happy to take any questions or debates about this 12 months on. Perhaps by 12 months we will not have enough information and we may have to wait for a second 12 months, but we will have a review automatically after 12 months of the operation of the new arrangements. Of course the public sector unions and their representatives will have input into that review. Is there any other point?

Deputy Sean Fleming: I asked about social welfare payments.

Deputy Brendan Howlin: Deputy Fleming made the point about the juxtaposition of reduced formal payment and the interaction it has with social welfare payments, especially for people of low pay when they get to a half-pay rate and the impact that has on the family income generally. It primarily is a matter for social welfare provision because what is being done here does not alter the current position. The difficulty the Deputy has addressed regarding a diminution in pay could arise right now.

As for the general principle, in their submission to the Labour Court, the public service unions proposed there should be a floor on temporary rehabilitation pay. In other words, there would be a minimum payment that is not less than the personal social protection rate of €188 per week. The Labour Court accepted the unions' proposals in this regard and endorsed the position that a minimum payment equal to social welfare protection rates for those who joined the service before 1995 is reasonable and should be accepted by the management. Therefore, while there are implementation issues to be worked out, the principle outlined in the aforementioned Labour Court recommendation is clear and will be implemented. That is the position for pre-1995 people. In the case of the post-1995 Civil Service, class A contributors have an entitlement to claim illness benefit that is not means tested. Normally, the individual receives his or her sick leave payment from his or her employer and then the public service body recoups the illness benefit payment from the Department of Social Protection. This is the way it normally works. My point is the new arrangement that is being put in place simply mirrors the old arrangements. While it may be worth my having a chat with the Minister for Social Protection on these matters, as the Deputy rightly stated it would be extraordinarily complicated to implement, through a payroll system, a sort of means testing of income within a household between social welfare and reduced formal pay. I believe it would make impossible the practical application of the scheme. However, this may be something that can be caught through the social welfare system, which carries out means testing where people have not paid a class A contribution.

Deputy Sean Fleming: I will make a few points just to conclude this line of approach. As a highly practical person, I will make two real and practical suggestions that I ask the Minister and the Department to take on board. On the issue of pregnancy-related illness, a system is in place at present whereby a person who is on half pay and has a pregnancy-related illness will not drop to a rehabilitative rate. There is a simple way to deal with this issue, that is, to have the same provision for a person on full pay, whereby she will not drop to half pay specifically during the period of a pregnancy-related illness. At present, there is full pay, half pay and the rehabilitative rate and there is already in place a system whereby one will not drop----

Deputy Brendan Howlin: There is a floor.

Deputy Sean Fleming: No, the Minister should bear with me. At present, my understanding is that in the case of a person on half pay who is ill during pregnancy, whose illness is related

to the pregnancy and who, under the current regime, exhausts her full 12 months, there is an arrangement in place whereby she will not drop below that rate during her pregnancy. I believe the arrangement is that-----

Deputy Brendan Howlin: One cannot go below half pay.

Deputy Sean Fleming: Exactly. In other words, a person who is on half pay during her pregnancy and the clock runs out on her, she will not drop below that. The cost of doing this would not be all that much, that is, someone who commences her pregnancy-related illness on full pay should not be dropped to the half-pay rate during that particular specific illness. It might be for only two or three months or a similarly short period. In other words, there already is a mechanism for someone who already is on half pay not to drop off the system and my suggestion is such people should not be dropped from the higher step to the intermediate step during this period. This is a practical suggestion to which the Minister might give consideration.

I have a second practical suggestion for the Minister to simplify matters for the employer before the statutory instrument is made. Illness benefit is based on one's contributions and is not means tested. Therefore, the amount is fixed at €188 per week if one is entitled to it. However, the qualified adult allowance is means tested, as is the qualified child allowance. I accept it is beyond the remit of the employer to know the personal circumstances of each family. My simple suggestion pertains to a person who is on half pay, who happened to be on €30,000 but whose pay dropped to €15,000 and who now gets €300 per week. If the cheque from Department of Social Protection comes in at a higher figure, simply give back the balance to that person. I simply suggest a profit should not be made by the Department or the employer through getting more in illness benefit from the Department of Social Protection than it actually is paying out to the person on half pay. If the cheque rolls in and it is for €100 more than the Department is paying out, top it back up in order that the person gets the benefit. This is the principle that already underlines the other arrangements, whereby the Minister stated people will drop to and not below their personal rate. In other words, there is a figure there and the Department has no calculations to make. When the Department of Social Protection has done its bit and has started to send in a higher cheque, an employer that discerns it is higher should simply refund the balance. It would be somewhat perverse for an employer to be making a profit, that is, getting more from the Department of Social Protection during a person's illness than it actually was paying out to the person on sick pay. I believe the Minister can understand this proposal. The Minister might be able to put forward a formula in this regard because I do not believe for a second it is his intention that his Department should make a profit on someone being out sick through getting more from social protection than it pays out in sick pay. I believe all Members are in agreement in this regard. The Minister should attempt to find a simple way to do this, which would take the employer out of the operation.

I have one final comment, to which the Minister may have responded earlier. In his contribution this morning, the Minister stated: "It is important to note that in overall terms, the new scheme will provide access to some form of income for public service employees who find themselves out of work due to illness or injury for a period of two years in total." Is that figure of two years the current figure or is it the new, reduced figure? What will happen at the end of the two years? Will the chief medical officer tell the person concerned to collect his or her cheque and go? The Minister should outline what will happen at the end of the two year period and I ask him to consider my two suggestions on pregnancy-related illness and for employers not to make a profit out of the illness benefit paid.

Deputy Brendan Howlin: On the first point made by the Deputy with regard to pregnancy-related illness, I will consider it in the context of the regulations. It depends on what emerges from the discussions regarding the Labour Court because that is the net issue at which they are looking. However, the Deputy makes a good case and I will consider it in the context of the regulations. Members can have a discussion about it when that happens. I refer to the other point made by the Deputy on ensuring that if a social welfare entitlement happens to be bigger than the reduced rate of pay, the sick person should get the benefit of the balance. I understood this already happens now. This is the reason I was checking but my own understanding is this already happens and it is rebated automatically.

Deputy Sean Fleming: Okay.

Deputy Brendan Howlin: However, I will check because that is a reasonable point. The Deputy's final question was on what happens when one has exhausted one's three months and one goes onto temporary rehabilitation pay, that is, what does it mean and how will that be calculated. If standard sick leave limits or the critical illness provisions or both are exhausted and there is a realistic prospect that the individual will be able to return to work, as I stated already, he or she will then go on to temporary rehabilitation pay for the further period during the total period over which support is paid, up to two years. This two-year limit is designed to mirror the two year period over which illness benefit currently is paid by the Department of Social Protection. Temporary rehabilitation pay, as the Deputy is aware, used to be called the pension rate of pay and will be calculated and awarded in the same way. It is based on the pension that an individual would be paid, were he or she to retire at that particular point in time. There are issues on the length of time of the payment of the temporary rehabilitation pay that the public service unions are raising in the context of the final phase of deliberations before the Labour Court on 16 December and that the matter should be clarified then.

Deputy Mary Lou McDonald: I note Members are on Committee Stage for amendment No. 1. Obviously, the Minister was obliged to change the Title because when the legislation was originally considered, it did not envisage legislating in this way for sick leave in the public service. As the Minister says, it is enabling legislation.

To deal with amendment No. 16, I refer to section 58B(4) which in my view is instructive. It states: "In making regulations under the subsection the Minister shall have regard to...". Front loaded at the beginning is the need to limit the circumstances in which public service bodies can undertake the commitment of financial resources in making payments in cases in which they are unable to receive the benefit of the services of their public servants. That is reasonable, in my view. It refers to the resources available. Subsection 58B(4)(c) cites the obligations of the State under the treaty of stability, co-ordination and governance under economic and monetary union, while subsection 58B(4)(d) refers to the specification of conditions for an entitlement to be paid remuneration during a period of sick leave and the desirability of having in place a satisfactory means of verifying that the public servant concerned is ill, etc. - in other words, not pulling a sickie when one is not sick. It is only in subsection 58B(4)(e) that there is mention of the need to protect the health of public servants. Whatever about the decision to order it in that way, an employer has obligations under health and safety law, as do employees themselves for their own well-being, and I am certainly not advocating a situation where people abuse a system of sick leave, be it certified or uncertified. I understand the scale of the current Bill and I am convinced not just by arguments made by the Minister, but also by arguments from the workers' side that savings need to and can be made. I do not have an argument with the Minister on that point. I ask the Minister to give the House the most recent figures for the number of public ser-

vants on what would be termed long-term sick leave as this information could provide a sense of the scale of this situation.

I said this earlier and I promise I will not repeat it again after this. I do not like the idea of the Minister having possession of this kind of enabling legislation. I reiterate this is not personal to the Minister. In my view, it may be a step too far. Subsection 58B(4) instructs any would-be Minister or the current Minister of what he or she needs to have regard to. It is ordered in that way with the health of public servants almost as the last item in that section and this worries me even more.

I refer to the issue raised by Deputy Fleming about the social welfare payment. I draw the attention of the Minister to a point on which I ask for clarification. It comes from the Labour Court recommendation which refers to rehabilitation pay and a minimum payment equal to social protection rates for those who joined the public service before 1995. I ask the Minister to explain and clarify what this will mean for the regulations.

The point made about gender-proofing of this legislation can be made equally about most, if not all, legislation. I do not believe there is due regard for the impact on gender of many other measures. The Minister made, on the face of it, a reasonable remark that the legislation and the regulations would not discriminate between male and female workers. That is fair enough. However, that is easily got around by the simple reference to “pregnant workers”. One of the sexes has the capacity to become pregnant and as of yet, bar scientific advancements, the other does not. There has to be the very specific reference to pregnant workers in this or any other legislation and certainly in the regulations. If the regulations did not take account of that, they would run against the existing legislation protecting pregnant workers but it would also be an obvious deficiency in any legislation.

I come now to the clincher. This Bill proposes cutting the amount of time to which workers are entitled to sick leave. I remind the Minister that pregnancy is not a sickness, but I refer to the example of a case of the baby blues, as the condition is called. It is not uncommon for workers who have been pregnant to have depression. Where in this specific instance is the worker situated with regard to sick leave? There is the issue of how the modest period of uncertified sick leave and certified sick leave is accommodated within the definition of critical illness. However, if the condition persists above and beyond the two years, which, sadly, can be the case, where does that leave that worker? The Minister is in charge and it is legitimate for him to ensure that provisions are not being abused. However, it would be a very bad turn if this scheme resulted in people whose illness was extended beyond the scope of what is envisaged by the Minister and who found themselves with no job to return to or who were forced out of their job. The nuance needs to be considered. It would have been preferable to have this discussion having had sight of the various regulations because much of what is speculation I presume would be resolved and set out for us.

The Minister referred to retrospection as being a look-back, which is a nice turn of phrase. He said, “We are changing the scheme going forward but then having a look back at the past”. It does not really matter whether it is called retrospection or if another term is used. The fact is that leave which workers have legitimately taken under the existing regime will now be calculated under the regulation and the norms of a new trimmed down set of limits. I am not suggesting this would cause significant difficulty in many cases but I can see circumstances where it will cause a problem for the simple fact that the Minister is reducing the period of time and leave to which people are entitled.

I have spoken to the Minister many times on the issue of retrospection, generally about excessive pay and pension pots at the top of the tree. The Minister has used arguments around property rights, contractual obligations, advice from the Attorney General and so on to state he could not tackle many of those pressing issues. It seems that on this matter the Attorney General takes a different view. She does not seem to be so hung-up on people's legitimate expectations or their contractual arrangement with the employer. In this instance it seems that can be set aside but there is precedent for that because that was also the case in respect of the financial emergency measures in the public interest legislation. I note that contradiction for the Minister. The Minister might respond to those points starting with the figures available to him because I would like to get a picture of long-term illness.

Deputy Brendan Howlin: The Deputy has raised a number of issues, which I will try to deal with sequentially as I did with Deputy Fleming.

I do not have numbers. I have a table with costings on a sectoral basis which I will provide to the Deputy. The last full year for which sick leave statistics have been gathered is 2012. I have before me a table which sets out the reporting of sick leave or absenteeism over that year. I will give the Deputy the cost in millions of euro in each sector.

For the Civil Service the figure is €5.3 million for the self-certified. The certified figure is €47.7 making a total of €53 million. The percentage of days lost as a total of the total Civil Service is 4.6%.

In Defence, the self-certified figure is €1.1 million. It is an interesting point that Defence has a much lower level of absenteeism.

Deputy Mary Lou McDonald: Will the Minister give me that figure again?

Deputy Brendan Howlin: The figure for Defence is €1.1 million; the certified leave figure is €7.8 million. The total cost in the Defence sector is €8.9 million. The total percentage of days lost in the defence sector is 2.65%.

In the education sector, self-certified sick leave for teachers is €6.4 million. The figure for certified illness is €54.9 million, making a total of €61.3 million. The percentage of days lost was 3.4%.

The self-certified figure for special needs assistants, SNAs, is €1.1 million. The certified figure is €6.4 million, making a total cost of €7.5 million. The SNA percentage days lost figure is 4%.

The self-certified cost for health is €26 million; the certified cost is €197 million, making a total cost of €223 million. The percentage of days lost was 4.79%.

In the local government sector, the self-certified figure is €5.8 million; the certified figure is €42.1 million. The total leave lost last year in the local government sector cost €47.9 million. The percentage of days lost is 4.4%.

On the final area of justice, for the Garda the self-certified figure is not applicable. The certified figure cost in the Garda is €27 million, therefore, that was the total cost. The percentage of days lost for the Garda was 7.4%. Interestingly, the self-certified figure for Garda civilians was €0.2 million, that is, €200,000. The certified cost was €2.7 million. The total cost of Garda civilians was €2.9 million, and the total percentage of days lost for Garda civilians was 0.4%,

less than half of 1%. I will provide that table to the Deputy.

Deputy Mary Lou McDonald: Can I pass a remark on that?

Deputy Brendan Howlin: Yes.

Deputy Mary Lou McDonald: What jumps out is the figure for health. If it is possible it would be very useful to have numbers beside it-----

Deputy Brendan Howlin: Yes.

Deputy Mary Lou McDonald: -----because it is only then that one can get the sense of what is a concern of everybody, not least the Minister as the employer, namely, whether there is a repeated pattern or if that is widespread. I would have a view on the Health Service Executive and its management capacities so it would be very informative for us to try to establish that pattern. I would appreciate it if the Minister can get those figures.

Deputy Brendan Howlin: Rather than just give the Deputy the figures for health I will see if I can disaggregate them better and get those to her.

The next point in the series of points made by Deputy McDonald was on her dislike of the provision of enabling legislation of this sort. I accept her comments that there is nothing personal involved in that. I believe it is a more democratic way of doing it in that we are bringing legislation to be debated here, circumscribing the power of the Minister and debating the power of the Minister as opposed to what happens now where it is done normally by circular that we do not see. I remember when I was teaching one would get circular 1 of a particular year, circular 2 and circular 3 changing terms and conditions and God knows what not by circular. This is a more democratic way of doing it. If we have a formal legislative authority determined by Parliament and a formal statutory instrument laid before Parliament containing a review clause that is a better, more open way of doing it but that would be a matter of viewpoint.

I do not want to repeat the point I made in reply to Deputy Fleming on the pre-1995 and post-1995 people other than to reiterate that regarding the pre-1995 people, we have accepted the Labour Court recommendation that the minimum position equal to social protection rates for those who joined the public service before 1995 is reasonable and is to be accepted. That will be reflected in the decision. The post-1995 people, as the Deputy is aware, are paying a Class A contribution so they are entitled to claim illness benefit. In the normal circumstances the way it works is that the employer receives that and pays the half pay. The point made by Deputy Fleming was about a situation where the social welfare recoupment was greater than the half pay of somebody on a low wage. My understanding is that the balance is rebated but I will check that for the Deputy.

I hear the points made by the Deputy about pregnancy related illness. They have been forcibly made by the unions. I did not want to prescribe pregnancy related illness as a stand alone issue but it is one of the issues to be determined by the Labour Court. I will be as flexible as I can and I will have regard to what the Deputy has to say when we are drafting the regulations.

Deputy Mary Lou McDonald: On that point, I presume the Minister will satisfy himself that in terms of the regulation, the critical illness protocol and the regulation when it comes forward that it is in line with health and safety responsibilities and so on.

Deputy Brendan Howlin: And all the fairly exhaustive legislative protection that is in

place to support-----

Deputy Mary Lou McDonald: Pregnant women.

Deputy Brendan Howlin: -----women in pregnancy. As I said, it is my intention that the current position of the public service that we are progressive and model employers will continue in regard to that.

The fundamental question asked by the Deputy is in terms of what happens after two years when one loses a point. One has had three months on full pay, three months on half pay and the related pay floor determined for the balance. The idea, and that is the reason we are renaming that payment, is for it to be an encouragement back to work. I said in the opening remarks, and I know it can sound a bit odd, and this is the advice I have from the medical practitioners, that the notion that the objective is to get people back to work is supportive of recovery. The system is designed to get people back to work, not to categorise them as permanently ill. We want to provide the supporting mechanisms, rehabilitation and so on to get people back to work. The norm would be that after two years one might determine one is not returning to work because the illness is such that one is not capable of that work and one might want to find work elsewhere, in which case one might retire. If one can return to work under a different set of circumstances, that would be facilitated also. That is part of the supporting regime we have put into the public service under human resource management. In terms of the specifics of time - I gave the answer to Deputy Fleming already - this is something we have not yet finalised with the Labour Court and it will be subject to the recommendation it will make on 16 December.

Deputy Mary Lou McDonald: I cited the example of post-natal depression, so we would not be talking in generalities. It would not be unheard of for a woman to require more than two years to reach a position where she was ready to go back to work and take up her duties and tasks or other duties and tasks. I like this notion of rehabilitation and back to work. That is absolutely sound. The last thing one wants to do is to keep people in the category of “sick”, psychologically for them and in terms of the work organisation. However, if the circumstances are exceptional and it takes that bit longer for people to get themselves fit and ready to take up their duties, that should be provided for. I do not think we should say two years and sin é - one is either fit to come back to work or not - in particular when dealing with illnesses which relate to people’s mental health. As we have spoken a lot about pregnant workers, I have cited post-natal depression. It has taken people I know longer than that time to feel fully well and fully ready to go back to work but they were perfectly capable of assuming their duties again. I raise that again with the Minister.

Deputy Brendan Howlin: It is something I will reflect on in regard to the regulations. We cannot have a situation where somebody can be sick forever and on half pay or on rehabilitation pay. The idea is that we would come to make some discernment in regard to it. I do not think that is the issue about which the Deputy is talking. She referred to an example where it might not be 24 months but 30 months or a while longer. Let me reflect on that and have regard to what emerges from the final discussions in the Labour Court on 16 December.

Deputy Richard Boyd Barrett: I have made general points around this issue in the previous debate but following on from the more specific aspects of this amendment, the figures the Minister gave were very revealing and confirm the argument I made to him earlier on this issue. The area where there is the highest level of absence through sickness is in the health service. That is no surprise. The percentage is higher, the numbers are higher and the cost is higher

because the Government has butchered the health service. It is obvious.

I spoke to a local authority worker before I came into the House about a study of ordinary bank workers - not the people at the top - I think in Bank of Ireland which reported that two thirds of sickness of among workers in banks has to do with stress. Why is that? Is it because bank workers are inherently more subject to stress? Not at all. It is because ordinary bank workers have been at the sharp end of the anger and indignation people feel about what has happened to this country. Of course, it was politicians and people at the top who were actually responsible but the ordinary bank workers feel the stress and must deal with it. If we broke down the Minister's figures on the health service, we would find exactly the same thing that the stress is induced by having to work longer hours, harder, with fewer resources, with more demands and more desperate people. I do not know if the Minister still does clinics but I am more stressed going into my clinic now than I was a year ago because there are more desperate people around.

Deputy Brendan Howlin: The Deputy comes in here to share his stress.

Deputy Richard Boyd Barrett: I do. That is exactly the point of being here.

Deputy Brendan Howlin: The Deputy is very successful.

Deputy Richard Boyd Barrett: That is what we are supposed to do, that is, be conduits for the experiences of people outside the House and to bring those experiences into it and, if I might say, to puncture the bubble that sometimes exists around this House, so that the real human reality of how policy decisions made in here play out in real lives is brought back in here. Surely that is the point of democracy. I would not belittle it.

Those figures deserve to be broken down even more to find out what are the illnesses that are leading to higher levels of absenteeism in the health service, higher levels among special needs assistants than in education generally, which speaks for itself, and higher levels among front-line gardaí than among those who are civilians, which again speaks for itself. The people at the front line having to deal with the consequence of the economic crisis and the impact of austerity on the ordinary members of the public, with whom they must engage, are more likely to be sick and the figures the Minister gave bear that out. I would not like to be at the housing desk in a local authority at the moment because the situation is desperate. These people are dealing with an impossible situation. How soul destroying must it be to be in the housing department of a local authority with people coming in day after day, more and more desperate because they are longer and longer on the housing list and are living in more deplorable conditions? What does that do to somebody's mental health? It crushes it. That is the reality and that is why people are getting sick.

Even though sicknesses are being induced by circumstances beyond the control of workers, we are going to put in arbitrary dates and say that after a certain point, people's entitlement to full sick pay will be cut. That leads on to the point Deputy McDonald made. One may not be able to go back to work after two years. What used to be six months is now three months. These are arbitrary dates. If the Minister is saying he wants to take into consideration people's illnesses, then he would not have those arbitrary dates. He would look at what is making people sick and at their illnesses and would look at it on a case-by-case basis, as this Government so often does in other matters. Let us actually look at what is making people sick and at their illnesses.

I accept the Minister does not want people to be out sick forever and to be labelled as sick. I suspect the vast majority of people who are on sick leave would rather get back to work, so let us assist them in doing so. That is the sort of reform we need but this is arbitrary and will undoubtedly hurt people.

I refer to defining critical illness and the area of mental illness, which relates to the point about stress. Let us not yet again make mental illness the poor relation of sickness and not really take it seriously when, in fact, it can be extraordinarily debilitating. Let us not say it is not really critical. I am fascinated and worried by how the Minister will define “critical”. There are lots of grey areas but will every person who has cancer and is getting cancer treatment be assumed, as a matter of course, to be critical?

3 o'clock

I would certainly hope that will be the case. It would be nice if the Minister said it was because we could be confident about one category, at least. However, I fear it may not be.

Deputy Brendan Howlin: I went through them in the Deputy’s absence.

Deputy Richard Boyd Barrett: Fair enough. I will study the Minister’s answers to these questions. As Deputy McDonald has said, illnesses like mental health conditions and depression arising from pregnancy have to be considered carefully. The same problem that applies to medical card discretion and probity could potentially apply in this area. I find it problematic that an onus is being put on people to prove how sick they are when they are at their most vulnerable. This has to be re-examined. There is evidence that in the case of medical cards, the default position has been to refuse people and force them to beg and cajole their way through an amazing amount of hoops to prove they are sick. They have to participate in the appeals process when they are sick and least need the extra hassle and burden. I am against the whole thing. The figures given by the Minister reveal the reality of why people are getting sick in the public sector. If he intends to go ahead with this proposal, fairness needs to apply in a couple of specific areas. I will listen to Minister’s answer. I have to go to a meeting, so I apologise for not being present for everything he will have to say.

Deputy Brendan Howlin: The Deputy makes a fair point about stress. I do not want to be flippant about it. Stress is a real issue for many public representatives. I assure the House that I have never had a more challenging job than the position I have held for the last two and a half years. That is true of whole sectors of the public service. People in my Department and in every front-line delivery system were under stress because our country was in a crisis as it tried to recover from the deterioration in its economic conditions. It was almost like a war. I do not intend to play that down. Absenteeism and sickness are not new phenomena. It would be interesting and instructive to look back at the figures for previous years. There were significant levels of absenteeism and illness in some sectors at the height of the wealth of the boom, when previous Ministers were saying the country was awash with money. It is important that we get better at managing our sick leave arrangements in a proactive manner. There is a responsibility on us to do that in a way that is reflective of the Labour Court recommendations. I would like to inform Deputy Boyd Barrett - this point was also referred to by Deputy Fleming - that I have circulated the critical illness protocol document, which sets out the criteria that will apply to determinations with regard to suitable recipients of critical illness payments. If Deputy Boyd Barrett has not had an opportunity to read that document, perhaps he might contact me so that I can ensure a copy finds its way to him.

Amendment agreed to.

Bill reported with amendment.

An Leas-Cheann Comhairle: As amendments Nos. 2 to 5, inclusive, amendments Nos. 8 to 11, inclusive, and amendments Nos. 18 to 20, inclusive, are related, they may be discussed together by agreement.

Deputy Brendan Howlin: I move amendment No. 2:

In page 3, to delete lines 23 to 32, to delete page 4 and in page 5, to delete lines 1 to 7 and substitute the following:

“(b) by substituting the following for the definition of “public service body”:

“ ‘public service body’ means, other than for the purposes of Parts 6A and 7A—

(a) the Civil Service,

(b) the Garda Síochána,

(c) a local authority within the meaning of the Local Government Act 2001,

(d) the Health Service Executive,

(e) an education and training board, and

(f) such other body or bodies as may be prescribed by the Minister by order under section 6 in accordance with that section,

and reference to ‘public service’ shall be read accordingly;””.

These amendments relate to the structural changes required to facilitate the insertion of the new Part 7 into the principal Act. They will accommodate the new insertion in the Bill, as already circulated. Amendment No. 2 provides for the reinstatement of one definition of “public service body”, which will apply to the recruitment and appointments function of the Public Appointments Service, in section 2(1) of the principal Act. The rationale for the amendment is that the original version of the Public Service Management (Recruitment and Appointments) (Amendment) Bill 2013 sought to introduce two definitions of “public service body” into section 2(1) of the principal Act. The first definition was to apply in respect of the recruitment and appointments function of the Public Appointments Service and the second definition was to apply in respect of redeployment. In the interests of clarity, it is considered that just one definition of “public service body” should appear in section 2(1) of the principal Act and that the definitions applicable to redeployment and sick leave remuneration should appear in their own parts of the Bill - Parts 6A and 7A, respectively.

Deputy Sean Fleming: I would like to pick up on the Minister’s final point. I hope someone in the Office of the Parliamentary Counsel is listening. I think it is bad practice to bury definitions at the end of Bills.

Deputy Brendan Howlin: The Deputy has made that point before.

Deputy Sean Fleming: I ask the officials in the Office of the Parliamentary Counsel to ensure all the definitions are set out at the beginning of each Bill. That will ensure a person who

is looking at a Bill can see how the subject of the Bill is defined. It should be easy to specify in the opening section of a Bill the definitions that are of relevance to the various sections of that Bill. Such an approach would be better than the approach that is currently taken. In the case of a large Bill, it is impossible to find the definition one is looking for. It is a lazy old practice. It probably takes a little more organisation to put the definitions in an earlier section. I ask the Office of the Parliamentary Counsel to do that.

We have no problem with the Minister's amendment No. 2. Amendment No. 3, in my name, proposes that the title "vocational education committee" be changed to "education and training board". I am sure the Minister agrees with that.

Deputy Brendan Howlin: That is done already.

Deputy Sean Fleming: The next amendment does the exact same thing in another section of the Bill. Amendment No. 5, in my name, seeks to require the Minister to "publish a list of such bodies referred to in paragraphs (a)(vi) and (b)(vi)".

Deputy Brendan Howlin: They are all done.

Deputy Sean Fleming: Perhaps that might be done "within 30 days of the enactment of this Act" or within some other reasonable period.

Deputy Brendan Howlin: I will go through all of these amendments after the Deputy has spoken on them.

Deputy Sean Fleming: If the Minister does not get a chance to put those details on the record, perhaps he might send them to us. It would be useful for Deputies on this side of the House to have the list. I am not sure what is on it. I have no issue with any of those amendments.

I will let the Minister speak on amendments Nos. 8 to 11, inclusive, which are in his name and move on to amendments Nos. 18 to 20, inclusive, which relate to one of the last main issues we have to cover. Schedule 3 lists the bodies to which the definition of a "public service body", as it relates to Part 6A, will not apply. These bodies will be excluded from everything we are talking about here today. It seems to me that the list substantially comprises commercial-----

Deputy Brendan Howlin: I advise the Deputy that we are back on Report Stage.

Deputy Sean Fleming: Can the Leas-Cheann Comhairle advise me in this regard?

An Leas-Cheann Comhairle: The Deputy will have two minutes when he speaks for a second time.

Deputy Sean Fleming: We were in Committee Stage a moment ago.

An Leas-Cheann Comhairle: We were, yes.

Deputy Sean Fleming: We are now in Report Stage.

An Leas-Cheann Comhairle: That is right.

Deputy Brendan Howlin: I wanted to check that point and advise the Deputy accordingly.

Deputy Sean Fleming: I thank the Minister. I will say what I have to say now. The earlier

amendments in this grouping are not a big issue. I will speak about the later amendments. This is an unusual one. Maybe the Chair can help me in this regard. We are now on Report Stage. I have spoken on some of my amendments in this group. Has the Minister spoken on every one of his amendments?

Deputy Brendan Howlin: Yes.

Deputy Sean Fleming: He has. That is fine.

An Leas-Cheann Comhairle: The Minister will have the final reply as well.

Deputy Sean Fleming: Okay. I will return to the issue I am raising in amendments Nos. 19 and 20.

Deputy Brendan Howlin: Yes.

Deputy Sean Fleming: It seems to me that Schedule 3 excludes the commercial semi-State bodies from everything we are talking about here today. I thought that part of the reason for these redeployment, recruitment and appointment moves is to open the possibility of staff moving between these bodies and the rest of the public service. Perhaps that is not the case. If it is the case, we should be including them in this measure. I am proposing that all of these semi-State bodies should be included in this legislation. There is a case to be made to include companies like Bord na gCon, EirGrid, Horse Racing Ireland, the National Stud Company, the Railway Procurement Agency and the VHI - I will not go through them all - in this sick pay legislation.

I would like to ask the Minister a question in this context. Perhaps he will not be able to answer it. There are different rates of sick pay. Will they continue with the six months and six months? We will probably find that some of the commercial semi-State organisations are operating the three months and the three months. The problem is that we just do not know what they have. We had this before when pay cuts were introduced under the Financial Emergency Measures in the Public Interest Acts. We all know of people who might work in the Department of Agriculture, Food and Marine, the local authority or the HSE, and the guy next door might work in CIE or Bord na Móna. They all generally regard themselves as public service workers in a similar category. However, when it came to some matters under the Financial Emergency Measures in the Public Interest Acts they were in different categories. We are again going down the road of changing the pay for 290,000 public servants - I do not know how many are involved in the commercial semi-State organisations. It is important to establish what the sick-pay arrangements are in each of these commercial semi-State organisations and other such bodies.

I believe they should be included under the scope of this legislation because the same general sick-pay principles we have been discussing in the past few hours should apply as equally as possible across all of these. There may be specific cases such as teachers who might come in in September or members of the Defence Forces who might have a slightly different regulation. However, it would be better for everybody concerned to have similar arrangements. There is no point in us doing all that and some of these commercial semi-State companies, such as the ESB and An Post, having a much more generous level of sick leave. They need to be considered in the same context as the other areas the Minister mentioned, such as the Civil Service, defence, education, health, local government and justice.

Regardless of whether the semi-State bodies are included in the scheme, Irish Water should

be on the list given that it has been established and is operational. It is even more bizarre now than it was when I tabled the amendment because I now understand that Irish Water will have its service level agreements with the local authorities for the next few years to be reviewed subsequently and then they can run on until 2025. Essentially the delivery of water services will be run by a semi-State body that collects levies, but the work on the ground will be done by local authority workers with a service level agreement. It is incongruous to have different sick-pay arrangements between people who are essentially working for the same organisation. The local authority workers who will be working on the pipes will have one arrangement, whereas the people in the Irish Water head office may have an entirely different sick-pay and sick-leave arrangement, and not the three months and three months we are introducing now. Irish Water is either one project or it is not; the purpose was to centralise it. It would be bizarre if we ended up with local authority workers doing work for Irish Water coming under the local authority sick-pay scheme, whereas those working for a commercial-State organisation would not be included in the same scheme. I do not even know what that scheme is. I am essentially looking for consistency across the board.

An Leas-Cheann Comhairle: I call the Minister, who has two minutes.

Deputy Brendan Howlin: I apologise to the House. My officials have just been notified that on the costings I provided to Deputies, the costs are fine but the percentage days lost need to be redone. I have asked my officials to redo that and we will send copies immediately to Deputy Sean Fleming. I will also send it to the Deputies who were in the House earlier and are absent now. I will also send it to the Ceann Comhairle's office to ensure the record of the House accurately reflects that. I apologise for that.

Amendments Nos. 3 and 4 are in the name of Deputy Fleming. The tabled amendments to section 2 take account of the proposed insertion of Part 7A of the Bill. The intention of the Deputy is already addressed in the text of these amendments. I have taken account of the fact that since the Bill was considered by the Seanad, the VECs have been abolished and replaced by the education and training boards. Consequently we have already incorporated these changes in the text now before the House. Those amendments are already addressed and I thank the Deputy for pointing that out - we were able to do that in the Seanad.

Amendment No. 5 would require me to publish two lists within 30 days of enactment of the Bill. The amendment is not necessary in either case. The first list, which is referred to in line 1 of page 4 is of "such other body or bodies as may be prescribed by the Minister by order under section 6 in accordance with that section". Such orders are statutory instruments and must be laid before the Houses and published in accordance with the Statutory Instruments Act 1947. I confirm that SI 551/2007 was made under this section to extend the remit of the Commission for Public Service Appointments to appointments being made by the Health Information and Quality Authority. No other orders have been made under this section.

The second list to which the Deputy refers at lines 15 to 38 of page 4 relates to bodies "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". This list has already been published. In December 2012, in exercise of powers conferred on me by section 8(1)(b) of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, I signed a statutory instrument, SI 581/2012, in accordance with the terms of the Statutory Instruments Act 1947. It sets out the details of the Ministers of the Government, public service bodies and bodies corporate that are prescribed as relevant authorities for the purposes of the public service

pensions scheme.

An Leas-Cheann Comhairle: I thank the Minister. As we are on Report Stage, I must stop the Minister. Deputy Fleming has two minutes if he wishes to make a contribution. The Minister will have an opportunity for a final reply.

Deputy Brendan Howlin: I will resume with the rest when I come back in.

Deputy Sean Fleming: I have taken a note of SI 581/2012. I have said what I want to say about consistency in the semi-State bodies and Irish Water. I ask the Minister to address that.

Deputy Brendan Howlin: My amendment No. 8 seeks to reposition the definition of “public service body” that applies in respect of the redeployment of Part 6A by moving it from section 2 to Part 6A of the Bill. I have already referenced that.

Amendment No. 9 is a technical amendment necessitated by amendment No. 8 and involves renumbering the section beginning with “recognised trade”.

Amendment No. 10 is another technical amendment necessitated by amendment No. 8 involving the renumbering of the section beginning with “redeployment day”.

Amendment No. 11 is another technical amendment necessitated by amendment No. 8 involving the renumbering of the section beginning with “a reference”.

Amendment No. 18 seeks to extend the application of Schedule 3, the list of commercial semi-State bodies, to Part 6A, concerning redeployment, and Part 7A, concerning sick-leave remuneration. If accepted Schedule 3 would exclude commercial semi-State bodies and their subsidiaries from the definition of “public service body” in Parts 6A and 7A. We have had a long debate about why semi-State bodies should be treated thus. As they have their own financial regulation and operate in a commercial environment, they should not be subject to either redeployment or the sick-leave arrangements in this Bill.

The principal Act and this amending legislation both exclude the commercial State bodies from their remit. We debated this on Committee Stage. In amendment No. 19, Deputy Fleming seeks to apply the terms of the Bill to the semi-State bodies, whereas I say they should be excluded. We have had a long debate about that and I do not believe we need to go through it again.

Amendment No. 20 relates to Irish Water. Irish Water is being established as a subsidiary of Bord Gáis Éireann, which is already captured under the provision at No. 23 in the Schedule. I know the Deputy wants to put it in to take it out, to identify it, to have it captured. It is in as an exempted body for the reason that it is a semi-State body.

Amendment agreed to.

Amendments Nos. 3 and 4 not moved.

Deputy Sean Fleming: I move amendment No. 5:

In page 5, between lines 21 and 22, to insert the following:

“3.—The Minister shall, within 30 days of the enactment of this Act, publish a list of such bodies referred to in paragraphs (a)(vi) and (b)(vi) as inserted into the Principal Act by

section 2.”.

Amendment, by leave, withdrawn.

An Leas-Cheann Comhairle: Amendments Nos. 6 and 7 are related and may be discussed together.

Deputy Brendan Howlin: I move amendment No. 6:

In page 5, to delete lines 22 and 23 and substitute the following:

3.—Section 7 of the Principal Act is amended—

(a) in subsection (2) by deleting paragraph (a), and

(b) by substituting the following for subsection (4):

“(4) Nothing in this section shall be read as affecting—

(a) the application of section 34(1)(i) to appointments to which this section applies, or

(b) the operation of Part 7A.”.

These amendments are to ensure that provisions in the principal Act do not cross-cut or affect the operation of Parts 6A and 7A. This amendment is necessary to facilitate the insertion of Part 7A into the Act. Section 7 sets out several provisions and appointments that are excluded from the provisions of the principal Act. It is proposed to amend the existing provisions of the Bill to ensure that when the exclusion process is being applied it will not affect the public appointment service, PAS, in its function of informing itself of best practice in regard to all recruitment assessment and selection matters and on the basis of this information to provide advice to the Civil Service and various public service bodies or the Minister in making regulations in regard to sick leave remuneration. That is the purpose of the amendment.

These amendments are designed to ensure that neither redeployment by the Public Appointment Service to unestablished excluded positions in the Civil Service nor the applicability of the new sick leave scheme require the separate sanction of the Commissioner for Public Appointments.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 7:

In page 5, to delete lines 24 and 25 and substitute the following:

4.—Section 8 of the Principal Act is amended—

(a) in subsection (2) by substituting “for the purposes of any provisions of this Act other than Parts 6A and 7A*,” for “for the purposes of this Act,” and

(b) in subsection (8) by substituting “for the purposes of any provisions of this Act other than Parts 6A and 7A*” for “for the purposes of this Act”.”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 8:

In page 6, between lines 8 and 9, to insert the following:

“(c) ‘public service body’ means—

(i) the Civil Service,

(ii) that category of persons referred to in section 30(g) of the Defence Act 1954, namely civilians employed thereunder by the Minister for Defence,

(iii) a local authority within the meaning of the Local Government Act 2001,

(iv) the Health Service Executive,

(v) an education and training board,

(vi) any other body (other than a body referred to in Schedule 3 (inserted by the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*)) established—

(I) by or under an enactment (other than the Companies Acts), or

(II) 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,

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,

(vii) any other body (other than a body referred to in Schedule 3) that 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,

(viii) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which subparagraph (iii), (iv), or (vi) 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,

and reference to ‘public service’ shall be read accordingly;”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 9:

In page 6, line 9, to delete “(c) ‘recognised trade’” and substitute “(d) ‘recognised trade’”.

Amendment agreed to.

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Deputy Brendan Howlin: I move amendment No. 10:

In page 6, in line 17 to delete “(d) ‘redeployment day’ ” and substitute “(e) ‘redeployment day’ ”.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 11:

In page 6, line 19 to delete “(e) a reference” and substitute the “(f) a reference”.

Amendment agreed to.

Deputy Sean Fleming: I move amendment No. 12:

In page 6, between lines 48 and 49, to insert the following:

“(2) Any employee who is subject to compulsory redeployment, following the expiration of the Haddington Road Agreement, shall have a right of appeal of such redeployment to a designated officer of the Public Appointments Commission.”.

We discussed on Committee Stage the idea that if there is some compulsory redeployment at the end of the Haddington Road agreement there would be some right of appeal mechanism to an independent person in the system, or the Public Appointments Commission, or somebody. That is the purpose of the amendment.

Deputy Brendan Howlin: I advised during the Committee Stage debate when we had a long discussion about this that the Bill will not provide power to the PAS in any circumstances to establish a system under which employees may be compulsorily moved. The Bill is designed to facilitate definitive voluntary cross-sectoral moves. It will not and cannot in itself force such reassignments. If cross-sectoral moves are agreed with specific individuals in the future, including outside the terms of specific collective agreements or post-Haddington Road the Bill will also facilitate those providing they are not in conflict with the Minister’s overall policy on redeployment and mobility.

I agree that if people are unhappy with the proposal to move to another employment it is important that they are able to appeal that. I do not agree that it is necessary or appropriate to have a statutory appeal power. The Croke Park agreement, as I explained to the Deputy on Committee Stage, provides an appeal system in respect of individuals being redeployed within health, education and local authority sectors and such an appeal system has been in operation satisfactorily for the duration of that agreement. The Haddington Road agreement extends this by providing that appeals on cross-sectoral redeployment and redeployments within the Civil Service will be considered by an agreed adjudicator.

Amendment, by leave, withdrawn.

Deputy Sean Fleming: I move amendment No. 13:

In page 7, between lines 11 and 12, to insert the following:

“(5) The Minister shall, within 6 months of the enactment of this Act, bring forward a report on the feasibility of the Public Appointments Commission establishing a process whereby employees who wish to voluntarily transfer to a new role within the public

service may be matched up with another employee who is willing to transfer in the opposite direction.”.

I might have moved this amendment, or one very like it, on Committee Stage. It is to establish a situation or some mechanism within the public service whereby people who want to transfer from one organisation to another location could register their wish to transfer, for example, from Portlaoise to Dublin or *vice versa*. If they are in similar grades it could be a swap. Was there a central application facility in the Department of Finance when there was a great deal of staff movement under the decentralisation programme? There could be some type of arrangement like that.

With the shared services in a local authority one might find a local authority that requires extra staff because it has a major project under shared services and people might like to get back to a particular region or whatever. It is up to each person to chase the organisations individually. It would be useful if there was a networked noticeboard available on which people could put their names on a swap or transfer list. There might be three people: A wanting to move to B, B to C and C back to A. It would help staff movement. I do not think there would be a major cost involved. Will the Minister give me his thoughts on that?

Deputy Brendan Howlin: We did discuss this matter on Committee Stage. I indicated then that I believe that the Irish public service has a reasonably well developed initiative to promote staff mobility and I gave some examples of that on Committee Stage. I accept that there is scope to introduce a more integrated mobility policy. We have agreed with the unions under the Croke Park agreement that we need to move towards an increasingly integrated public service in any event and to achieve that, the public service will need to be reorganised and public sector bodies and individual public servants will have to have more flexibility. Our terms and conditions in respect of sick leave, pay, annual leave and so on will have to be regularised so that they are more uniform. These points are very well made. Consideration is being given to the opportunities to strengthen mobility within the Civil Service as part of the programme of reforms under way. I will introduce a new reform package early in the new year and I will have regard to the mobility issue in crafting that.

Amendment, by leave, withdrawn.

Deputy Brendan Howlin: I move amendment No. 14:

In page 9, line 28, to delete “that” and substitute “the pay”.

This is a technical amendment. On Report Stage in the Seanad the text of 57D(b) was amended to remove any doubt that the PAS must always consider any collective agreement on mobility or redeployment in the context of the broader redeployment and mobility policy of the Minister. This amendment adjusts the changed subsection slightly to take account of that Seanad amendment.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 15:

In page 10, lines 5 to 9, to delete all words from and including “(inserted” in line 5 down to and including “1977)” in line 9 and substitute the following:

“(amended by section 11 of the Ministerial, Parliamentary and Judicial Offices and

Oireachtas Members (Miscellaneous Provisions) Act 2001)”.

This is another technical amendment which replaces a reference to a 1977 amendment of section 13 of the Minister and Parliamentary Officers Act 1938 to take account of the more recent amendment to that section in 2001. The latter amendment defines the Leader of the House in Seanad Éireann as a holder of ministerial office for the purposes of that Act. The clarifying amendment has no impact on section 57E.

Amendment agreed to.

An Leas-Cheann Comhairle: Recommital is required in respect of amendment No. 16, which is in substitution for amendment No. 16 on the principal list of amendments dated 9 December 2013. It has already been discussed with amendment No. 1.

Bill recommitted in respect of amendment No. 16.

Deputy Brendan Howlin: I move amendment No. 16:

In page 11, between lines 37 and 38, to insert the following:

“Insertion of Part 7A in Principal Act.

7.—The Principal Act is amended by inserting the following Part after Part 7:

“PART 7A

SICK LEAVE REMUNERATION

58A.—(1) In this Part—

‘condition’ includes, if the Minister so determines and makes (whether in respect of the whole of a period claimed to be sick leave or portion of such a period) provision in that behalf in the regulations concerned, a condition that a medical practitioner of a class specified in the regulations certify in writing that the public servant concerned is unable to attend to his or her duties due to illness or injury;

‘public service body’ means—

(a) the Civil Service,

(b) that category of persons referred to in section 30(g) of the Defence Act 1954, namely civilians employed thereunder by the Minister for Defence,

(c) the Garda Síochána,

(d) a local authority within the meaning of the Local Government Act 2001,

(e) the Health Service Executive,

(f) an education and training board,

(g) to the extent not otherwise provided by this definition, any other body (other than a body referred to in Schedule 3 (inserted by the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*)) established—

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

(ii) 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,

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,

(h) any other body (other than a body referred to in Schedule 3) that 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,

(i) any subsidiary of, or company controlled (within the meaning given by section 10 of the Taxes Consolidation Act 1997) by, a body to which paragraph (d), (e) or (g) relates and in respect of which a pre-existing public service pension scheme exists or applies or may be made;

‘public servant’ means—

(a) an employee or officer of, or the holder of a position in, a public service body,

(b) to the extent not otherwise provided by this definition, a person holding a position the appointment to which is made by the Government,

(c) an officer of the Houses of the Oireachtas,

(d) the Ombudsman, or

(e) the Comptroller and Auditor General;

‘relevant person’ means a public servant falling within a class of public servants specified in the regulations concerned;

‘sick leave’ means a case in which a public servant is unable to attend to his or her duties due to illness or injury.

58B.—(1) Without prejudice to subsection (5) and subject to subsections (2) and (7), the Minister may make regulations providing for the payment of remuneration, in circum-

stances specified in the regulations and subject to such conditions as are specified therein, to a relevant person during a period of sick leave on his or her part, and that remuneration shall be (as the Minister determines and specifies in the regulations)—

(a) the whole amount of the remuneration that would otherwise accrue to the person,

(b) a percentage specified in the regulations of the whole amount referred to in paragraph (a), or

(c) in respect of an initial number of hours, days or weeks of sick leave on the part of that person occurring, in a given period, the whole amount referred to in paragraph (a) and then, in respect of a number of hours, days or weeks of sick leave on that person's part (whether they are a continuation of the initial occurrence of sick leave in that period or are a separate occurrence of such leave in that period) a percentage specified in the regulations of that whole amount.

(2) Regulations under subsection (1) shall contain a provision that no remuneration shall be paid in respect of any part of a number of hours, days or weeks of sick leave (on the relevant person's part) that exceeds a number, specified in the regulations, of hours, days or weeks of sick leave (on that person's part) that may occur in a given period.

(3) Each of the references in subsection (1)(c) to a number of hours, days or weeks, and each reference in subsections (1) and (2) to a given period, is a reference to a number of hours, days or weeks or, as the case may be, a period that the Minister determines and specifies in the regulations for the purpose of the particular provision concerned.

(4) In making regulations under subsection (1), the Minister shall have regard to—

(a) the need to limit the circumstances in which the public service bodies can undertake the commitment of financial resources in making payments in cases in which they are unable to receive the benefit of the services of their public servants,

(b) the resources available, for the time being, to the Exchequer to pay the remuneration of public servants,

(c) without prejudice to paragraph (b), the obligations of the State under the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union done at Brussels on 2 March 2012,

(d) with respect to the specification of conditions for an entitlement to be paid remuneration during a period of sick leave, the desirability of having in place a satisfactory means of verifying that the public servant concerned is unable to attend to his or her duties due to illness or injury, and

(e) the need to protect the health of public servants,

whilst taking account of the desirability of there being a measure of provision, as appears to the Minister to be appropriate and just, for making payments to public servants who are unable to attend to their duties due to illness or injury.

(5) Regulations under subsection (1) may provide in exceptional cases (that is to say cases defined in the regulations by reference to the serious nature of an illness or injury that has occasioned a relevant person's being on sick leave (which may extend, if the Minister considers appropriate, to the circumstances involving a period of the person's rehabilitation following an illness or injury of that nature)) and notwithstanding the provision otherwise made by the regulations, for all or any of the following:

(a) that there may be paid to the person remuneration, in respect of the time of his or her sick leave, for a period longer than would otherwise be the case under the regulations;

(b) that there may be paid to the person remuneration, in respect of a particular period of the time of his or her sick leave, of an amount that is greater than the percentage (of the whole amount referred to in subsection (1)(a)) specified in the regulations under subsection (1)(b) or (c);

(c) that the provisions of the regulations shall operate subject to such other modifications as the Minister determines and specifies in the regulations, which may include provision—

(i) limiting the total period in respect of which, in a foregoing case, remuneration may be paid to a relevant person, or

(ii) conferring a power on a person specified in the regulations to determine, in a foregoing case, that after the lapse of a particular period of the time of a relevant person's sick leave, no further remuneration shall be paid in respect thereof.

(6) Regulations under this section—

(a) may contain such incidental, supplementary or consequential provisions as the Minister considers appropriate, including provisions delegating to the public service body concerned the determination of any matter in respect of which the regulations provide that a determination shall be made, in particular a determination—

(i) as to whether an illness or injury is of a serious nature,

(ii) as to what is an appropriate period of rehabilitation in the circumstances concerned, and

(iii) as to what is satisfactory certification, in writing, by a medical practitioner of any relevant matter; and

(b) may—

(i) if the regulations apply in respect of more than one class of public servant, make different provision for the different classes of public servant to which the regulations apply, and

(ii) otherwise make different provision for different classes of case.

(7) Where, before the commencement of *section 7* of the *Public Service Management (Recruitment and Appointments) (Amendment) Act 2013*, a period of sick leave, on a relevant person's part, has begun and continues after the commencement of that section, the arrangements that were in existence before the commencement of that section in respect of the payment of remuneration to that person during his or her sick leave shall continue to apply in respect of so much of that period of sick leave as falls after that commencement and regulations under this section shall not apply to that person until such time as he or she is able again to attend to his or her duties.

(8) For the avoidance of doubt, nothing in this section prejudices the operation of the Social Welfare Acts or instruments made thereunder.

(9) Every regulation under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

58C.—This Part has effect notwithstanding—

(a) any provision made by or under—

(i) any other Act,

(ii) any statute or other document to like effect of a university or other third level institution,

(iii) any circular or instrument or other document,

(iv) any written agreement or contractual arrangement,

or

(b) any verbal agreement, arrangement or understanding or any expectation.”.”.

An Leas-Cheann Comhairle: Amendment No. 1 to amendment No. 16, in the name of Deputy Mary Lou McDonald, is out of order.

Amendment No. 1 to amendment No. 16 not moved.

Deputy Sean Fleming: I move amendment No. 2 to amendment No. 16:

In the proposed inserted section 58B(1), in line 2, after “regulations” to insert “which shall be published and laid before each House of the Oireachtas in draft form as soon as may be after each draft regulation is made”.

Amendment put and declared lost.

Deputy Sean Fleming: I move amendment No. 3 to amendment No. 16:

In the proposed inserted section 58B, to delete subsection (9) and substitute the following:

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

Amendment No. 3 to amendment No. 16 put and declared lost.

Amendment No. 16 put and declared carried.

Bill reported with amendment.

Deputy Brendan Howlin: I move amendment No. 17:

In page 11, to delete lines 45 to 49.

Amendment agreed to.

Deputy Brendan Howlin: I move amendment No. 18:

In page 12, line 5, to delete “PART 6A” and substitute “PARTS 6A and 7A”.

Amendment agreed to.

Deputy Sean Fleming: I move amendment No. 19:

In page 12, line 5, to delete “DOES NOT APPLY” and substitute “SHALL APPLY”.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Deputy Sean Fleming: I move amendment No. 20:

In page 12, between lines 5 and 6, to insert the following:

“1. Irish Water.”.

Amendment put and declared lost.

Bill reported with amendments and received for final consideration.

Question proposed: “That the Bill do now pass.”

Minister for Public Expenditure and Reform(Deputy Brendan Howlin): I thank Deputies for their contribution on what is detailed and complicated legislation. The insertion today

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was of substance and I thank Deputies for their forbearance on that because it was a challenge to all of us to ensure we were in tune with the procedures of the House in moving from Report Stage back to Committee Stage. We gave a fair airing to the significant issues that arose. I thank Deputies across the House for their help in getting this through and also for the very detailed consideration we gave to this on previous Stages.

Question put and agreed to.

An Leas-Cheann Comhairle: The Bill, which is considered to be a Bill initiated in Dáil Éireann in accordance with Article 20.2.2o of the Constitution, will be sent to the Seanad.

Sitting suspended at 3.35 p.m. and resumed at 3.40 p.m.

Topical Issue Matters

An Leas-Cheann Comhairle: I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 27A and the name of the Member in each case: (1) Deputy Charlie McConalogue - the need for additional Garda resources in Border areas of County Donegal; (2) Deputy Martin Ferris - to discuss the judicial review decision regarding the Shannon LNG project; (3) Deputy Derek Keating - the suspension of ten staff at Stewart's Hospital; (4) Deputy Brendan Griffin - the danger of losing 700 planned jobs in north Kerry at Shannon LNG following today's High Court ruling and the need for the Minister to direct the Commission for Energy Regulation, as is within his powers, not to pursue the policy of charging energy suppliers in respect of the British-Irish Gas interconnectors if such suppliers do not intend to use them; (5) Deputy Patrick Nulty - the need to restore the Christmas bonus for carers, pensioners and those on long-term social welfare payments; (6) Deputy Gerald Nash - the lack of resources and support nationwide for gifted children; (7) Deputy Mick Wallace - the impact of the new building regulations; (8) Deputy Dara Calleary - the ERSI report which highlighted that low-income households will suffer most as a result of Budget 2014; (9) Deputy Anthony Lawlor - the need to ensure that persons taking up part-time employment are guaranteed a speedy return to unemployment assistance once their employment ceases; (10) Deputy Thomas Pringle - the need to restore the Christmas bonus; (11) Deputy Joe Higgins - the ongoing dispute at Marks and Spencer; (12) Deputy Tom Fleming - the need for the Minister to take decisive action to ensure delivery of the Shannon LNG project in Tarbert, County Kerry; (13) Deputy Patrick O'Donovan - the future of the proposed Shannon LNG Plant; (14) Deputy Arthur Spring - the Energy Regulators' decision and its effects on the Ballylongford, Shannon LNG project; (15) Deputy Clare Daly - the introduction of the the new building control regulations; and (16) Deputy Richard Boyd Barrett - the cut to the travel pass for blind people.

The matters raised by Deputies Derek Keating, Gerald Nash, Anthony Lawlor and Charlie McConalogue have been selected for discussion

Dáil Éireann
Topical Issue Debate

Services for People with Disabilities

Deputy Derek Keating: I thank the Ceann Comhairle for the opportunity to raise a quite serious issue that has come to light as a result of some students from Trinity College Dublin going on placement. I thank the Minister for coming into the Dáil to address this issue. It has been reported in the national media that ten staff from Stewarts Hospital, which is a care facility for people with intellectual disabilities, have been suspended pending investigation into allegations over the standard of care provided to residents. I have considerable experience in community work and have had the opportunity at various stages to supervise mature students who are providing a service. I know all too well that it often takes considerable courage for any student to raise issues of concern because of possible consequences.

I welcome the Government's commitment to the protection of whistleblowers and am delighted that Stewarts Hospital is working with the Health Information and Quality Authority, HIQA, to address these particular issues. Working as a carer is, of course, a very responsible position and it is an essential part of our society based on trust. The questions raised in this investigation are somewhat disturbing. Like the exposé in this House over recent weeks about charities, long before these events took place, I formed the opinion that greater supervision of all staff, including continuous professional development and assessment, monitoring and reviewing of standards of practice and regular in-service training, are vital components to ensure that the highest standards are adhered to by all care givers but especially those directly involved with the most vulnerable members of society such as those with learning disabilities who very often do not have the full means of protecting themselves.

I have no doubt that this is particularly distressing for family members and I am asking the Minister to ask Stewarts Hospital to meet individual family members to discuss the outcome of the HIQA investigation. My fear is that there may be organisations providing care today that are not giving due attention to individual care. It begs the question as to whether this problem is systemic throughout the care sector bearing in mind the fact that many recipients of care in Stewarts Hospital are moving into their later years and in the circumstances, are regarded as more vulnerable. They require more sensitive care in such circumstances because of the dual dependency of age and intellectual disability. I would be very grateful if the Minister could convey to Stewarts Hospital my request that following the outcome of the investigations, including that of HIQA, it would agree to meet with each family.

Minister for Health (Deputy James Reilly): I thank Deputy Keating for raising this matter. I am pleased to take this opportunity to outline the current position in respect of the standard of care provided to residents by the Stewarts Care organisation in Dublin.

Stewarts Care is a charitable foundation, with a long tradition in the provision of care for people with intellectual disability. The institution was the first in Ireland to offer such support for people with severe disabilities. Operating from two main sites at Palmerstown and Balgaddy in south-west Dublin and several satellite residential and service centres throughout west Dublin and north Kildare, Stewarts provides extensive on-site and community-based services. The organisation supports more than 300 residents and provides wide-ranging services for other clients, children and adults, who attend day services. Many families are also supported within

their homes through the Stewarts home support programme.

The Government announced the commencement of a new scheme of registration and inspection of residential services for people with disabilities by the Health Information and Quality Authority, HIQA, from 1 November 2013. HIQA is now able to set and monitor standards for designated centres, including residential services provided to persons with disabilities. HIQA is also empowered to undertake investigations into the safety, quality and standards of these residential services. This has been called for by the disability sector for a number of years. The sector was widely consulted in the drawing up of the new standards. With guidance from HIQA, these standards will empower providers to deliver even higher quality services.

Regarding the specific issues raised by Deputy Keating, I have been advised by the HSE that Stewarts Care received reports at the end of November from student nurses expressing concerns about some practices in the delivery of residential services to service users. Like the Deputy, I commend those young students.

In accordance with statutory requirements, Stewarts Care informed the HSE and HIQA of the reports. An investigation team was identified in line with guidance received from HIQA. I understand that, following consultation with HIQA, a number of staff have been suspended pending the outcome of this process. No one from Stewarts Care is now on the team examining the issues. It is expected that the chairman of the investigation team will meet each of the complainants over the next few days as part of the external investigation. Further action will be predicated on the outcome of this.

As an investigation into the allegations is under way, it is not appropriate for me to comment further. In addition, Stewarts Care may not be in a position to issue further comment before the completion of this process. The HSE acknowledges that the provider is working with HIQA to address all concerns and I am assured that the HSE will continue to be in close contact with Stewarts Care.

I will convey Deputy Keating's suggestion that Stewarts Care should meet each client's family once this process is complete. Not only does it seem a sensible action to take, but it is essential in order to ensure trust.

Deputy Derek Keating: I thank the Minister for his comprehensive report. In circumstances such as these, I agree with the Minister that due process must be allowed to conclude. I am reminded of the importance of setting the record straight. As the Minister stated, Stewarts Care has been a successful operation for many years. It has cared for a large number of people appropriately. It is a wonderful institution.

I acknowledge the Minister's congratulation of the student nurses involved. We all agree that they showed great courage, notwithstanding the process that needs to take place. I am grateful to the Minister for agreeing to my request that, irrespective of the outcome, Stewarts meet the families concerned at the end of the process so as to allay their fears and put their minds at rest. We await the outcome.

Deputy James Reilly: I thank the Deputy again for raising this issue. A priority for the Minister of State, Deputy Kathleen Lynch, and I is to ensure that the most vulnerable in society have a voice. It was extraordinary that there was no inspectorate to safeguard standards in the care and support for people with disabilities, many of whom cannot speak up for themselves. It is interesting that new people can enter an environment and see with new eyes protocols that

require revision. Without trying to prejudge the outcome of this investigation, I believe in a general sense that it is always good to have an outside authority to monitor and support the service so as to ensure that it meets the highest standards and keeps up to date with the modern approach to providing care for people who require it in that setting as opposed to somewhere that is everyone's preference, that is, at home or in a more independent setting.

Jobseeker's Benefit Payments

Deputy Anthony Lawlor: I thank the Ceann Comhairle's office for allowing me to raise this issue. I am disappointed that the Minister for Social Protection is not present. She is detained elsewhere. I welcomed her announcement of a couple of weeks ago to the effect that people who were in receipt of social welfare payments and wanted to work during the Christmas period would easily be able to resume those payments. However, the real problem is not with the Christmas period, but with the entire year.

This issue was raised with me by a recruitment company in Kildare. It has approximately 1,000 people on its database. Many of those are on short-term contracts and doing part-time work. The company is being asked to fill in forms for the social welfare office. The form requires it to declare the hours people will work for the weeks ahead, but it is not able to make that prediction. If it writes "Zero" as requested, yet the people work in those weeks, they could be accused of fraudulently taking payments.

The company cannot find indigenous people to take these short-term work contracts. As a result, people who are not on the welfare system are primarily being employed. I am referring to people who come to this country and take advantage of the short-term, flexible hours. Make no mistake about it - the Irish want to work, be it for short or long terms. We must be able to provide sufficient flexibility.

If the Minister's statement is policy, it must be implemented by every office. What she wants must be acted upon by the Department. We must allow people who want to work for short terms and flexible periods to return to the social welfare system as quickly as possible. Otherwise, we are deterring people from returning to the workforce. The Minister of State, Deputy McGinley, knows as well as I do that, for the sake of their mental health, most people would rather work for two, four or six hours instead of sitting at home staring at the walls or watching television.

If it is policy to allow people to return to the social welfare system as quickly as possible, it must be implemented by all sections of the Department of Social Protection. I will appreciate the Minister of State's response.

Minister of State at the Department of Arts, Heritage and the Gaeltacht (Deputy Dinny McGinley): I thank the Deputy for raising this matter. Regardless of the time of year, people on jobseeker schemes should not have any concern about taking up temporary work for fear of delays in getting back into payment when the jobs are finished.

4 o'clock

In cases where a jobseeker customer takes up temporary work for a short period or avails of a short-term training course, arrangements are in place to suspend temporarily the claim so that

it can be reinstated without delay when the work or training finishes. Effectively, the jobseeker's claim is kept open while the person works, although the payment is obviously stopped for the period. This temporary suspension, which was originally set at a maximum of four weeks, was increased to eight weeks in 2012 and in March 2013 it was further extended to 26 weeks for educational sector workers. The arrangements are put in place once the customer notifies the Intreo social welfare local office of an offer of temporary work.

In the 11 months from January to November 2013, the temporary suspension has been used on 49,000 occasions. This compares with less than 14,600 in 2012. Even where a person does not avail of these special arrangements, payment can be reinstated within a very short timeframe. For example, in November 2013, almost 35% of all jobseeker claims were awarded on the day the application was received, and these are cases where the special provisions for periods of temporary work were not availed of by the customer. In summary, if a person on a jobseeker's payment gets an offer of a job for up to eight weeks or gets a chance to go on a training course, they should give the details to their Intreo social welfare local office as soon as possible. The office will be glad to make the arrangements to fast track the claim back into payment when the time arrives.

Although the arrangements for temporary suspension of claims are in place all year round, the Minister recently issued a reminder of the arrangements to all Members of the Oireachtas in view of the increase in opportunities for temporary work at this time of year. The Department constantly reviews its operational procedures to ensure the best possible service for its customers. If the Deputy has a particular case in mind where payment has been delayed unnecessarily, the Minister will be glad to have the case examined by the Department on receiving details from him.

Deputy Anthony Lawlor: I welcome that the Minister is willing to meet with the individual, but it is not an individual in this case but a company that recruits individuals for jobs in various other companies. The recruitment company has a problem recruiting individuals for jobs in companies it has on its books. The problem is that people are scared because it takes them so long to get back on the live register after they have come off it. I understand the arrangement whereby they can come off the register temporarily, but the social welfare office asks them to indicate the hours they will work in the weeks ahead. One cannot do that if one's job is temporary, and people are worried that they might be accused of fraudulently taking money from the Department of Social Protection.

I welcome the fact that officials in the Department are willing to meet with this company to discuss the issues it has, but it is very important, now that we are generating a far more flexible workforce, that we have a social welfare system that is able to cater for that workforce. I hope all social welfare offices throughout the country are doing what the Minister actually wants them to do.

Deputy Dinny McGinley: As the Minister indicated in the reply I delivered on her behalf, if there is a case to be dealt with, be it individual or general, it will be assessed. The Deputy will agree that the Minister's approach in this has been very flexible. Times have been extended and the response to applications for reinstatement is almost immediate. If the Deputy has the details, I will pass them to the Minister.

Special Educational Needs Services Provision

Deputy Gerald Nash: I thank the Ceann Comhairle for allowing me to raise this topical issue. I suspect it is one that is rarely raised in the House.

All Members of the House are rightly concerned with ensuring that the State supports children who may have learning difficulties or other disadvantages that might hamper their educational development or their general opportunities in life. It might seem a little strange to be seeking support for very bright or gifted children with exceptional learning ability, but it is an issue that we must address both for the well-being of the children concerned and also for the benefit of the country. It is tempting to be glib and ask what these children could possibly need and to say they are very lucky and that their parents should be thankful. However, these children have specific requirements which must be met if they are to fulfil their potential and maximise the contribution they can make to society and the economy.

We all recall from our childhoods that the worst thing a child can be is different, one way or the other. There is a danger of exceptionally gifted children being isolated and sometimes frustrated in the learning environment they occupy in the standard State school system. These children learn faster, earlier and differently. There is a growing population of children in Ireland with what is called dual exceptionality. This is where their intellectual ability is often in the top 5% quotient or above, but they also might have a mild to severe learning challenge and sometimes even a profound disability. Being an exceptionally bright child does not always mean that the child will have an exceptionally bright future, and parenting can be a daunting challenge for those who are rearing what is known as a gifted child.

Unlike many countries, there appear to be scant resources available in Ireland for exceptionally able children, yet it is estimated there are over 27,000 children who fit into this category. There is also probably a need to ensure that training is provided for teachers to recognise and cater for children with exceptional ability. On the face of it, there appears to be a lack of opportunities for those children to develop their talents and skills further. I am aware of the facilities in Dublin City University, DCU, and the University of Limerick. However, if one identifies a gifted footballer, musician or artist when they are young, those skills are honed, encouraged and developed. There is a vast number of children in this country, 27,000, who fit the profile of being exceptionally able, so it is important that we try, in so far as we can and notwithstanding the resources available to us, to contribute as much as possible to develop their ability so they can fit in and continue to enjoy the school and general learning experience they encounter.

Minister of State at the Department of Education and Skills (Deputy Sean Sherlock): I am pleased to have the opportunity to respond to the issue raised by Deputy Nash and to clarify the position regarding the supports available for gifted children in schools.

The Education Act 1998 requires the board of management of each school to publish the policy of the school relating to participation by students with special educational needs, including students who are exceptionally able. The measures schools take in this regard are required to be stated in the school plan. It is the duty of school boards of management to ensure that appropriate education services are made available to such students.

Schools at both primary and second level use strategies such as curriculum differentiation, curriculum enrichment and acceleration to facilitate the development of pupils who are exceptionally able. Syllabi and curricula for second level schools have been designed in such a way

as to enable teachers to cater for the wide range of pupil ability. The revised primary curriculum recognises the importance of developing the full potential of the child and caters for pupil diversity, including meeting the needs of exceptionally able pupils. The curriculum at primary and secondary school level identifies curricular content and matters relating to the learning process and places strong emphasis on enabling children to learn how to learn. The curriculum also places considerable emphasis on the development of language skills, investigatory and problem solving skills, higher-order thinking skills, working individually and as a member of a group. These skills are encouraged at both levels.

Use of information and communication technologies and class and school libraries is meant to benefit all pupils in terms of additional learning. The National Council for Curriculum and Assessment, NCCA, in collaboration with its counterpart in Northern Ireland, the Council for Curriculum Examination and Assessment, CCEA, has produced draft guidelines for teachers of exceptionally able students. These guidelines issued to all primary and post primary schools in November 2007, along with a questionnaire for feedback. The NCCA-CCEA guidelines are designed to raise awareness of the social, emotional and academic needs of exceptionally able students and to assist teachers in planning their teaching and learning. The guidelines provide advice to schools on the identification of gifted children. They set out profiles of students and identify whole school and classroom strategies and case studies which demonstrate how schools can best meet the needs of such students.

The Special Education Support Service, SESS, is a service under the management of the Department of Education and Skills which provides support for teachers to assist them in meeting the needs of all pupils with special educational needs, including pupils who are exceptionally able. The service is available to schools which may be seeking advice or support relating to a specific special education issue in the school. In addition, the Professional Development Service for Teachers, PDST, also under the management of the Department, provides training to assist teachers to differentiate for all pupils, whether less or more able. Issues around exceptional ability and giftedness are addressed as part of the school planning process which is facilitated by the PDST.

Deputy Gerald Nash: I thank the Minister of State for his comprehensive reply which sets out the services available and the policies which inform those services. It is important that we have in place a support mechanism for young people who are exceptionally able. Through my work as a constituency Deputy I have had contact with students who are frustrated because they no longer feel challenged in a classroom environment, which then leads to frustration in the teaching profession. Our teachers do an excellent job but often find it difficult to continue to challenge a student who feels academically unfulfilled in a classroom environment. A teacher has a significant number of pupils to teach and coach through the curriculum. Parents are also trying to balance all of this. It is important this area is closely monitored.

As I said earlier, I am conscious of a service in Dublin City University which provides an outlet and resources for exceptionally able children. It is important that such resources are available to all children and not only children from families who can afford to access them. I know that the Dublin City University service does its utmost to support everybody who tries to access it. I thank the Minister of State for his response to this issue. It is an area in which I have an interest and know the Minister of State, given his brief, will also be interested in it.

Deputy Sean Sherlock: I again thank the Deputy for raising this issue. I can assure him that we have a good knowledge of the DCU entity. I would be interested in exploring avenues

with other higher education institutes, be they institutes of technology or universities, in regard to the development of similar entities.

To be fair, teachers have a number of students to teach within the classroom environment and try to do so to the best of their ability. There may be additional resources that could be provided in a third level academic environment near to where the student lives that might encourage the exceptional needs about which we are speaking. It is an issue on which I have an open mind. The DCU model could potentially be replicated with the willingness of the institutes of technology and universities.

Garda Resources

Deputy Charlie McConalogue: I understand that the Minister for Justice and Equality, Deputy Shatter, is unable to be here today. However, as the Minister of State, Deputy McGinley, will be aware, Garda resources in Border counties, particularly Donegal, have been drained during the past two to three years to the extent that they are now exceptionally stretched and at a level which makes it difficult or impossible to provide the level of policing required to ensure Border areas in particular are policed.

The Minister of State will be aware of the particular challenges in Border areas in terms of the problems that arise for communities living close to populated areas which a force is not responsible for policing. There are many avenues for cross-Border crime. Unless the necessary resources are put in place those wishing to do so will continue to exploit the lack of resources available to police cross-Border crime, leading to an increase in crime in this regard.

What does the Minister, Deputy Shatter, propose to do to address the chronic shortage of gardaí in Donegal and to ensure that its communities can feel safe and be properly policed?

Deputy Dinny McGinley: On behalf of the Minister for Justice and Equality, Deputy Shatter, I thank the Deputy for raising this matter of significant public importance. Unfortunately, the Minister cannot be here to respond to this issue as he is attending a Garda Reserve graduation in Templemore.

The Deputy will be aware that the Commissioner is responsible for the allocation throughout the organisation of resources, including personnel, transport and other facilities. The Minister has no function in this matter. The allocation of resources is constantly monitored by the Commissioner and his senior management in the context of demographics, crime trends, policing needs and other operational strategies in place on a district, division and regional basis to ensure optimum use is made of Garda resources.

Today, the Minister announced the opening of a recruitment campaign for new recruits to the Garda Síochána. It is four years since recruitment last took place. The Minister is delighted to be in a position to provide for the recruitment of new members to An Garda Síochána. Following a difficult time for our economy it is a huge positive that we can begin again to take new members into the force. It is expected that the new recruits will enter the Garda college in mid-2014, when they will embark on a progressive new training course. The new course has been developed to reflect the current policing environment and will better equip Garda members for the reality of life on our streets. It will also allow for attestation of members after 32 weeks, following which they will be assigned to Garda stations with full policing powers. It is the

Minister's declared intention to retain Garda numbers at 13,000. This will be bolstered by the current recruitment campaign. It is the Minister's declared intention to retain Garda numbers at 13,000 and this will be bolstered by this recruitment campaign.

In the Donegal Garda division there have been several serious incidents and high-profile aggravated burglaries on elderly victims along the Border area in during 2013. Operation Liath was introduced within Donegal division in January 2013 as an operational strategy to improve public safety and enhance the effectiveness of high-visibility police resources within the division. This operation in Donegal is running in conjunction with national operations such as Operation Fiacla and other Garda operations in existence to combat criminality within the Donegal division. The main focus of this ongoing operation is to disrupt and prevent criminality against older persons within the community, to apprehend suspects in the commission and the attempted commission of offences and to fully investigate detect and prosecute any offences outstanding against those suspects and groups. This will be achieved through a focused, targeted and co-ordinated approach by the Garda Síochána.

The objectives of the operation are being addressed through intelligence-led patrols, checkpoints, continued liaison between the Garda Síochána and the Police Service of Northern Ireland, intelligence gathering and the continued support and rejuvenation of neighbourhood watch and community alert schemes. The Commissioner has informed the Minister that there are 412 gardaí, 29 garda reserves and 28 civilian staff assigned to the Donegal division. These resources are further augmented, where necessary, by several Garda national units, including the Garda traffic unit, the Garda national drugs unit, the national bureau of criminal investigation, the criminal assets bureau and other specialised units. The Minister is determined that the resources of the Garda Síochána will be used in the most effective and efficient way and that the best possible service is provided to the public. The Minister is confident that the primary Garda objective of combating crime will continue to be achieved and that, despite the pressure on the public finances, it will be possible for the force to operate to the optimum benefit of our communities in a manner that will facilitate the prevention and detection of offences.

Deputy Charlie McConalogue: This is not the first time, unfortunately, I have had to raise this issue on the floor of the Dáil. When I raised it previously, the Minister for Justice and Equality said he did not see Border areas as special cases in respect of how policing plans are laid out and developed. He saw no distinction between the needs there and the needs in other parts of the country. Unfortunately, when that is the type of leadership coming from the Minister, it gives the wrong message to the public. Also, it is not the best type of leadership in terms of giving a message to the Garda about how the Government understands the particular needs. Although the day-to-day operations of the Garda are the responsibility of the Commissioner, it is the Minister who sets out the resources and who decides the number of gardaí he must work with.

The Minister of State outlined that we now have 412 gardaí in the county of Donegal. That is down from 466 at the end of 2010, over 54 personnel down. That is well in excess of a 10% decrease in only a couple of years, a significant decrease. We are seeing this in terms of gardaí being stretched on the ground to try to meet the particular needs of Border areas.

I call on the Minister of State to comment. Does he see Border areas as having particular needs or special circumstances which require particular policing needs? Do we require an acknowledgement from the Government in terms of the types of resources required? I realise recruitment is starting again, not before time, but we have a particular issue in respect of inci-

dents in Border areas. The Government must respond to this and equip the Garda and the Garda Commissioner to respond.

I call on the Minister of State to provide more specific information to show that the Government has an understanding and acknowledges the difficulties that exist. It has not done so before. Will the Minister of State to give the House details, if possible, in terms of what the Government will do to assist the Commissioner in addressing these needs?

Deputy Dinny McGinley: The Minister recognises the importance of combating crime in every part of this jurisdiction. That is why he has succeeded in securing a budget of €1.3 billion for the Garda Síochána during the coming year. Furthermore, it is why he has succeeded, after a period of four years, in lifting the embargo on Garda recruitment. For the first time in four years we are opening up Templemore and new entrants will be going in by the middle of next year. After 32 weeks they will be dispersed throughout the country and communities to do what the Deputy has outlined. That is the reason the Minister has succeeded in getting an extra €9 million to augment the Garda fleet, which is so important in rural areas and every area. A total of 305 new vehicles will be provided by the end of this year.

I believe that these steps indicate the importance we attach to providing a safe environment for our citizens in every part of the country, including the Border areas, and, as Deputy McConalogue noted, in my county. I am familiar with what is going on there and I am pleased that there has not been any great escalation of crime. Nevertheless, there are incidents and it is in the interests of everyone to ascertain who carried them out and bring them to justice. Steps have been taken and steps are being taken to enable the Garda and the Commissioner to carry out their work as efficiently as possible.

The Dáil adjourned at 4.25 p.m. until 2 p.m. on Tuesday, 17 December 2013.