

# DÁIL ÉIREANN

## AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

## JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

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*Dé Céadaoin, 29 Meitheamh 2022*

*Wednesday, 29 June 2022*

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Tháinig an Comhchoiste le chéile ag 5.30 p.m.

The Joint Committee met at 5.30 p.m.

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Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Martin Browne,	Victor Boyhan,
Matt Carthy,	Paul Daly.
Michael Collins,	
Michael Fitzmaurice,	
Joe Flaherty,	
Paul Kehoe,	
Michael Ring.	

Teachta / Deputy Jackie Cahill sa Chathaoir / in the Chair.

## **General Scheme of the Agricultural and Food Supply Chain Bill 2022: Department of Agriculture, Food and the Marine**

**Chairman:** Apologies have been received from Senator Lombard. I remind members and witnesses in the Public Gallery to turn off their mobile phones.

The purpose of today's meeting is to conduct pre-legislative scrutiny of the general scheme of the agricultural and food supply chain Bill 2022. The witness today is the Minister for Agriculture, Food and the Marine, Deputy Charlie McConalogue.

On 28 February, legal requirement for mask-wearing in all settings was removed. However, it is still good practice to use face coverings, particularly in crowded areas. The service encourages all members of the parliamentary community to wear face masks when moving around the campus or in close proximity to others.

Witnesses giving evidence from within the parliamentary precincts are protected by absolute privilege in respect of the evidence they give to the committee. This means that witnesses have full defence in any defamation action for anything said at a committee meeting. However, witnesses are expected not to abuse this privilege and may be directed by the Chair to cease giving evidence on an issue. Witnesses should follow the direction of the Chair in this regard and are reminded of the long-standing parliamentary practice to the effect that, as is reasonable, no adverse commentary should be made against an identifiable third person or entity.

Witnesses who are giving evidence from a location outside the parliamentary precincts are asked to note they may not benefit from the same level of immunity from legal proceedings as witnesses giving evidence from within the parliamentary precincts and may consider it appropriate to take legal advice on this matter. Privilege against defamation does not apply to the publication by witnesses, outside the proceedings held by the committee, of any matter arising from the proceedings.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against any person outside the Houses or an official, either by name or in such a way as to make him or her identifiable. Parliamentary privilege is considered to apply to utterances of members participating online in this committee meeting when their participation is from within the parliamentary precincts. There can be no assurance in relation to participation online from outside the parliamentary precincts and members should be mindful of this when they are contributing.

The committee will now hear from the Minister for Agriculture, Food and the Marine, Deputy Charlie McConalogue. I invite the Minister to give his opening statement.

**Minister for Agriculture, Food and the Marine (Deputy Charlie McConalogue):** I thank the Chairman and members. I appreciate the opportunity to be with the committee this evening as we begin the pre-legislative scrutiny on one of my key priorities, as well of as my Department and the Government. I thank the Chairman and all members for the time they are taking to do pre-legislative scrutiny, for the engagements members will have around this, for engaging with others and for responding with the committee's views and perspectives. I look forward to hearing the committee's thoughts on it and any ideas members have around the proposed legislation.

From the Department I am joined here today by Ms Angela Robinson, head of food industry

development division; Mr. Noel Collins, head of the unfair trading practices enforcement authority; and Mr. John Kinsella, head of legal services division.

It is a great honour for me to present to the committee the general scheme of a Bill that will give effect to a key programme for Government commitment to ensure fairness, equity, and transparency in the food chain by establishing a new authority to enforce the unfair trading practices directive and to have a specific role in analysing and reporting on price and market data in Ireland. This Bill proposes to establish the new authority, which will be known as the office for fairness and transparency in the agrifood supply chain. The need for this legislation and this office has never been greater, as I am sure committee members will agree. The events of the last few months have shown just how fragile our supply chains are. Now more than ever we need a new independent office that will be a leading voice in promoting and, crucially, enforcing the principles of fairness and transparency in the agricultural and food supply chain.

The office will have real teeth and will help to protect our farm families and primary producers who are the bedrock of our rural communities. The general scheme of the Bill provides that the new office to be established will be able to do this in several ways. It will perform a price and market analysis and reporting function to bring greater transparency. It will provide regular reports on price and market information on all sectors in the agrifood supply chain, and these reports will be published. It will be able to commission reports on price and market information on the agrifood supply chain. The new office will also engage proactively with retailers, processors, wholesalers, farmers, fishers and others on matters affecting fairness and transparency in the agrifood supply chain. As the State's designated unfair trading practices enforcement authority, the office will be responsible for ensuring that buyers in the agrifood supply chain do not employ unfair practices in their business-to-business relationship with their suppliers. The Bill provides wide-ranging powers for authorised officers to investigate unfair trading practices. In summary, this office will, in particular, be an advocate, an enforcer and an acolyte for farmers, for fishers and for other small food businesses, to improve their position and to bring greater transparency and fairness all along the supply chain.

As the committee is likely to be aware, the unfair trading practices enforcement authority is currently located and operating in my Department. To coincide with enactment or commencement of the Bill, I will repeal the current unfair trading practices, UTP, regulations that I signed in 2021 and I will use the enabling provisions in this Bill to make new regulations for unfair trading practices and for providing for the transfer of responsibility for UTP enforcement functions from my Department to the remit of the new office. I am not currently proposing any changes to the UTPs themselves at this time and the impact of the regulations will be reviewed on an ongoing basis in consultation with the new office. If I need to make any changes or amendments to the UTPs, the power is there to adjust these without having to amend the primary legislation.

The Bill provides that I may introduce a fee for complaints. The need for any such fee will be examined in due course. The Bill also provides for a levy to be imposed to assist in the costs of running the office. There is no immediate proposal to introduce a charge or levy at this time as this will depend on the costs of the office over time and the number of complaints received and investigations undertaken.

With regard to the structure of the office itself, the day-to-day running of the office will be overseen by a CEO, who will report to a board appointed by me, as Minister or by the Minister of the day. The board is to consist of a chairperson and five ordinary members, two of whom will be primary producers. It is envisaged that the appointment of board members will be

through the State boards process. I expect the recruitment process for the office's CEO to start very shortly.

I am acutely aware of the importance of ensuring that there is fairness in the agrifood supply chain for farmers, fishers and other food suppliers. This Bill and the establishment of the new authority is an important step towards achieving that goal. I am confident that as a result of this crucial work, we will see improved transparency and increased availability of information about the agrifood supply chain. Ultimately, this will be to the benefit of our farm families and primary producers. Primary legislation, by its nature, takes time and in this case the Bill is not only setting out new rules for business-to-business relationships but also establishing a new State authority to oversee and implement those rules.

Before drafting the heads of the Bill, committee members will recall that my Department held a public consultation between April and June 2021. A total of 28 submissions were made. Following on from the consultation, in June 2021 a webinar for stakeholders was held advising of the rules of the statutory instrument transposing the directive and of the results of the public consultation. Due to the importance of the establishment of this new office, since the Government's approval in March 2022, my Department has continued to work with the Office of the Parliamentary Counsel in the Office of the Attorney General on the detailed drafting of the Bill. I sincerely thank the Attorney General for the resources of his office and for the attention of his staff in giving priority to this legislation.

I accept that the committee has not yet provided its observations on the Bill and I look forward to seeing them and observing the meetings the committee will have in that regard. I ask the committee to provide its observations to me as soon as possible to enable them to be considered and to allow for amendments to be made, where possible, in advance of presentation of the detailed draft Bill to the Houses of the Oireachtas. The sooner the office is set up the better for our rural communities and I urge us to work positively and constructively for the benefit of all our farm and fisher families.

I again thank the committee for the time and effort it puts in. I appreciate the committee's attention to this matter and the invitation to be here. I look forward to us all working collaboratively and collectively to deliver this crucial legislation and the subsequent office. I thank all committee members for their interest in this matter and I know we can deliver something meaningful that will stand the test of time for the long-term benefit of our farm families, fishers and all other primary producers. In a similar vein, I recognise the work of all my staff and the team that has already put so much effort into this legislation. I acknowledge the work of Ms Angela Robinson and Mr. Noel Collins, who is currently overseeing the unfair trading practices directive, and Mr. John Kinsella and his team, and indeed the broader team that has been involved in carrying out this work. I look forward to engaging with the committee.

**Chairman:** Does the Minister propose we go through the Bill section by section?

**Deputy Charlie McConalogue:** That would be okay.

**Chairman:** We will go through it section by section and take questions at the end of each section, if that is okay.

**Deputy Charlie McConalogue:** That is okay. Will I begin to work my way through the Bill? Is that the easiest way to do it?

**Chairman:** Yes.

**Deputy Charlie McConalogue:** Head 1 includes the Short Title and citation. Head 2 comprises interpretation and definitions. Head 3 relates to regulations and provides for the laying of regulations and orders to be made under the Bill. Head 4 deals with expenses. It provides for a standard provision relating to expenditure in the Bill, such as funds to be sanctioned by the Minister for Public Expenditure and Reform.

Head 5 deals with the application and scope of the Bill. It also provides that the Minister may, by order, provide that additional agrifood products may come under the remit of the Bill. This Bill applies to agricultural and food products, and to the enforcement functions for unfair trading practices. This head also allows for the inclusion of products not included under annexe 1 to the Treaty on the Functioning of the European Union. It could, if the Minister decided, potentially include other products such as mineral water, which was included under the grocery goods regulations.

**Deputy Matt Carthy:** Is that the conclusion of Part 1?

**Deputy Charlie McConalogue:** Yes.

**Deputy Matt Carthy:** I will speak to Part 1. I thank the Minister and his officials for being here and presenting the heads of the Bill. I too look forward to pre-legislative scrutiny. To follow on from the Minister's point, I hope and trust he will engage with us constructively on ways in which we can strengthen the Bill. I understand the Minister's sentiments when he says he wants to get this legislation through speedily. I would, however, point out that any delays up to this point were not the result of any actions on the part of the committee. The timeframe for the establishment of this body has been pushed back a number of times. The most important thing is to get this right because if done right, it could be an important and welcome development to ensure we have greater fairness in the food chain for our farmers.

I have some questions about Part 1. The Bill is explicit that it applies to business-to-business relationships. Can the new body ensure fairness for farmers without looking at the full length of the chain, rather than limiting the scope to just business-to-business? The Minister will know that in our submission to the public consultation process and in some of the correspondence we have received, notably from the Irish Natura and Hill Farmers Association, INHFA, there have been requests for the Department to consider transferring some or all of the functions of the Competition and Consumer Protection Commission, CCPC, in respect of food to the new office. Has the Minister given consideration to the transfer of functions from the CCPC to the new body?

**Deputy Charlie McConalogue:** The unfair trading practices directive takes over some of the roles which would previously have been carried out by the CCPC. One of the key functions, alongside the enforcement of the unfair trading practices directive, will be the capacity of the office to assess what is happening in the supply chain, to carry out reports and, indeed, to trace where margins are going within the supply chain, with a view to ensuring transparency and that an independent and credible office is carrying out that role. The key objective is to ensure parity for farm families, fishers and primary producers in respect of what is happening in the food supply chain. We must ensure that as much emphasis as possible is brought to ensuring those professionals are getting a fair deal and a fair price for the food they are producing. Obviously, that cannot be done by setting prices. The best way to do it is by assessing and shedding light on what is happening in the marketplace. We must put emphasis on the creation of a culture of respect for the primary producer. That is something which the office will have the capacity to do and which will be an important part of its function.

**Senator Paul Daly:** If the office comes up with examples of situations in which there is unfair trading, what can it do? The Minister has said he wants the office to have teeth. What is the Minister's vision for what action the office can take to address a situation where it considers someone is being abused on price or there is unfair trade?

**Deputy Charlie McConalogue:** Penalties are laid out in the unfair trading practices directive. There are compliance notices and fines. Matters can also be brought forward to prosecutions and fines where the rules around unfair practices are being breached. The office will have the capacity to do that.

**Senator Paul Daly:** It cannot, however, interfere with the pricing structure. It cannot get the victim, for want of a better word, a better price. It can penalise the retailer who was dealing unfairly but cannot influence price.

**Deputy Charlie McConalogue:** One cannot set what happens in the market. All one can do is monitor and bring transparency to what is happening in the market. We have a situation where 90% of the food we produce is exported so the ultimate price we get for much of our produce is determined by what is happening in some 160 international markets around the globe. The key focus of our national agricultural sector and the different actors, agents and farm families involved is to try to produce the best quality product possible. We must provide a premium product, market it well and maximise its price. Ultimately, the price is set outside the country. We need to be able to bring as much transparency to bear on how you trace that back from the prices on the international market to what is happening within the supply chain and to the price the farmers are getting. The more transparency we can bring to this area, the more we can create that culture and put pressure on to ensure that primary producers and farmers get a fair deal.

**Chairman:** How is the Minister going to prevent below-cost selling if he cannot dictate price?

**Deputy Charlie McConalogue:** It is not proposed to ban below-cost selling. We had a ban on below-cost selling up until the earlier part of this century. That ban was done away with in 2005. The reason it was discontinued was because it was found to be ineffective in achieving the stated objective. The key objective behind it was to ensure that the primary producer got a fair deal and a fair price but the practical evidence showed that it was bringing more red tape into the equation and more administration regarding how groceries were sold. This did not necessarily mean that the primary producer got a better price, however. If you intervene at retail level and make prescriptions as to how or at what level goods can be sold, the evidence in this country and internationally shows that this does not necessarily change how retailers or those higher up in the supply chain engage with primary producers in terms of the price they get. What people normally refer to whenever we talk about below-cost selling is looking to achieve below-cost buying instead in order that whoever is doing the buying is not buying from the primary producer at a price that is less than what it would have cost to produce the product or less than what it would take for the producer to get a fair margin. There is no real way you can intervene and set a price for the market. That is determined by markets and mostly in our case, as an exporting nation, by the prices on offer in international markets. We must ensure that there is transparency and maximise pressure to ensure farmers get a fair deal.

Regarding produce sold primarily in the domestic market, such as fruit, vegetables, potatoes and 50% of our pork, it is really important that we have responsive supply chains that respect the role of the primary producer and the fact that for a healthy food supply chain, you must have economically sustainable producers. We need supply chains that are responsive to the situa-



tion and cost of production. We have seen that particularly in recent months, when inflation and cost pressures have been significant at farm level and when there has been slowness in the responsiveness of the supply chain to the increased cost of production. We need to learn from that and ensure that in terms of engagement and ensuring there is respect throughout the supply chain, it is responsive. If this is not the case, those who produce the food will ultimately go out of business and you end up having to look for it outside the country, which is in nobody's interests. You do not have a supply chain where there is respect for all throughout it. I came forward with some support packages this year, particularly for the horticulture and pig sectors, which have been under pressure. We have seen increases in prices in some of those but these have tended to lag behind the increased cost of production, which has put pressure on farmers.

**Deputy Michael Fitzmaurice:** How can we have a minimum price for alcohol if we cannot have a minimum food production price?

**Deputy Charlie McConalogue:** Minimum alcohol pricing applies to alcohol sold within the State. It is a price per unit per alcohol and requires it to be sold at a certain level. It applies to all alcohol products and is designed to incentivise responsible use of alcohol and prevent its abuse. Given that 90% of the food we produce is exported and that this determines the price, I have not heard from anyone how such a system could be put in place that would have a meaningful impact on the food chain.

**Deputy Michael Fitzmaurice:** Will the new body or office that will look after this include people who come from farming backgrounds or the private sector. What will be its make up?

**Deputy Charlie McConalogue:** There will be a board, two members of which must represent primary producers. They will be appointed through the Public Appointments Service-----

**Deputy Michael Fitzmaurice:** Out of how many?

**Deputy Charlie McConalogue:** Out of five. They will be appointed through the Public Appointments Service.

**Chairman:** Is the Minister including the chairman in the five or is it five and the chairman?

**Deputy Charlie McConalogue:** The five includes the chairman. That will be the board that will oversee it. There will be a really important role here for the CEO and the lead person in terms of the leader of the organisation.

**Deputy Michael Fitzmaurice:** What is the position with the CEO? Will his or her appointment be approved by the Minister?

**Deputy Charlie McConalogue:** The CEO will be appointed by means of a competitive recruitment process - probably through the Public Appointments Service. We have been engaging with the Department of Public Expenditure and Reform about approval for the post and the criteria for it. It will be the first post to be filled. The capacity and abilities of that person will be really important when it comes to leading-----

**Deputy Michael Fitzmaurice:** Does the public appointments process allow people from the private sector to come in?

**Deputy Charlie McConalogue:** Yes.

**Deputy Michael Fitzmaurice:** This body cannot introduce minimum pricing or get in-

volved in cost of production. What the Minister is saying is that if a bad price is given, the body can put out a list of the general run of things in Ireland, the rest of Europe and the rest of the world along with the cost of production. What is the value of this to a farmer? The body has no mandatory power to tell somebody that if cattle are at €5, the price should be €5.25. It can highlight the discrepancies it sees but going by what the Minister is saying, it cannot interfere in the market. I am trying to get my head around what extra value this body will have other than highlighting the problems. If the body thinks a cartel is in existence, does it have the power to seize whatever evidence exists?

**Deputy Charlie McConalogue:** Powers relating to competition are under competition law-----

**Deputy Michael Fitzmaurice:** So the body will not be involved in that.

**Deputy Charlie McConalogue:** At the moment, we do not have an independent office with credibility that assesses, reports and plays an active role in the context of having oversight over and ensuring transparency in respect of the food chain. If we think back to the beef protests of 2019, so much of that was about a lack of trust and transparency. In order to address that, the beef task force was set up. A number of reports were commissioned arising from that in order to tease out the issues at play because no one was in a position to assess the situation and report with credibility on what was happening. We need an office which stands aside from the Department, processors and primary producers and has independence and credibility and specific functions in order to be able to assess what is happening.

**Deputy Michael Fitzmaurice:** I apologise for interrupting. If the price of beef was €5 and a task force said it had carried out an analysis and believed there was room for the price to be €5.20, there is no legal mechanism or power to force a processor to accept that.

**Deputy Charlie McConalogue:** If that was the case, we would be getting involved in determining and setting the price for the market. That is not something that is legally possible. We can track what is happening regarding various different prices, the markets we sell into and the changing market dynamics over time. For example, 95% of our beef is sold into the European market. There can be variances from the European averages index. Sometimes we are above the European average and at other times we are below it.

At the moment, we get reports on prices but no one is operating in the sector other than actors in the supply chain who can comment on or assess the situation. A separate office with the capacity, credibility and independence to assess and report on the supply chain and market dynamics and call things out can, through that, apply pressure regarding what is happening and try to ensure there is fairness, as much as possible, within the supply chain. That would be an important addition to our food supply chain.

**Deputy Michael Fitzmaurice:** Will it examine offal and all other parts?

**Deputy Charlie McConalogue:** It can examine the entire supply chain and assess what is happening.

**Deputy Michael Fitzmaurice:** From reading the proposed legislation, I note that there may be a fee in the context of those who wish to make complaints. What will be the amount involved?

**Deputy Charlie McConalogue:** I do not have a firm view on that at this stage. It is im-



portant that, through the primary legislation, we have a mechanism in place. We would need to see how the office is being used.

What is fresh in my mind is the experience regarding forestry appeals. A vast number of appeals that could be submitted simply by firing off an email, which went into an appeals committee that got clogged up and bogged down. Somebody could appeal through the click of a finger and there is not necessarily a quality assessment of an appeal. It was found in that case that when a small, but appropriate, fee was involved there was more proportionality in how people engaged with the system and submitted appeals. It brought about a more proportionate appeals system in forestry.

In the aftermath of the legislation passed by the Oireachtas that enabled a small fee to be charged, the level of appeals one would expect now appears to be more proportionate. That is the rationale for having a fee in place. Should a Minister decide that a fee of €50 or whatever is appropriate, that can be implemented. Otherwise, there is nothing to stop a person sitting down and sending off 100 appeals, however frivolous, and using up time which is valuable and may not be very effectively used in dealing with such appeals. A fee of €10, €20 or €30 would mean someone would be much less likely to fire in 50 or 100 frivolous appeals. That was found to be the case in terms of the changes made regarding the forestry system. It is important that we have that capacity in this Bill.

**Deputy Michael Fitzmaurice:** Will the office have the power to examine feedlots, farmers, VAT and different things involving the agricultural sector?

**Deputy Charlie McConalogue:** In order to have a healthy supply chain, it will be important that the office assesses the issues which are important to those in the supply chain. If there are issues which are creating distrust or seem to involve a lack of clarity and transparency, the office should assess that. It will also have the capacity to develop codes of practices and engage with and make reports at all levels of the supply chain.

Part of the challenge I have seen over the past while is that in the absence of having an independent and creditable entity that can do that, it is very difficult to bring that transparency forward in a way in which people will feel things are being done fairly and independently. For example, feedlots get a great deal of criticism, but the office could take them out of the equation and determine what would happen. Assessing that clearly and being able to examine the role they play, positive or otherwise, would be something which could be helpful. An office which is independent could report with credibility.

**Deputy Michael Collins:** My questions are brief as some have been asked already. The Minister stated that the new office will encourage fairness and transparency in the agrifood sector, which is a good news story. The information I have indicates that the board will be appointed by the Minister and consist of a chairperson and five ordinary members. Will the Minister appoint the board directly?

**Deputy Charlie McConalogue:** I wish to correct a previous answer I gave. The board will comprise a chair and five members. The process will be similar to that of most State boards in the country. It will be an open application process, through the Public Appointments Service. Advertisements will go out, people will apply and the criteria for the various board members would be stated. For example, as I said, two of the representatives have to be primary producers. The Public Appointments Service will make a recommendation to the Minister following an assessment and recruitment process. The Minister will then make appointments. That is

what currently happens.

When I make appointments to State boards, I receive a list of ten people who have come through the recruitment process organised by the Public Appointments Service. There may be 50, 60 or 70 applications and the PAS assesses each person's criteria and credentials. It then conducts interviews, as appropriate, and sends a list of ten people to me, as Minister, which outlines the various credentials of each person. As Minister, I choose from those ten people, whatever number of appointments I need to make. The process for the new board will be similar.

**Deputy Michael Collins:** I thank the Minister. There were several protests by farmers outside factories a number of years ago. Many people felt very annoyed that a lot of profit was being made from animal parts that the farmer did not seem to benefit from. Will the new office have the power to enter into factories and check this out?

**Deputy Charlie McConalogue:** Can the Deputy repeat the question?

**Deputy Michael Collins:** Will the new office have the powers to go into factories to investigate matters? As I said, there were a lot of rumours outside the factory gates from farmers who sold cattle and felt animal parts were being sold on for a hell of a lot more profit than they received. It is something farmers felt very aggrieved about at the time. Is it possible that the new office will have the power to investigate this?

**Deputy Charlie McConalogue:** A number of unfair trading practices are specified, and the office will have the power and the capacity to investigate and audit them.

In terms of wider pricing and value in the supply chain as such, the office can do reports in regard to that. It can assess what is going on in the market and make a report on that. In regard to unfair trading or practices, it will have the capacity to do inspections and to take prosecutions.

**Deputy Michael Collins:** I thank the Minister.

**Senator Paul Daly:** I wish to go back to the issue of the powers. If a farmer makes a complaint to this new office and his complaint is upheld following an investigation, the office has the power to enforce penalties or fines. Does it have the power to make the offender compensate the aggrieved party for whatever was lost? Would a farmer just get the satisfaction of having highlighted what happened and hope it will not happen again, or will the office have the power to impose a fine to allow for reimbursement for whatever grievance was suffered?

**Deputy Charlie McConalogue:** The office will not have the power to require compensation, but a company can be prosecuted and fines can be imposed on it. There are no specific financial remedies for suppliers in the Bill. What the Bill provides is that the office can issue a compliance notice in the first instance to bring an end to an unfair trading practice. The failure to comply with the compliance notice is an offence which is prosecutable. The office can intervene, call out, and put compliance notices in place for UTPs if there is a practice happening that should not be happening and it must be stopped, and to prosecute, as appropriate, as well.

**Senator Paul Daly:** In the case of an unfair trading practice, the aggrieved farmer would be out of pocket or else he would not have brought the case. Is there no means for the new board to make sure he gets compensated for whatever he lost in the case of the grievance?

**Deputy Charlie McConalogue:** There is not specifically any measure in the Bill. I will ask my officials if there is anything to add. If it was found that the law was broken in some

way, it would be open to the person who suffered the grievance to seek compensation, but the office itself does not determine compensation. It applies the law and oversees it and it can bring prosecutions in regard to it. In addition, it can impose fines, but compensation is an issue that would be decided by the courts.

A compliance notice can require that a buyer return to a supplier a payment, charge or compensation or however such expense is described and referred to in regulations 6 and 7. There is some capacity for compensation for immediate recompense for the issue that has been identified under a compliance notice.

**Chairman:** Would that address below-cost selling as well?

**Deputy Charlie McConalogue:** No. Below-cost selling will not be banned. Various trading practices are being prohibited in which a supplier would engage with somebody who is larger than him and to whom he is selling a product, but it does not address price.

**Deputy Joe Flaherty:** I thank the Minister and his departmental officials for their work on this important area. It is good to see it coming before us in such a timely fashion. I have a couple of key questions. The UTP directive is being operated currently on an interim basis by the Unfair Trading Practices Enforcement Authority, UTPEA, since 2019. Will the Minister give us some details on what activity we have seen thus far from it?

**Deputy Charlie McConalogue:** I will ask Mr. Collins to give a brief update. He is managing the UTPEA and knows how it is currently operating.

**Mr. Noel Collins:** The priority for the interim enforcement authority has been to try to develop a culture of compliance with the current regulations, which set out 16 prescribed unfair trading practices. We are very much focused on that. We have been very proactive and engaged with the largest buyers in the agriculture and food supply chain in Ireland, including the largest retailers and wholesalers in the State, and then cascading down to the largest buyers that purchase directly from primary producers. We have engaged in a consultation with our colleagues and the relevant State agencies to identify who those businesses were and we requested that they submit implementation reports to us as the enforcement authority on what they have been doing to ensure compliance. For the very largest retailers and wholesalers, we have a liaison officer model in place since the end of last year. We meet these liaison officers every quarter when we go through in detail what actions they are taking to ensure compliance with the regulations. We have been quite challenging in that engagement to ensure they are taking appropriate actions to ensure compliance. We do not have the resources to engage with all the businesses.

**Deputy Joe Flaherty:** Has the agency taken anybody to task yet?

**Mr. Noel Collins:** No. We have not had any evidence of non-compliance. If we get evidence of non-compliance, we will certainly not be shy about making investigations. We reiterate our ongoing message to all suppliers that they should contact us in confidence if they have been impacted by prescribed unfair trading practices. We will be very keen to hear from them and we will certainly take appropriate action because we have very significant powers under current legislation to do so if breaches are identified.

**Deputy Joe Flaherty:** I thank Mr. Collins. The Minister outlined there will be a CEO and five board members. In terms of staffing, what kind of personnel will be assigned to this body?

**Deputy Charlie McConalogue:** We have not yet made a final determination on that, but

our estimation is there could potentially be up to 15 or 20 people.

**Deputy Joe Flaherty:** What is being envisaged in terms of the skill set? Is it forensic accountants or what type of people?

**Deputy Charlie McConalogue:** Yes, we are looking at a wide range of expertise. Perhaps Mr. Collins would comment on the type of competencies that will be required. A range of specialist competencies will be required to staff the agency and enable it to do its work. Mr. Collins might comment further on the type of competencies that will be required.

**Mr. Noel Collins:** Given the nature of the modern world, many documents are now in electronic form. There may well be a need for a skill set for specific types of investigations for people with forensic analysis skills in that type of area. The new office will take a view in terms of the level, number and complexity of cases that come before it to determine whether it is appropriate for it to hire in an appropriately skilled person on a full-time basis or whether it can be done on a contract basis. That will very much depend on the workload and the nature of cases that come before it.

**Deputy Joe Flaherty:** In terms of a comparison with the UK Groceries Code Adjudicator, is this agency modelled directly on it or have we looked at European models as well? Is this going to be best in field? Will the Minister give an oversight on what the agency has been based on and the level of research that was carried out.

**Deputy Charlie McConalogue:** I will ask Ms Robinson to come in and give a further update. We engaged with the original Groceries Code Adjudicator, Christine Tacon, who set up the office and pioneered it. We took some advice from her on the approach we have taken in the Bill. I will ask Ms Robinson to add to what I have said.

**Ms Angela Robinson:** As the Minister has said, we looked very closely at the Groceries Code Adjudicator. We had a lot of engagement with that body. One of the significant issues arising from it was the level of engagement the Groceries Code Adjudicator had with the suppliers and buyers, which Mr. Collins has outlined he has done since the setting up of the enforcement authority.

We also looked at some observatory type operations being looked at across Europe, as the Deputy will possibly be aware. We looked at the kind of things they are looking at in respect of the price, market analysis and reporting function. The Deputy will be aware that EU Commission places a greater emphasis on market transparency now. Many member states are looking at setting up models to ensure this price and marketing reporting function, exactly as the Minister outlined earlier, to make available that transparency in the market chain. I would add that one of the difficulties in this legislation is we are trying to combine a very specific EU directive and national legislation in establishing a new office. We tried to navigate that through setting up the enforcement function and providing this analysis of the market. Going back to Deputy Carthy's remarks about the time the legislation is taking, part of that was looking at specific legal aspects to make sure this legislation will stand up to scrutiny. Thankfully, so far the Attorney General is happy with that.

**Deputy Joe Flaherty:** I thank Ms Robinson. Moving on to the UTPs, we have the ten practices classified under the directive as black, which we take as a given. There is an element of concern about the six grey ones. We have had a number of years' lead-in to this and we have custom and practice. Many of these have been bedded in. There is an unfair advantage there to

the retailers, particularly against the small food producers. There is probably going to be some capacity for the Minister to change that. Does he not think we should harden up on those grey practices or take a much stronger line? Really we should be drawing a line in the sand and saying that what is happening at the moment, where people are being asked to pay for marketing and merchandising in a store, is not acceptable and is putting an unfair burden on a small food producer. Many small food producers are coming to us privately because they do not want to speak out. They are telling us they have to assure a retailer a margin for value-added food in the order of 35% and are then getting additional costs, many of which are covered within those grey UTPs. Ideally, in a Utopian situation we should not have any grey practices. We should just have a list of 16 clear-cut UTPs. Does the Minister see a mechanism within the proposal whereby those grey areas can be phased out? Are we going to launch this but accept the six grey areas are going to continue indefinitely?

**Deputy Charlie McConalogue:** I will ask Ms Robinson to make a further comment on it. The unfair trading practices that are included have been given a lot of thought and consideration at European level and apply across the European Union. It has been well examined and thought out. The legislation is providing for capacity within the primary legislation to amend those and for the Minister to amend them. I certainly would have an open mind on what we are seeing in the market and about trying to make sure it is as effective as possible. As a starting point, we are working off the European basis and providing through this office and legislation the capacity to adjust as we would identify what is happening in the supply chain.

**Chairman:** We will have to suspend the meeting as we have a vote. We will return as quickly as possible.

*Sitting suspended at 6.23 p.m. and resumed at 6.52 p.m.*

**Chairman:** I invite Ms Robinson to respond to the question Deputy Flaherty raised before the meeting was suspended.

**Ms Angela Robinson:** I thank the Chairman. Deputy Flaherty asked about changing some practices from grey to black, which is one of the issues we considered, including by way of public consultation. A number of respondents to the consultation asked that we change certain practices from grey to black, while others wanted to retain the grey practices as they were.

**Deputy Joe Flaherty:** I bet most of the respondents were retailers.

**Ms Angela Robinson:** In fact, there was quite a selection of respondents. Interestingly, both sets of respondents said they would like to see how the legislation works before any changes happen. That was one criterion. Some of the suppliers said the grey practices give them freedom, for example, to say they are prepared to have this arrangement and to pay for it if it means X, Y or Z. They wanted to retain that capacity.

The problem with unilaterally changing grey practices to black is the risk of undermining a freedom to contract for suppliers who want to enter into those arrangements and see whether they are happy to follow particular practices. When the directive was being debated and drafted at EU level, there was a consciousness of the need to allow for some flexibilities for suppliers to enter into such arrangements. That is why the decision was made not to make those particular practices black. However, as the Minister said, as this rolls out and as the regulations are enforced, we will be monitoring the situation to make sure that if there is widespread abuse of some of the grey practices, for instance, we can consider changing some of them to black.



**Deputy Joe Flaherty:** I accept some of that. Much of the work Mr. Collins and his team have done has fed into what is being proposed. We now have a body of information to hand that will allow us to see what is happening in terms of the additional costs to small suppliers. I take on board that some suppliers will probably favour the grey practices remaining because they are market-dominant suppliers, it suits them that they be retained and they can afford to follow them. Head 39 provides for the capacity for new regulations in this regard. Will the Minister give a commitment that he will pursue this issue with determination? It is a concern that is being fed through to us by small-scale suppliers. Unfortunately, they are not in a position to voice their discontent. A good example is that they are being asked to provide a margin of 35% as well as additional add-ons thereafter that currently fall into the grey area. If a supplier is selling to the multiples, that will invariably be its biggest sale. It really minimises what suppliers can do and makes it incredibly difficult for them to trade.

**Deputy Charlie McConalogue:** Something that is really important in the legislation is that it gives the capacity to amend and adapt the unfair trading practices that are listed as we go along. It is essential that we take feedback and monitor what is happening in the marketplace. We must work to ensure there is fairness and no unfair practices. Where we identify practices that need to be addressed or included, we will do so. For now, it is prudent and appropriate that we work off the European benchmark, to which a lot of thought and consideration has been given. When we have the new office up and running and there is the means and capacity to assess the experience of what is happening already and the work the current unfair trading practices, UTP, unit and directive are doing, we can adapt as we go.

**Deputy Joe Flaherty:** I am happy with the Minister's commitment in this regard.

**Chairman:** The next speaker is Deputy Ring but he seems to have left the room. Are there any other questions on the establishment of the new office?

**Deputy Matt Carthy:** Are we up to head 5?

**Chairman:** We are dealing with the functions of the new office, including enforcement.

**Deputy Matt Carthy:** I have a question on head 7, the establishment of the office for fairness and transparency in the agrifood supply chain, and the process that led to this proposal. The programme for Government provided for the establishment of a food ombudsman. When the matter went out for public consultation, there was reference to a food ombudsman and a food regulator. From where did the title for the new office come? Were there submissions suggesting the name of the new body should be the "office for fairness and transparency in the agrifood supply chain", as opposed to either the "food ombudsman" or "food regulator"? Has the Minister given any consideration to sectoral regulators, as has been suggested, in particular, for the meat sector?

**Deputy Charlie McConalogue:** The key point is the effectiveness of the office and the work it does, not necessarily its title. I have heard a lot of floating of the regulator idea, including a meat regulator. However, when one probes further, there is very little detail as to what is meant by that and the substance of what is being suggested. The key point is that we have an office that brings transparency and fairness to the supply chain, that works well and is effective. That is the key objective here. We have already done a public consultation and I will certainly reflect on any ideas, suggestions or proposals put forward by members in the course of this pre-legislative scrutiny process.



In regard to the ombudsman name itself, it became clear during the consultation process that the use of the word “ombudsman” was not going to be suitable. The use of the title of “ombudsman” is protected under section 10A of the Ombudsman Act 1980. The purpose of this provision is to prevent overuse of the term “ombudsman”, in particular by bodies which may not be carrying out the normal responsibilities associated with an ombudsman. We also had a few submissions from people pointing to the use of the word “ombudsman” and whether it was appropriate to what we were doing here. The key thing, which has not changed and what we are seeking to strengthen in every way we can, is the purpose of this office. We have moved away from the name “ombudsman”. The whole objective and mission is to bring fairness and transparency to the food supply chain, which is why I have selected that name for the office we are going to set up. As I said, in regard to the substance of it and what we are seeking to achieve, I will consider any ideas, thoughts or substance that comes forward from the committee or elsewhere.

**Deputy Matt Carthy:** I will move to heads 8 and 9 if nobody else has anything on that point.

**Chairman:** I understand Deputy Ring wants come in.

**Deputy Michael Ring:** I am glad to see the proposals for legislation in regard to controlling to make sure farmers get a proper price for their product. What worries me is that we had the recent measures for below-cost selling of drink in supermarkets and we now discover that a survey in Scotland, which did the same thing, found the people who paid most for this were poor people because they did without food but they still had their drink. In Ireland, what happened was that where the price of drink went up, the Government gained nothing and it went to the supermarkets.

Will this commission really have the power to go in and investigate? We have so many agencies in this State, so many CEOs and so many people getting paid by the taxpayer and I never hear anything from them. We have recently seen the price of petrol and diesel going up but I never hear of anyone from the State going in to check that. There was a situation on 1 May where the carbon tax went on. The only thing that came under that was coal, briquettes and home heating oil, but every station in the country put up petrol and diesel by a few cent that week, yet I never heard from those involved in consumer affairs in any of these organisations that the taxpayer of this country is paying for. I am just asking the question. Is this going to be another toothless outfit with jobs for the boys and girls? Will it have any power? Will it be prepared to go in and do what has to be done? Are we just going to get another quango that we will all be paying for, as taxpayers, and it will have a big chief executive and a big staff, and nothing will happen? I want to know from the Minister if it is going to have power and if it is going to do the job, or will it be like the county managers now, full of power and no action?

**Deputy Charlie McConalogue:** First, there was evidence and case law assessed around the introduction of minimum unit pricing for alcohol, for example, that indicated and gave a strong basis that if we were introducing minimum pricing, it needed be for health reasons as opposed to other reasons, and that if we were doing it for other reasons, it would constitute market interference. Minimum unit pricing would seem appropriate because it is a health measure but anything else would be market interference.

To give a bit more detail, the below-cost selling piece is important. It is not something we have not tried in this country before and it was in place for many years. We did away with it because it was found not to work and not to achieve its objective of protecting the primary

producers and ensuring they got fair play. Previous legislation banned the sale of some retail products below net invoice price, which was the Restrictive Practices (Groceries) Order that was brought in back in 1987. That order effectively allowed suppliers to specify minimum prices below which products could not be sold. It was revoked in 2005 as it was considered that it had acted against the interests of consumers. There were also difficulties with enforcement.

The Competition and Consumer Protection Commission has advised that studies have found that laws banning below-cost selling often fail to safeguard the parties they aim to protect from declining market shares and often lead to higher prices for consumers. The European Union directive on unfair trading practices from 2019, though including a number of unfair trading practices, UTPs, to help protect small suppliers, including primary producers, did not include below-cost selling or selling below the cost of production as an unfair trading practice to be prohibited. The rules in the directive do, however, ban unilateral changes of contract, which would include the price agreed to be paid, and practices where the buyer requires the supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion.

The banning of below-cost selling is something that other member states are trying to address but, historically, like ourselves, with limited success, if any. For example, a previous law introduced in France does not appear to have achieved what it set out to achieve. In a case centred on below-cost selling in Spanish law, I understand the European Court of Justice raised issues regarding compliance with EU law. There are no plans at this time to introduce it here.

That is just by way of background. The key thing is that if we put in a restriction in terms of what price something could be sold at, it does not necessarily stop those who are still buying that product from trying to squeeze the seller in every way possible. The fact they can sell it on the shelf at a certain amount does not mean that when they are buying it, they will not try to get the lowest price. As I said earlier, when talking to primary producers, we find that what they want to ban is below-cost buying of their produce, not the below-cost selling of it at the end of the chain. They want to make sure that what is bought from them is bought for a fair price. Again, it is not possible to interfere in the market to that extent.

What we need to do and what will be a very important rationale for establishing this office is to try to ensure we are building a healthier supply chain, one that respects the primary producer and one that will have the capacity to put in place codes of conduct, protocols and so on. For products that are sold on the domestic market, that is going to be an important role, and the experience in recent months speaks to that. Whenever there are changes in terms of the pressure and cost that comes into play for the primary producer, as we have seen in recent months, it is important that the rest of the supply chain responds to and respects that, and that it does not simply squeeze the life out of the primary producer and leave them carrying the burden and, ultimately, squeeze all of the life out of them to the extent that they stop producing. There will not be a healthy supply chain unless those who are producing the goods, and doing the biggest part of the work at the outset, are getting a fair margin. For products that are produced primarily for the domestic market, it is important that we ensure this through protocols and the building up of respect, as well as through building an office that is proactive in regard to calling that out and identifying it as important.

The vast majority of what we produce, some 90%, whether it is dairy, beef, lamb or otherwise, is exported and sold abroad. Obviously, there is nothing we can do other than producing the best product possible, ensuring it is a premium product and then marketing it in the best way possible. We cannot do anything to determine what price will be available on world markets or

international markets other than making sure, to every extent possible, that we are at the higher end of the value chain. For those products, therefore, the price is set abroad. What we need is oversight and transparency in regard to what is happening in the supply chain so anyone can trace the price back from China, Europe or Britain to what is happening in the supply chain, shine a light on that and try to ensure the producer is getting fair play by doing that.

**Deputy Michael Ring:** Like the Minister, I want to see the producer getting a fair price for his product. What is happening now is that the producer is not and everybody else is being ripped off. The person buying it on the ground is paying more and the producer is not getting what he should get. I hope this legislation will deal with that. We can go back again to the below-cost selling of drink. The only people affected by this were the poorer people because they did without their food and bought drink. That has been proven.

The Minister talked about France. When I was the Minister of State who had responsibility for sport certain people within the Department tried to ban sponsorship for sport. Such sponsorship was banned in France and instead of the consumption of drink reducing, it increased.

I want the producer to get a fair share of the price. I do not want the consumer to be ripped off either and there is nobody there to protect them. If supermarkets want to sell a product below cost then that is fine once they pay a fair price to the producer; producers are entitled to a fair price and should get that.

**Deputy Matt Carthy:** I have a question that follows on from our previous discussion on the name, which I still do not fully understand. I mean that rather than having an ombudsman or a regulator it appears that we have neither.

Heads 8 and 9 deal with the functions of the new office. One of the reasons, which has been mentioned at every farmers' meeting over the past decade which any of us has attended, given for the need to have an office is that we need somebody to be able to take complaints of cartel-like behaviours by processors or retailers and investigate them. Clearly, the CCPC is not up to that task. The CCPC received complaints but never approached the processors and told those who made the complaints that unless they could actually provide the evidence then the CCPC could not do anything. Will the new body be in a position to accept and investigate complaints of cartel-like behaviour by meat factories?

**Deputy Charlie McConalogue:** A key role will be to examine and shine a light on what is happening in the supply chain. The way to do so is to assess where the market is at and trace that back. Also, the body will monitor changes over time, analyse the dynamic behind them, assess whether the changes are related and shine a light on the situation. That is going to be a key function of this office. Also, the office will be independent, have credibility, and will have the authority to call things out and call out what is happening in the market.

Competition law, etc. is a matter for the CCPC. The new office will greatly introduce transparency to the supply chain and give oversight. The body will be able to speak and act authoritatively in that regard.

**Deputy Matt Carthy:** Let us say a farmer or an individual reports to the new office for fairness and transparency, and shows that on a given day 15 separate factories offered prices for beef that were within 1% of each other. What would the office do with that information? How would it identify whether the activity is price fixing on a grand scale or, as I have called it, cartel-like behaviour? What impact and ensuing actions would follow a complaint of this nature?

**Deputy Charlie McConalogue:** There are world markets for a lot of products such as grain, milk, etc. and the prices tend to equalise. For example, the price of milk around the world is similar. Therefore, one does not expect too much variation in what happens. The key thing, particularly concerning anti-competitiveness or cartel-like behaviour, is people coming together to keep prices lower than what they should be.

**Deputy Matt Carthy:** Yes.

**Deputy Charlie McConalogue:** I ask Mr. Kinsella to comment on the role played by competition law, etc.

I do think that having an independent office generates credibility. It keeps a close watch on the market, shines a light on what happens in the market and monitors all of that. Such work can be very helpful in identifying what is happening in the market and the dynamics. One can move from paying above the European average price for beef, which I have seen happen, to within a couple of months paying below the average price and one is left wondering what happened. At the moment nobody has the independent authority or credibility to give an opinion.

**Deputy Matt Carthy:** That is why I have asked about the new body.

**Deputy Charlie McConalogue:** Therefore, having a separate office that can and does price reporting, and can examine a matter, shine a light on it and speak with authority about what is happening will be a good thing.

**Deputy Matt Carthy:** What will the office examine?

**Deputy Charlie McConalogue:** Cartel-like behaviour comes under competition law and I ask Mr. Kinsella to comment.

**Deputy Matt Carthy:** The Minister has mentioned world markets and of course they dictate prices. Understandably, the price of timber has fluctuated greatly in the past year and that situation is reflected in the price we will pay in any hardware shortage. Timber is dearer now than it was this time last year. If every timber or hardware store sold the same piece of timber at a price within 1% of the other, and increased the price on the exact same day as the other, then questions would have to be asked as to whether the retailers had collaborated. For several years those questions have been asked about meat factories. The great white hope is that we might have a body that will actually investigate and examine how that came about and whether there has been collaboration or illegal practices. The CCPC has clearly said that it is not in a position to do such work so will the new body have the authority to do this work?

**Deputy Charlie McConalogue:** The new office can make reports and recommendations to the CCPC and my Department. This is about having an office that can trace and assess what happens in the market, assess movements in the international market, into which we sell and that determines our price, and then being able to call out and put pressure in terms of what happens there.

Obviously cartel-like behaviour is a criminal matter and something for which clear evidence is needed. Mr. Kinsella will discuss that point.

**Mr. John Kinsella:** This legislation is not designed to replace competition laws. If there is evidence that the competition laws have been breached then people can go to the appropriate authorities seeking investigation. As the Minister has said, this legislation will bring greater

transparency to what happens in the food supply chain. If the reports produced by this particular body assists in those types of complaints or assists the Competition Authority then so be it. This legislation does not replace competition legislation.

**Deputy Matt Carthy:** I shall move on because we are going around in circles when discussing this point. Everybody says, “if there is evidence of price fixing”. I want to know whose job it is to find that evidence because the CCPC has told individual farmers that it is their job to provide the CCPC with evidence before the CCPC will even go and ask the meat processors for their opinion on the matter, never mind investigate.

Heads 8 and 9 deal with functions and I cannot see a reference to regulatory inspections. Will inspections be part of the remit of the new office?

**Deputy Charlie McConalogue:** It will have in terms of the unfair trading practices that are listed.

**Deputy Matt Carthy:** I specifically mean the ten practices classified as black.

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**Deputy Charlie McConalogue:** Yes, specifically relating to unfair trading practices.

**Deputy Matt Carthy:** The current enforcement authority requests annual implementation reports from some of the large buyers of agricultural and food products, which are asked to describe the measures that are being taken to ensure compliance. Will the new body request the reports?

**Deputy Charlie McConalogue:** Yes.

**Deputy Matt Carthy:** Head 9(1)(c) says, “collect, analyse and report on publicly available price and market data in the agricultural and food supply chain”. I note from a number of submissions that there is a concern about the wording “publicly available” because it might hinder the performance of the function. I mean if it is only “publicly available” information then the provision could create issues concerning other information. Is that something the Minister would consider in terms of the progress of the Bill?

**Deputy Charlie McConalogue:** There is also broader capacity. There is a legal requirement to collate that information but there is broader capacity for it to commission reports outside of that and seek further information. One of the key capacities here is going to be the proactive capacity to assess what is going on in the market. One of the legal requirements as a starting point is to be an authoritative collector of publicly available market data.

**Deputy Matt Carthy:** Would it not be equally appropriate and less restrictive if the wording referred to collection, analysis and reporting of all price and market data that comes into its possession?

**Deputy Charlie McConalogue:** The next item, Head 9(1)(d), requires it to publish regular analysis and reports on price and market information or contingency issues in regard to the agricultural and food supply chain. The next point provides for the powers and functions to conduct and commission research studies and surveys.

**Deputy Matt Carthy:** I see all of that, I am just asking specifically in Head 9(1)(c).



**Deputy Charlie McConalogue:** It makes it a legal requirement to do that very point but it has much broader capacity than that.

**Deputy Matt Carthy:** Finally on this section, a number of submissions we received were questioning whether the definition of agriculture and food products specifically covers agricultural feed. Can the Minister confirm that is the case?

**Deputy Charlie McConalogue:** Yes.

**Chairman:** That is Head 9. Head 10 is fairly self-explanatory. Head 11 contains----

**Deputy Matt Carthy:** Can I ask a question on Head 10? Some colleagues already asked whether five members are sufficient for the board. In respect of the Data Protection Commission and the Garda Síochána Ombudsman Commission there is provision in legislation for the appointment of additional members if workloads increase. I am wondering why such a provision is not embedded in this Bill and whether the Minister is going to consider adding one.

**Deputy Charlie McConalogue:** The legislation will provide for adding more board members. The approach we are taking is that we feel we want to keep the board efficient. Its ultimate role here is to provide governance and oversight of the work. There will be an executive reporting to it. We felt a board of five plus the chairperson would be sufficient to do that.

**Deputy Matt Carthy:** A quorum would be three which is a very small number of people to be deliberating on such important matters.

**Ms Angela Robinson:** There is also provision for the setting up of committees, as the Deputy will have noticed. If there is additional workload the board can constitute a committee of additional persons to look at particular aspects, for example a sectoral issue.

**Deputy Matt Carthy:** Who would appoint that board though?

**Ms Angela Robinson:** The board would appoint that committee with the approval of the Minister.

**Deputy Matt Carthy:** The Minister mentioned earlier that the Public Appointments Service will be used. Is that in the heads of the Bill?

**Deputy Charlie McConalogue:** Yes.

**Deputy Matt Carthy:** In respect of the chair, would the Minister consider for such an important role that it would be appropriate to get Oireachtas approval of the nominee?

**Deputy Charlie McConalogue:** It is not in the Bill. I would be open to considering that as for many chairs, they would appear before a committee of the Oireachtas as part of the process. We do not have that provision at the moment. I will certainly reflect on that point and see if we would include it as part of the process.

**Deputy Matt Carthy:** For clarification on points 6 and 7 of Head 10, am I correct in understanding that a year after the board is established, and every year after that, one of the members will have to resign? I can understand it is good practice that somebody would step back when a body is in place so that there is renewal. I am sorry, are we after missing a vote?

**Chairman:** The Deputy was going so well I said I would leave him alone.



**Deputy Charlie McConalogue:** How are we pair-wise? Deputy Carthy and I will pair with one another. The Chairman has got me in trouble now.

**Chairman:** We won all right anyway, Minister.

**Deputy Matt Carthy:** The Government did not lose. I apologise for that, I did not even see it.

**Chairman:** I saw the vote all right but I said if we were going up for every vote we were never going to get through our business.

**Deputy Charlie McConalogue:** I will report you to the Whip then, so, Chairman.

**Chairman:** I will deny it.

**Deputy Matt Carthy:** The Minister mentioned earlier - and I think he has committed to this - that farm organisations will be represented on the board. Is that correct?

**Deputy Charlie McConalogue:** It will be through the Public Appointments Service. There will be two primary producers.

**Deputy Matt Carthy:** Are we leaving for a vote?

**Chairman:** That is up to the Deputies.

**Deputy Charlie McConalogue:** There is no point unless there is another one called.

**Chairman:** There is another one called.

**Deputy Charlie McConalogue:** We had better go over so. I do not have a pairing arrangement.

*Sitting suspended at 7.26 p.m. and resumed at 7.32 p.m.*

**Chairman:** I call Deputy Carthy. His coat is coming off, so things are getting serious.

**Deputy Matt Carthy:** I am toggling out now. I hope we do not have to make that trek too often tonight. Regarding the board and reappointments annually or the removal of members, if two members of the board are primary producers, will their replacements automatically be primary producers?

**Deputy Charlie McConalogue:** There is a legal obligation that two members must be primary producers. This legal obligation is specified in the proposed legislation. Ms Robinson will clarify a further point.

**Ms Angela Robinson:** Regarding the question about committees and approval, the committee gives approval. Regarding fees, the consent of the Minister and of the Minister of Public Expenditure and Reform is required. We referred to a new community that had to be established. I might have mentioned that the Minister is involved in the approval. It is the board of the new office that appoints the committee. Only the fees aspect must be approved by the Minister and by the Minister for Public Expenditure and Reform. I just wished to clarify that point. In other words, it is open to the board to appoint the committee members.

**Deputy Michael Fitzmaurice:** Regarding the new board, will it be voluntary? What are the budgets? Have figures been done up in this regard yet?

**Deputy Charlie McConalogue:** The board is open to remuneration, and it is expected that will be in line with similar boards. This is all to be decided. Most State boards do not pay a whole lot, but there is recompense in respect of what is involved for the members.

**Deputy Michael Fitzmaurice:** Will this board meet often?

**Deputy Charlie McConalogue:** The proposed Bill is silent on this matter.

**Deputy Michael Fitzmaurice:** What?

**Deputy Charlie McConalogue:** The proposed Bill is silent on the number of meetings.

**Deputy Michael Fitzmaurice:** There was a great deal of criticism that the task force did not meet often enough. Will there be a meeting every month or every two months? The general scheme is silent in this regard. Who will decide to break this silence?

**Deputy Charlie McConalogue:** The Minister will have a role. It will be important that the committee meets regularly, functions and carries out its legal obligations under this proposed legislation. Regarding the role of the board, we have the executive, the CEO and the staff, but they report to the board. It does governance. Similar to every board in respect of which there are legal implications, it will be important that it meets appropriately in the context of carrying out those duties. We could consider making the proposed legislation more specific regarding the number of meetings, but whether that is appropriate is another question. Certainly, however, the board has legal obligations in the context of this legislation being proposed. Therefore, the board is legally responsible for carrying out those obligations. In respect of being responsible for the job they are doing, therefore, the members would have a duty of care in that regard and a duty concerning their legal responsibilities as well to meet an appropriate number of times to fulfil those obligations.

**Chairman:** I am moving down the heads a small bit, but these is on the same theme as Deputy Fitzmaurice's questions. Provision is made for the attendance of a chief executive before the Committee of Public Accounts, as well as before the relevant Oireachtas committees. The chief executives of the various State bodies under the auspices of the Department of Agriculture, Food and the Marine are expected to come before this committee fairly regularly. Should it not be prescribed in this proposed legislation as well that the chief executive and chair of this new body should appear before this committee?

**Deputy Charlie McConalogue:** What head are we on?

**Chairman:** Head 16 provides for the attendance of a chief executive before the Committee of Public Accounts. Head 17 provides for the attendance of a chief executive before other relevant Oireachtas committees, select or joint, to discuss the general activities of the office. The representatives of Bord na gCon and Horse Racing Ireland, HRI, for example, and all the other bodies under the auspices of the Department of Agriculture, Food and the Marine, are expected to come before this committee. Should it not also have been prescribed in the proposed legislation that the chief executive and chair should appear before this committee as well?

**Deputy Charlie McConalogue:** This proposed legislation makes it a legal requirement for the chair or the CEO to attend the committee if they are requested to do so at any stage.

**Chairman:** Yes, but we had experience where the representatives of certain bodies would balk at coming before us. Specific mention is made of the Committee of Public Accounts.

Since this new agency will be under the remit of the Minister and his Department, I would prefer if the attendance of its chair and CEO before this committee was also prescribed in the proposed legislation.

**Deputy Charlie McConalogue:** We could amend the text to specifically refer to this committee. The current wording makes it a specific legal requirement for the CEO, if asked, to appear before any Oireachtas committee, including this one. The person concerned cannot baulk at attending. The law mandates that he or she must turn up and attend such meetings. Therefore, the legal provision is there. We could specify one committee, namely this one, which is obviously the most relevant. We could keep the other committees unnamed in the proposed legislation.

**Chairman:** That is my preference.

**Deputy Charlie McConalogue:** We can consider that. We will have to work out a legal text as well to change any names.

**Deputy Michael Fitzmaurice:** Regarding the money, approximately €1 million, going to set up this body initially, will farmers be paying any of this cost in the form of a levy or anything like that? I ask this question because levies for many different things are now being applied to farmers. Will they be exempt from having to put their hands in their pockets in this regard? Things are tight enough for them. How is it envisaged that this money will be raised?

**Deputy Charlie McConalogue:** There will be no levy on farmers. The proposed legislation has the capacity to enable the Minister in future, by regulation, should he or she decide, to apply a levy to processors and to those for whom the UTP aspects would apply, but not on the farmers.

**Deputy Michael Fitzmaurice:** Will the processors then pass that on to the farmers?

**Deputy Charlie McConalogue:** There is an allocation in this year's budget, and there will be in the years to come, for the running of the office. I do not have any plan to introduce a levy now, but the proposed Bill does allow for that to be the case in future if running costs required it to be done. My preference, however, is that we would run this agency out of Departmental allocations and funding. Having said that, though, this proposed legislation does provide that there can be a levy, not on farmers but on processors.

**Deputy Michael Fitzmaurice:** It will probably be necessary to pay for them as well.

**Deputy Charlie McConalogue:** The point is that the proposed Bill provides the capacity to enact a levy, but it is not a requirement or an immediate plan.

**Chairman:** Head 11 deals with the term of the chair. Do the members have any questions on this aspect?

Head 12 provides for meetings and the procedures of the board. Is that okay?

Head 13 provides the board with the power to establish committees and set out how they operate. That is what Ms Robinson was referring to earlier.

Head 14 provides for the chief executive of the office and outlines their appointment process and tenure in the role.

Head 15 sets out the functions of the chief executive.

Heads 16 and 17 are what I was inquiring about a minute ago. Head 16 provides for the attendance of the chief executive before the Committee of Public Accounts. Head 17 provides for the attendance of the chief executive before other relevant Oireachtas committees. I made my point on that to the Minister. It would be better if this committee was mentioned specifically.

Head 18 is a standard provision relating to a person maintaining a role with the office if they are elected to public office.

Head 19 provides indemnity for members of staff of the office when they are carrying out their obligations under the legislation.

Head 20 provides for the submission of a three-year strategy statement from the board to the Minister, who should lay it before the Houses of the Oireachtas. The board will also submit a work programme on the discharging of its functions to the Minister.

**Deputy Michael Fitzmaurice:** If it is a report to be laid before the Houses, would it not be better if it was yearly? What are the Minister's thoughts on that?

**Deputy Charlie McConalogue:** Standard practice for many bodies would be to lay out a report every three years. It is a reasonable timeframe. It is appropriate-----

**Chairman:** Within that three years would there be progress reports on the strategy?

**Deputy Charlie McConalogue:** It will give progress reports, certainly, but it makes sense that you do a certain level of medium-term planning too and that there be consistency in that regard. I would imagine that if it was every year, the reports would be quite similar each year, whereas if you are doing it every three years, there is a bit more onus on you to review it a bit more strategically and plot it out on a three-year basis. That is a sensible approach here.

**Chairman:** It would be a three-year strategy with yearly reports. Okay.

Head 21 provides for an annual report to be submitted to the Minister and certain minimum requirements around same, such as details of claims received, number of investigations and decisions of the office on UTPs.

Head 22 provides for the provision of funds to the office by the Minister advanced from funds provided by the Oireachtas.

Head 24 provides for the disclosure of an interest by relevant persons.

Head 25 allows the office to enter into contracts and engage consultants and advisers, paid by the office's own funds, as may be required in the performance of its duties.

Head 26 relates to securing premises for the office to perform its functions.

Head 27 relates to the seal of office of the body established by an enactment.

Head 28 confers the power to borrow money on the office to perform its functions, subject to the consent of the Minister for Public Expenditure and Reform.

Head 29 prohibits an unauthorised disclosure of information obtained by persons while engaged in their role with the office.

Head 30 amends the Freedom of Information Act 1997 to include the office.

Chapter 2 of the general scheme concerns the staff of the office. Head 31 provides the board may find staff for the office and determine their number and grade, subject to the relevant ministerial approval. The board may also determine the terms and conditions of staff, subject to relevant ministerial approval.

Head 32 provides for the transfer of employment of certain persons from a Department of State or by a public body to the office where that person has agreed to transfer. It also provides safeguards for the interests of such persons that their previous service will be counted as service for the purpose for a number of related Acts.

Head 33 relates to remuneration of those engaged by the office. I presume the remuneration will be transparent.

**Deputy Charlie McConalogue:** Yes. It will be reportable to the Minister, etc.

**Chairman:** We had a body there lately where the remuneration of the chief executive was not made public.

Chapter 3 of the scheme concerns the transfer of functions, namely, the transfer of functions of unfair trading practices enforcement authority, UTPEA, under the UTP directive to the office and also provides that anything commenced under the directive before the office is established may be continued.

Head 35 carries over any existing UTPEA contracts or agreements to the office.

Head 36 transfers any assets or liability of the UTPEA to the office.

Head 37 designates the office as the enforcement authority for the purposes of the directive and requires it to fulfil obligations under the directive.

Head 38 carries over certain obligations of the enforcement authority under the directive's Article 5 regarding complaints.

**Deputy Matt Carthy:** I wish to address that one.

**Chairman:** All right.

**Deputy Matt Carthy:** On head 38-----

**Chairman:** I was going right well Deputy.

**Deputy Matt Carthy:** You were flying.

**Chairman:** Yes.

**Deputy Matt Carthy:** I am sorry for breaking your stride.

**Chairman:** Yes, all right.

**Deputy Matt Carthy:** Head 38(1) concerns the office's ability to initiate and conduct investigations on its own initiative or on the basis of a complaint. I will take the first part first and the reference to the office's "own initiative". This also goes back to the earlier point. What capacity and power does the office have to conduct investigations on its own

initiative? Is the Minister satisfied it will have a budget, staff in place and crucially, the power to do what a regulatory would be able to do like entering a premises, seize documents and getting full information on financial accounts if it feels there are unfair trading practices occurring?

**Deputy Charlie McConalogue:** Yes. Where it relates to the listed unfair trading practices, the office will have those powers. Mr. Collins may want to go into the protocol on that to elaborate.

**Mr. Noel Collins:** I can comment on the current regulations. They give extensive powers to authorised officers to inspect and enforce, including investigations, and to access records and seize records as appropriate that relate to an investigation should they form evidence as part of a subsequent-----

**Deputy Matt Carthy:** How many times have those powers been used to date?

**Mr. Noel Collins:** We have not initiated an investigation under the current regulations.

**Deputy Matt Carthy:** Those are precisely the same powers that will be conferred on the new body.

**Deputy Charlie McConalogue:** It is the same ones that are transposed in this proposed Bill.

**Deputy Matt Carthy:** On the basis of a complaint then and from some of the submissions we received, there are concerns in respect of head 38(3)(b). It states, “Other organisations that have a legitimate interest in representing suppliers shall have the right to submit complaints”. Does that exclude individuals, for example, an individual farmer, from making a complaint under that article? It appears it will allow farm organisations, as I read it.

**Deputy Charlie McConalogue:** Yes. Anyone can make a complaint.

**Deputy Matt Carthy:** The Minister is saying that also relates to individuals, under head 38(3).

**Deputy Charlie McConalogue:** Individual farmers can make them, yes. Any supplier can.

**Deputy Matt Carthy:** Yes. The Competition and Consumer Protection Commission, CCPC, and the IFA have made submissions and drawn attention to confidentiality being particularly important. Is that a shortcoming, in the Minister’s view? This is in respect of head 38(4).

**Deputy Charlie McConalogue:** This is in relation to whenever a complaint is being investigated.

**Deputy Matt Carthy:** Yes. It states, “Where the complainant so requests, the Office shall take the necessary measures for the appropriate protection of the identity of the complainant or the members”. Thus they must request it.

**Deputy Charlie McConalogue:** Yes.

**Deputy Matt Carthy:** The submissions we have received have said it should be the default position that confidentiality is protected unless there is a very strong reason to divulge information. As I said, we heard that from two very different actors, namely, the CCPC and the IFA. They essentially said confidentiality should be the default position.



**Deputy Charlie McConalogue:** You could go at it either way but the key thing here is it is in legislation and a legal requirement for confidentiality for the complainant. The reason is to give confidence to anybody making a complaint they will be legally protected and their identity legally protected. This is strong in that anybody who is making a complaint can ensure that is the case, simply request that, and they have the legal protection for that. I think it is appropriate but it is open for debate. I think this covers it well.

**Deputy Matt Carthy:** I move to head 38(5)(a) that provides the office can decide not to investigate complaints it considers frivolous or vexatious. Going back to my earlier question, if I contacted the office and said I think a cartel is operating in the meat factories, would the Minister consider that to be vexatious or a legitimate complaint? I refer to the new office rather than the Minister personally.

**Deputy Charlie McConalogue:** The office has been set up for a particular purpose, to ensure there is transparency and oversight of the unfair trading practices directive. It would be erroneous to require in law that it should follow up on every issue it regards as frivolous, having assessed them. Its legal obligation is to follow up on any complaint that it assesses as having merit. One of its key functions will be to properly assess, follow up on and apply the full force of the law to any complaint it gets that has any merit at all. If the opposite was the case and the office had a legal obligation to follow up on every case, there would be nothing to stop people from bringing it down with-----

**Deputy Matt Carthy:** I accept that. The definition is important.

**Deputy Charlie McConalogue:** Ms Robinson wants to make a further point, if that is okay.

**Ms Angela Robinson:** The Deputy made a point about submissions and confidentiality where the complainant so requests. That was taken directly from the directive during its transposition. It is required that member states shall ensure, when the complainant so requests-----

**Deputy Matt Carthy:** The submissions requested that it be strengthened rather than undermined, so the default position would be that the complainant's identity would not be publicised-----

**Ms Angela Robinson:** I understand.

**Deputy Matt Carthy:** -----or given to the person the complaint is being made against, unless there was a good reason for the office to do that. It would strengthen that position. My question was about whether we could look at that. This issue comes on the back of a submission from the Irish Farmers' Association. Head 38(9) states, "Where the Office considers that there are insufficient grounds for acting on a complaint, it shall inform the complainant of the reasons within a reasonable period of time after the receipt of the complaint." Would the complainant be informed in writing? Is there a need for that to be specified?

**Deputy Charlie McConalogue:** What is the Deputy's question?

**Deputy Matt Carthy:** As it is currently worded, it states that the complainant should be informed. A farm organisation has requested the inclusion of the words "in writing". Can that be considered?

**Deputy Charlie McConalogue:** We can consider that. Informing a person in writing would be the professional way to do business.

**Deputy Matt Carthy:** I presume there is a particular reason that a farm organisation has raised that. It arises on the back of its experience.

**Deputy Charlie McConalogue:** That is fair enough. We can look at that.

**Chairman:** Head 39 allows the Minister, following consultation with the European Commission, to “prohibit certain trading practices in business-to-business relationships in the agricultural and food supply chain (referred to as an “unfair trading practice””, by way of regulation. This head prohibits engagement in UTPs. The general scheme states, “This Head also reflects the existing UTPs in the Directive and provides for regulations to be made with regard to such UTPs.”

**Deputy Matt Carthy:** A couple of points have been raised already. There was quite a bit of discussion of the groceries order. Up until the last 12 months of the life of that order, there were few complaints about it. It was driven by a high-profile campaign and the Minister at the time abolished it. Members may recall hearing me say on numerous occasions that I was so disappointed with this regulation at a European level was because I thought there was capacity to ban below-cost selling across the EU, which would be a game changer. Recognising that most of our product is exported, mostly within the EU, that would have been a positive step. I was disappointed there was not stronger support at an Irish level, including from the Government. The Minister said there can be different impacts and that he saw no evidence regarding legislation similar to the groceries order to ban the below-cost retail selling of perishable foods. Has he conducted or does he plan to conduct an analysis of whether these laws are in place in other jurisdictions and what their strengths and weaknesses are, along with a full impact assessment of a potential ban on below-cost selling?

**Deputy Charlie McConalogue:** The Competition and Consumer Protection Commission has assessed it and reviewed studies that have found that laws banning below-cost selling have often failed to safeguard the parties they aim to protect. There is no evidence from the research on this so far to suggest that such a ban works. We can look at our own national experience of when this was in place in the late 1990s or early 2000s. There was no sense that this had a benefit for farmers or food producers, but it added complexity, administration and red tape to the supply chain. It ultimately led to increased prices for consumers but there was no evidence it led to increased prices for primary producers or farmers. France has tried to do something, which has not worked out. There is a case centred on below-cost selling in Spanish law. The European Court of Justice raised issues regarding compliance with EU law. No matter what one requires people to sell a product for, it does not necessarily change their behaviour relating to how they purchase it. If we required our supermarkets and retailers to sell products at a certain level from the supermarket shelves, the idea that, as a result, purchasers would give a good price to the people who supply them does not stand up to scrutiny.

Ultimately, we want to ensure there is respect for the need for proper margins in the engagement between sellers and primary producers. I have seen no evidence that banning below-cost selling achieves that. We trialled this for more than 20 years in our own country and it failed. It sounds grand as a sound bite but there has been no evidence to support the idea. Any evidence we have is to the contrary.

**Deputy Matt Carthy:** That might be the case if the price is static but, since the abolition of the groceries order, the proportion of income spent on food has diminished greatly. Part of the reason for that is the abolition of the groceries order. To my mind, it could certainly be-----

**Chairman:** Will Deputy Carthy speak to the Bill in front of us?

**Deputy Matt Carthy:** This relates to the head of the Bill and the practices that are being banned. The concept of fresh food has been devalued because a person can sometimes buy a head of lettuce for 8 cent. Other vegetables can be very cheap if they are bought in the right place at the right time. There is much anecdotal evidence to suggest that when those types of sales are run, including of dairy products and previously meat products, it puts pressure on processors, which in turn puts pressure on farmers to reduce the cost that they offer. Recently, we saw poultry farmers from across the country protesting outside some large retailers. The situation was flipped on its head entirely. They were told that the supermarkets would not pay an extra 15 cent per chicken because their consumers were used to being able to get chickens so cheaply. Then when global factors have influence, all of a sudden the retailers have no problem putting up the cost of their food. It is nothing to do with the primary producers here in Ireland. All I am asking for is that the Department of Agriculture, Food and the Marine carry out its own appraisal of whether there can be a mechanism. It does not have to be the same groceries order. In my view it would be better at a pan-EU level, but if we cannot do that, let us look at all options in respect of Ireland.

**Deputy Charlie McConalogue:** This is something to which I have given quite a bit of thought. The Department of Agriculture, Food and the Marine, the Department of Enterprise, Trade and Employment and so forth have given this a lot of consideration at different times. International examples have been monitored at different times too. There is no evidence, in our experience of this or what is happening internationally, to back that up. I accept we need a healthier understanding of and relationships in the food supply chain from food producer to consumer. That relates to the value of food, what is taken and involved in producing it and particularly around the importance of respect for the primary producer. It will be an important role for the new office, especially with products that are produced domestically primarily for the domestic market and in relation to the supply chain protocols and codes of conduct around engagement.

I do not see, nor has anyone shown me, how below-cost selling would actually achieve that. There is undoubtedly work to be done there and it will be an important role for the office to bring about a much more respectful supply chain, particularly for the produce we produce for our own market.

**Deputy Matt Carthy:** Concerns have been expressed in some of the submissions we have received. The IFA has expressed concern that its members have encountered different definitions about perishables and whether it relates to 30 days or might be extended to 60 days. I do not know if the Minister has seen that submission and whether he can address that.

**Chairman:** That was a submission to the committee, not to the Minister.

**Deputy Matt Carthy:** That was a submission to our committee. Okay. Does the Minister understand the context of the question or the general point?

**Deputy Charlie McConalogue:** That 30 days or 60 days is perishable?

**Deputy Matt Carthy:** Yes. I expect this is in the sale or returns element.

**Deputy Charlie McConalogue:** What we have is based on the unfair trading practices directive. If the Deputy wants to forward that on to us, we will look at it and consider the points.

**Deputy Matt Carthy:** We will do that. Returning to the earlier point about the grey and black, this is the difficulty. Someone in a contract with a retailer or another body for a long time who has been forced to have these grey practices included in the contract is in a weak position to say he or she does not want that anymore. Is that not the case? The purpose of the greying of those should be that I as an individual or a company can go to this new body, say something is in my contract that I do not think is appropriate, and the office can examine the matter, judge that there is no rationale for it to be in the contract and instruct the retailer to remove it. Will that be the position?

**Deputy Charlie McConalogue:** Possibly, or it could be the case that both sides are quite happy with arrangements. A reasonable starting point would be to work from the European standard, which received a lot of assessment before it was agreed on. A key reason for setting up the office is that it can monitor situations like that and assess exactly what is happening. Where feedback like that comes from suppliers, we can adjust our position and try to ensure the supply chain is healthy and respectful. If we need to turn some greys into black because they are unfair and they put undue pressure on suppliers to do things they would not want to do, then that would be a reason to adjust and do that. As a starting point, given this is something that was teased out in great detail and is now a standard across Europe, we should start with the unfair trading practices that are there, and the Bill provides that they can be adjusted as we go.

**Deputy Matt Carthy:** As I mentioned, I was involved in the negotiations at EU level and the exact opposite argument was used: that we would set a minimum standard and the expectation was that member states would go much further. They will probably include all, if not a large amount, of the grey list and probably add new ones themselves. That was nearly five years ago at this stage and now here we are.

**Deputy Charlie McConalogue:** We can do that, and if there are ones the Deputy wishes to suggest, I will be all ears. This is a starting point. Importantly, the legislation provides for exactly that, that it is for us to expand the list and adjust it. As a starting point we are working on the base that is there at the moment.

**Deputy Matt Carthy:** A suggestion has been made by the Irish Natura and Hill Farmers Association that categorises as an unfair trading practice the rules around conformity, such as the colour of eggs or the size and shape of vegetables. It is lunatic stuff that leads to food being thrown out sometimes. Would the Minister consider the ban of that practice to be an appropriate unfair trading practice to be added to the list?

**Deputy Charlie McConalogue:** On a black UTP the current regulations say, “A buyer shall not unilaterally change the terms of a supply agreement for the agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standard, the terms of payment or the price, or as regards the provision of services insofar as these are explicitly referred to in Regulation 7.” Again, the legislation is providing the capacity for us to go further and to do more. It is important we get insight and feedback from suppliers, that we have a good read and steer on what is happening in the market, and that we are responsive in ensuring we are adapting the unfair trading regulations as we go. If there are ones people feel strongly should be there from the outset, I will listen to them and consider them. What is very important, though, is the Bill we are passing here provides the capacity to improve things immediately and to adapt and improve where necessary. We are open to all suggestions. The office, once established, will play an important role in assessing the value and merit of different proposals.

**Chairman:** Head 40 makes it an offence to engage in a UTP in contravention of a regulation made under head 39. Head 41 provides for the voluntary use of effective alternative dispute resolution mechanisms in cases where the office believes they could be successful. The office may suspend examination of a complaint during the use of this mechanism. Article 7 of Directive 2019/633 also promotes the use of alternative dispute resolution mechanisms such as mediation.

**Deputy Matt Carthy:** On part 4, it makes sense that where the parties to an independent alternative dispute resolution reach full and final conclusion, the office may consider the issue closed. Is there an inference, and if so, can it be made more explicit, that where they do not reach a resolution, the office then resumes its consideration?

**Deputy Charlie McConalogue:** First, the office is not required to consider an issue closed in such circumstances, because if issues have arisen on which the office feels it should follow up, the capacity is there for it to do that. My reading of the legislation is that in the absence of a resolution being agreed between the parties, the issue is not closed. It is clear that is what the legislation says.

**Chairman:** Head 42 states the office shall collect, analyse and report on price and market information in the agricultural and food sector and that it shall be published regularly. There may also be studies or analyses on the functions of the office where requested by the Minister or on the office's own initiative.

**Deputy Matt Carthy:** This was in relation to a late submission from Musgrave, which referenced the need to report on the price of products such as butter and mince as a new provision. It sought new information, yet in the April briefing to us the Department indicated that is already collected by the Department in relation to butter. What additional produce will be price-tracked?

**Ms Angela Robinson:** Under the market transparency rules at EU level, additional reporting requirements were brought in for member states, transposed by the Minister last year in SI 449 of 2021. That requires additional information regarding the selling price, which is the price at which a processor sells the product, and the buying price, which is the price at which the retailer buys in. Under these new additional price-reporting requirements, the selling and buying prices are required for beef meat, forequarters, hindquarters, beef minced meat, poultry cuts, drinking milk, butters - retailers are required to submit the price they buy butter at - and fat-filled powder.

**Deputy Matt Carthy:** Are they required now?

**Ms Angela Robinson:** Yes. They are reported to the Department and onwards then to the Commission.

**Deputy Matt Carthy:** They are not new powers given to the Commission to price-track those. That is already happening.

**Ms Angela Robinson:** Yes. It is part of the statutory instrument the Minister transposed last year under market transparency.

**Chairman:** Head 43:

provides that the Office may engage with the Minister or another minister of the Gov-



ernment where it believes that it can contribute to the bringing forward of legislation. [According to the general scheme] It relies on section 9 of the Consumer Protection Act 2007.

The office should keep regulations made under the Bill under review.

**Deputy Matt Carthy:** This head mentions that the Minister may consult the office regarding proposals for legislation in terms of fairness and transparency. The office could bring proposals but there is no obligation on the Minister to act. Is there a mechanism by which, at a minimum, there would be an obligation on the Minister to outline why he or she has not acted?

**Deputy Charlie McConalogue:** The Minister, Oireachtas and Government are the competent authorities for governing the country and setting laws so to require the Minister to follow what an office suggests would not be appropriate. The Deputy is suggesting that if the office suggests something and the Minister does not act, he or she should be accountable for it, but the Minister is accountable to the Oireachtas, the committee etc. for everything so there is strong oversight of any action the Minister does or does not take. I do not see it as something to be put into legislation.

**Chairman:** Part 4 is on agrifood regulations. Head 44 is:

an enabling provision that allows the Minister to make Regulations to provide for the more efficient application of the Act. It also provides that Regulations may be made to give effect to an act of an institution of the European Union.

Part 5 is on enforcement. Head 45 provides for the appointment of authorised officers for the exercise of functions of the office. Head 46 sets out the functions of authorised officers, which include entering and inspecting premises, examining documents and records and inspecting and taking copies of records. Authorised officers will have the power to search land, premises and vehicles. Private dwellings have specific requirements.

**Deputy Matt Carthy:** On general powers of inspection, providing for seizing documents or equipment, do those powers include the power to identify beneficial ownership of an entity? It is head 46. It is on the general power of inspection. If a complaint is made against a body - large processors, for example - will the inspectors or authorised officers have the right to identify the beneficial owner?

**Deputy Charlie McConalogue:** Subsection (12) of head 46 states, “An authorised officer may require a person to give to the officer such information as is in the person’s power or procurement as regards any premises specified by the officer including”; and then under (b) it states, “the name of the owner, occupier or person who is in charge of the premises”.

**Deputy Matt Carthy:** That is not necessarily the same thing as the beneficial owner. The person in charge of the premises could be a company in the Isle of Man. It might not be the person who owns the companies.

**Deputy Charlie McConalogue:** It requires the name of the owner.

**Deputy Matt Carthy:** Okay. That is okay for now.

**Deputy Martin Browne:** Under head 45, “Appointment of authorised officer”, it states, “The Chief executive may appoint in writing such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under this Bill”. What criteria or qualifications would be required for that role? Is it enforcement, agriculture or finance?



**Deputy Charlie McConalogue:** I would expect it in the main to be employees of the new office of fairness and transparency. If it was a very specialist skill they had to find somebody to do, it would have the capacity to do that as well. The key thing would be the responsibility of the CEO to appropriately designate authorised officers. It is an important position and a responsibility which has to be carried out in a way that is responsive to law. Therefore, the CEO would have a responsibility to make sure the person appointed as authorised officer is appropriate to the task.

**Deputy Martin Browne:** The functions of an authorised officer include inspecting at all reasonable times any premises if he or she is carrying out official activity. He or she can examine documents and records, inspect vehicles and demand the production of documents or access to places. There is a lot in it. I wanted to know about the criteria. Have we people in mind who can cover all that?

**Deputy Charlie McConalogue:** I expect it would be primarily employees of the office of fairness and transparency. As Deputy Browne noted, many legal powers are assigned to the authorised officer. As it is a role that carries responsibility and duty to the law, the CEO would have to be satisfied in relation to the appointee. We have the appointment of authorised officers at present for various functions such as, for example, in relation to animal welfare. There is the appointment of authorised officers for inspecting and going onto premises for animal welfare purposes and seizing animals where they are not being cared for appropriately etc. This is a different type of authorised officer but it would be within the responsibilities and the duties of the CEO to appoint them.

**Chairman:** Head 47 provides that a judge may issue a search warrant for an authorised officer to enter a premises where there are reasonable grounds for same. Head 48 provides that an authorised officer may serve a compliance notice instructing a buyer to remedy an infringement under the Bill. This head also provides for an appeal by the buyer to the Circuit Court where a person has been issued with a compliance notice. Head 49 makes it an offence to obstruct an authorised officer in the exercise of his or her functions under the Bill. It will also be an offence to make false or misleading statements.

Part 6 deals with criminal proceedings. Head 50 provides for the extension of the time limit for a summary offence under the Bill, as explained by the general scheme.

**Deputy Matt Carthy:** On that, the time limit for instituting proceedings is two years. It seems to be fairly short. We have a number of submissions that have advocated for three years. It appears to be an incredibly tight timeframe for proceedings to be brought within two years from the date of the alleged commission of the offence. Considering that this is a body that has to carry out a piece of work, make a determination and follow through, that could make it incredibly tight in legal terms.

**Deputy Charlie McConalogue:** I will ask Mr. Kinsella to comment on that.

**Mr. John Kinsella:** That type of timeframe would be usual for a summary offence. We would be aware if the office is bringing proceedings for summary offences. If it is an indictable offence, there will not be any time limits. It is only when it is bringing proceedings in the lower courts.

**Deputy Matt Carthy:** One of the submissions stated that the time limit of three years would cater for a potential delay on the part of the complainant to bring a complaint to the office

in the first instance. One can see that if somebody only realises he or she has been subject to an unfair trading practice perhaps six months after it happens, when maybe an accountant brings it to his or her attention, and the person then makes a complaint to the office and the office has to carry out its work, two years is an incredibly tight timeframe.

**Mr. John Kinsella:** It is, but the law generally tries to strike a balance on people's rights to defend those types of allegations. The longer there is a gap between the date of the offence and the institution of proceedings, it is generally difficult for the accused person in those types of proceedings to defend himself or herself. However, I reiterate it only relates to summary offences. The indictable offences do not have those time limits.

**Chairman:** I call Deputy Martin Browne.

**Deputy Martin Browne:** Deputy Carthy has covered it. There was a request for it to be extended to three years. For clarity, is this the time period referred to in head 38(5)(c) that the office "may decide not to investigate a complaint referred to in subsection (1), or to discontinue an investigation of a complaint" on the ground that "the practice complained of occurred at too remote a time to justify investigation"?

**Mr. John Kinsella:** No. The time limit only relates to a summary offence, so that is proceedings brought in the lower courts, the District Court.

**Chairman:** Okay. Head 51 provides that a person such as a director, manager, secretary or any other officer of a corporation may be held responsible for the actions of the corporation where he or she is directly culpable. Head 52 sets out fines and penalties for an offence committed under the Bill. A person who commits an offence under section 29(3) is liable on summary conviction to a class A fine. A person who commits an offence under sections 48(11) or 49(1) is liable on summary conviction to a class A fine or imprisonment for a term not exceeding six months or to both, or on conviction on indictment to a fine not exceeding €500,000 or to imprisonment for a term not exceeding three years or to both.

**Deputy Matt Carthy:** The level of the potential fine on conviction on indictment of €500,000 might appear to be a large sum, but it is not for some of the operators. The transposition of the ECN+ directive this year gave the Competition and Consumer Protection Commission, CCPC, power to issue fines of up to €10 million or 10% of turnover. The general data protection regulation, GDPR, provides for fines of €20 million or 4% of global turnover. We are talking about huge operations in some instances and if they are breaching what are already very restrictive UTP regulations and if they are doing it on a large scale, their profits could be significantly more than the €500,000 fine they could receive. Would it be appropriate to look at the powers the Dáil has legislated for in the last couple of years in respect of the CCPC and copy and paste them into this Bill with regard to fines?

**Deputy Charlie McConalogue:** Mr. Kinsella will speak on the rationale for the €500,000.

**Mr. John Kinsella:** That is a specific offence relating to section 29(3). It relates to the disclosure of confidential information.

**Deputy Matt Carthy:** It is the greatest penalty that can be applied.

**Mr. John Kinsella:** Yes, for that offence.

**Deputy Matt Carthy:** For any offence in this.

**Mr. John Kinsella:** The Deputy is right. My apologies. That comes from EU law. The current statutory instrument that deals with UTPs is limited to €500,000 because that is the limitation imposed by the European Union Act. If people think that the penalty should be increased, we can look at that, but that is why it is set at that rate at present. That is what is required by the Act.

**Deputy Matt Carthy:** I ask the Minister to look at that and to look at the legislation the Dáil has passed. There are two legislative measures in particular, but the one relating to the CCPC is the most appropriate on that.

I have a question about head 55, which is about the exact opposite. It provides for a fixed penalty of €250 to €1,000. Can we get a sense of what type of infringements a fixed penalty would be considered appropriate for and, second, whether that range would be an appropriate deterrent? With regard to multinational companies, it is very low to get a €250 fixed fine.

**Ms Angela Robinson:** That is a fixed fee. I ask Mr. Kinsella to correct me if I am wrong, but it is at the discretion of the enforcement authority to decide whether it wants to go down that route rather than initiate legal proceedings. Once it issues that fixed penalty notice and if that is paid, the legal proceedings would not be initiated. It is important to be clear on that. If, for example, there were cases where it was considered that there was not a substantive breach, the enforcement authority might like to decide on that. If the operator or the buyer accepted that there was a non-compliance, the enforcement authority could decide to issue a fixed payment notice on that. There are very strict rules regarding the fixed payment notice. They are the maximum that can be provided. That is my understanding.

**Deputy Matt Carthy:** The €1,000 is the maximum.

**Ms Angela Robinson:** Yes.

**Deputy Matt Carthy:** On foot of Senator Paul Daly's earlier point, is it possible that a fixed payment mechanism can be put in place? If somebody was infringed to the tune of that type of money because of a breach of UTP, could this office pass a fixed payment instruction that the processor or retailer pays the supplier in respect of that? Does Ms Robinson understand the question?

**Ms Angela Robinson:** I will refer it to Mr. Kinsella because we looked at that in some detail in the early stages of the drafting to see, as Senator Paul Daly pointed out, whether there could be a recompense or an offsetting of payments in respect of that. However, considerations around the legality of that were quite complex and lengthy. Mr. Kinsella is more familiar with this. We had discussions on it.

**Mr. John Kinsella:** Ms Robinson put it well. This is not a system of administrative fines. This is a procedure whereby people are given the option to accept there has been a breach in the law and accept a small penalty. This is why the penalties are so small. Because people would not go near court, the offences involved must be very regulatory. It is usually for very minor offences that do not carry custodial penalties or heavy fines. It is only available for very minor transgressions. It can only be put out as an option when a decision has been made to prosecute. It is an option for somebody to buy off a prosecution much like a road traffic offence. It is in this range of offences.

**Deputy Matt Carthy:** If there are unfair trading practices, somebody has been treated unfairly. Senator Daly put it very well earlier. People found guilty of committing an offence

pay a fine. The office can tick a box and save everyone from going to court. The only person who gets nothing is the person who had to pay to get the complaint considered in the first place. That person will be down money.

**Mr. John Kinsella:** We do not provide for this in the Bill. If somebody has a cause of action and is out of pocket as a result of an unfair trading practice-----

**Deputy Matt Carthy:** That person has to go to court.

**Mr. John Kinsella:** -----that person has to go to court.

**Deputy Matt Carthy:** That person cannot issue a fixed notice penalty.

**Mr. John Kinsella:** A compensation payment would be an administration of justice function reserved under our Constitution to the courts. As the Deputy knows, under the Constitution there are limits to what we can provide for in legislation. The Deputy is straying into this type of territory. It becomes very complicated when administrative penalties such as these are requested. We just cannot do it.

**Senator Paul Daly:** Is there any provision for appeal other than to go to court after the decision?

**Mr. John Kinsella:** An appeal by whom?

**Senator Paul Daly:** An appeal by the person who has been found by the body to be infringing. Is there any recourse to appeal other than going to court?

**Deputy Charlie McConalogue:** The option of a fine would be there. If the office for fairness and transparency is taking a case forward, it would have to go to court in the first instance to prosecute. The court would-----

**Senator Paul Daly:** What if people are slapped with fixed penalties?

**Deputy Charlie McConalogue:** They would not have to pay them.

**Senator Paul Daly:** People either pay a fixed penalty or go to court.

**Deputy Charlie McConalogue:** Yes.

**Senator Paul Daly:** What if people think they are innocent? Do they have recourse to appeal the decision without going to court?

**Deputy Charlie McConalogue:** In that case they would not have taken the fixed penalty. It would be up to the unfair trading practices directive to take them to court and they would have their day in court.

**Senator Paul Daly:** So there is no appeal process in the system.

**Deputy Charlie McConalogue:** Until such time as people are brought to court, they would not have anything to appeal. They would be in disagreement and they would be defending a case.

**Senator Paul Daly:** They would have been slapped with a fixed penalty.

**Deputy Charlie McConalogue:** Yes, but-----

**Senator Paul Daly:** They would feel aggrieved that they were innocent but this group has found them guilty. They would be slapped with a fixed penalty but they would have no recourse to appeal other than refusing to pay the penalty and going to court in the hope of proving their innocence.

**Mr. John Kinsella:** To be clear, a fixed penalty is an option people will be presented with. It is not an administrative fine. They will not be stuck with it. They will have the option of taking a fixed penalty or going to court. If people think they are innocent and do not want to accept the fixed penalty then presumably they will go to court. Once they are in the court process they have the range of appeal options that are available to anybody in the courts.

**Senator Paul Daly:** Hypothetically speaking, if a major buyer of mushrooms accepts the ruling of this organisation and accepts a fixed penalty, that buyer is accepting there is something wrong with the buying process. In the retailer's eye this will open up the floodgates. Those selling tomatoes, apples and oranges will say that if the mushroom supplier was treated like that, they would all be in for the kill. Surely that buyer would want to appeal it to the nth degree before it got out among the other suppliers that there was a breach of trading practices.

**Mr. John Kinsella:** We would not expect that buyers who do not think they are engaging in an unfair trading practice would take the fixed penalty notice option. Such a case would then be in the courts where the enforcement authority could make a finding against the buyer and that would be public.

**Senator Paul Daly:** To answer my question there is no internal appeal. The appeal is the court of the land.

**Deputy Charlie McConalogue:** We would expect there to be a lot of dialogue between the buyers and the enforcement authority on an issue. People can appeal a compliance notice but they have to go to court to do so. There is an onus on the unfair trading authority to ensure it has-----

**Senator Paul Daly:** It is through the court and there is no internal appeal process.

**Deputy Charlie McConalogue:** It is not in the interests of the unfair trading practices enforcement authority or the office of fairness and transparency to go to court for something that does not stack up.

**Deputy Martin Browne:** I want to come back to the penalties and the €500,000. The directive does not stipulate a minimum or maximum threshold for financial sanctions. Ireland has no minimum, but we do have a maximum. Why was this way to do it chosen? It has been mentioned that it went through Europe. It seems to be rather a light touch and will not act as much of the deterrent especially for larger buyers. In the Minister's opinion will the penalty act as a suitable deterrent for this type of practice?

**Deputy Charlie McConalogue:** Will the €500,000 act as a suitable deterrent?

**Deputy Martin Browne:** Yes.

**Deputy Charlie McConalogue:** I think €500,000 is a significant deterrent-----

**Deputy Martin Browne:** Not for a multinational.

**Deputy Charlie McConalogue:** -----in anybody's book. Decisions can be published,



which is significant from a reputational point of view. We will reflect on the points that have been made. This is pre-legislative scrutiny. It is a significant Bill to which we have given thought and on which we have worked closely with the Office of the Attorney General. This is the first step in the legislative process. We will consider the matter further. I would certainly see €500,000 as being a pretty hefty penalty.

**Chairman:** Head 53 provides the court shall order the guilty party to pay the office's costs and expenses relating to the investigation, detection and prosecution of the offence.

Head 54 provides the office will institute summary proceeding for offences. We have dealt with head 55.

Part 70 deals with miscellaneous provisions. Head 56 enables the Minister, with the consent of the Minister for Public Expenditure and Reform, to make regulations imposing fees to be paid by a person making a complaint under the proposed Bill. This is for the purpose of meeting expenses properly incurred by the office in the due performance of its functions under the proposed Bill. Such regulations may apply to the rate of fees payable. The Minister may direct the office to pay surplus funds to the central fund where gross income received by the office in each financial year exceeds the amount of expenditure incurred in the administration of its office in that year. Earlier we spoke about serial objectors clogging up the system. Is there a way that a fee would not be charged the first time someone makes a complaint?

**Deputy Charlie McConalogue:** We do not necessarily have to charge a fee.

**Chairman:** I understand the reason. We do not want someone making free with complaints and clogging up the system.

**Deputy Charlie McConalogue:** We might potentially set it up without a fee and see how it goes. I will have to take legal advice on whether it is possible for someone's first complaint to be without a fee and the second to have a fee.

**Chairman:** Would that be possible?

**Deputy Charlie McConalogue:** I do not know whether that would prejudice a second complaint over a first complaint. If we were planning a fee it would not be significant. We want to avoid a situation whereby somebody can fire off complaints at the press of a button.

**Chairman:** I accept that.

**Deputy Charlie McConalogue:** A fee of €30 or €50 would potentially change the pitch but not act as a barrier to anybody with a genuine complaint.

**Chairman:** Head 57 provides for an annual estimate of income for certain purposes to be submitted by the office to the Minister. The general scheme explains that this head is based on section 24A of the Consumer Protection Act 2007, as inserted by the Central Bank Reform Act 2010, and relates to the Bill's following provisions providing for levies.

Head 58 provides for the power to impose levies that will contribute to the cost of enforcing rules on UTPs. The office may, with the relevant ministerial consent, make regulations prescribing levies to be paid by buyers who are subject to regulation by or under this Bill. This is for the purpose of meeting expenses arising from discharging the office's functions under the Bill. Under subsection (4), where the office proposes to make regulations under this section, a draft of the regulations shall be laid before each House of the Oireachtas and the regulations

shall not be made until a resolution approving of the draft has been passed by each House.

Head 59 provides for a circumstance where either a surplus or a deficiency in certain income of the office occurs during a financial year. The office may adjust levies accordingly.

Head 60 provides that the annual report and annual accounts of the office shall contain details relating to any prescribed levy.

Head 61 sets out the forms of service of a compliance notice.

Head 62 provides for the voluntary submission of a code of practice to the office for its review or approval by a person representing one or more buyers. The office may withdraw approval in certain circumstances.

Head 63 provides for the admissibility of codes of practice in court proceedings.

Head 64 provides that the office may issue guidelines applicable to buyers or persons representing buyers for specific matters, such as supplier protection. The office may consult on draft regulations with appropriate people.

**Deputy Matt Carthy:** May I ask the Minister about the timeframe for the legislation?

**Chairman:** Yes, but do not go on. I wish to deal with a matter afterwards.

**Deputy Matt Carthy:** This is important legislation. I hope that, following these deliberations, the Minister will take some of our suggestions on board. I can see scope for a number of amendments that would strengthen the Bill. Is it the Minister's attention that an appropriate full-length Committee Stage will be offered so that every amendment can be considered?

**Deputy Charlie McConalogue:** Yes. We have 69 pages of heads in front of us and a great deal of thought has gone into this Bill, but the reason for the legislative process is to examine it fully. The reason for pre-legislative scrutiny is for the joint committee to have the opportunity to engage with other key stakeholders and feed that back. We have done a great deal of work in getting it to this point and I look forward to engaging with the Seanad, the Dáil and the select committee on scrutinising it strongly and assessing the merits of proposals. We have discussed a number of proposals today and I will reflect on some of them. At the committee's discretion, it is my intention to give the Bill proper time on Committee Stage to go through it and examine it fully.

**Chairman:** I must take care of some housekeeping before we adjourn. I propose that the committee meet on Wednesday, 20 July, in three sessions. Session 1 will be on the draft technologies report, as amended, and will run from 10 a.m. until 11 a.m. in private session. Members of the Joint Committee on the Environment and Climate Action will be invited. We have held two meetings with that committee. Session 2 will be on the methane emissions calculations, with academic witnesses attending, and will be in public session. Session 3 will be on sectoral emission ceilings, with officials from the Departments of Agriculture, Food and the Marine and the Environment, Climate and Communications in attendance, and will run from 3 p.m. until 5 p.m. Is that agreed? Agreed.

Our next public meeting will be at 5.30 p.m. on Wednesday, 6 July, when we will continue our pre-legislative scrutiny of the general scheme of the agricultural and food supply chain Bill. As there is no further business-----

**Deputy Charlie McConalogue:** May I say something briefly? I thank the Chair and the other members of the committee for their engagement and time and for their thorough examination of the Bill. I also thank my team - Ms Robinson, Mr. Collins and Mr. Kinsella. I also thank Ms Sinéad McPhillips, assistant secretary in the Department, who has led on this Bill. I thank my former private secretary, Mr. Aiden Kelly, who is a key member of the team, Ms Siobhan Ball, Ms Becky Reynolds, Mr. Louis Watters and others for their contribution in getting the Bill to this stage. I also thank the Attorney General and the Office of the Parliamentary Counsel. Introducing new legislation requires a great deal of work, time and engagement. I also thank the stakeholders who have contributed to the consultation process so far. I thank the committee for its work today and for the work that will be required of it in the time ahead in overseeing this legislation and bringing it through the Oireachtas.

**Chairman:** I thank the Minister and his officials.

The joint committee adjourned at 8.46 p.m. until 5.30 p.m. on Wednesday, 6 July 2022.