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**Thursday,**  
**3 November 2005**

**DÍOSPÓIREACHTAÍ PARLAIMINTE**  
**PARLIAMENTARY DEBATES**

**SEANAD ÉIREANN**

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

*Thursday, 3 November 2005.*

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## SEANAD ÉIREANN

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*Déardaoin, 3 Samhain 2005.*  
*Thursday, 3 November 2005.*  
 —————

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

—————  
*Paidir.*  
*Prayer.*  
 —————

### Order of Business.

**Ms O'Rourke:** The Order of Business is No. 1, a referral motion to the Joint Committee on Justice, Equality, Defence and Women's Rights to consider the report of the independent commission of inquiry into the murder of Seamus Ludlow, and the observations made thereon by former Commissioner Wren and Mr. Justice Barron, and to report back to Seanad Éireann by 31 March 2006, to be taken without debate; No. 2, Railway Safety Bill 2001 — Second Stage, to be taken on the conclusion of the Order of Business until 2 p.m., spokespersons have 15 minutes and other Senators have ten minutes and Members may share time, with the Minister to be called upon to reply not later than ten minutes before the conclusion of Second Stage. There is much interest in this Bill. There are seven or eight Members on this side who wish to speak and it may be the same on the other side of the House, so the debate does not have to end today.

**An Cathaoirleach:** The Leader said “until 2 p.m.” and not “to conclude”.

**Ms O'Rourke:** It may conclude.

**An Cathaoirleach:** I know, but if it does not conclude, it will continue on another day.

**Ms O'Rourke:** Exactly. No. 3, Employees (Provision of Information and Consultation) Bill 2005 — Report and Final Stages, to be taken at 2.30 p.m. until 4 p.m. There will be a sos from 2 p.m. until 2.30 p.m.

**Mr. B. Hayes:** I would like to raise the issue of a new practice that seems to have been introduced in some of our schools, where such schools are now deliberately refusing to accept students with special needs. This story appeared in an article in *The Irish Times* this week. Some schools are cherry-picking students and refusing to accept

special needs students. This is a new form of educational apartheid. When *The Irish Times* published a league table of schools in the Dublin area, it was quite clear that schools which had up to 30% of students with special needs were located in poorer communities, whereas schools which had less than 1% of students with special needs were schools in affluent areas. The Minister for Education and Science rightly spoke out against this practice in a recent conference, which I welcome. However, the Government and the Department of Education and Science should be absolutely clear that we made it unlawful for schools to introduce entrance exams, and that the new testing arrangements introduced by some schools are also unlawful. The Department needs to be strong on this issue because we have a responsibility in our schools to provide a learning environment for all students of all abilities, of all classes and of all creeds. This is an important aspect of Irish education that should not be lost.

When are we likely to debate the Ferns report? There is considerable interest in this report on all sides of the House. I join with Senator Quinn, who called for a debate yesterday on road safety. It is timely that we debate that matter. This afternoon, the Joint Committee on Justice, Equality, Defence and Women's Rights will receive the report by Mr. Justice Barron into the murder of Mr. Seamus Ludlow. The report will also be published, which I welcome. The report has been with the Government for the past 14 months. I understand that as late as last night, the family of Mr. Ludlow had not been informed that the report was to be published today. If this is the way we are treating victims, then that is abhorrent. We have a responsibility, when matters of such importance are brought to the attention of a committee or a plenary session of this House, to inform the families of those people.

**Dr. Henry:** Will the Leader ask the Minister for Foreign Affairs to come into the House so he can update us on the deteriorating situation in Ethiopia? This is one of our priority countries in Africa. Members of the Oireachtas and former Members were very important in monitoring the election in May yet a satisfactory conclusion has not been reached even in respect of the results of that election. Yesterday a large number of unarmed people were killed in Addis Ababa. Our embassy in Ethiopia has been exemplary in recent months in trying to encourage all those involved in the political process to move forward. I was there a few weeks ago and I cannot but say that I was extremely distressed to read about the truly shocking casualties arriving at the hospitals I visited. We have put a great deal of time and effort into this country and we were very encouraged that progress was being achieved. I would be most grateful if the Leader could arrange a debate.

[Dr. Henry.]

An issue the Leader raised in the House has come up again, namely, the transfer of prisoners from America, or other parts of the world, to places where they may be tortured. It is extraordinary to see the CIA express worry about this issue. Important members of both the Senate and Congress in America have said that these people are outside the rules of war. Do they have an idea of the danger in which they are placing their own personnel and military by expressing such views? The reason we have rules and the Geneva Convention is that everyone is protected. To hear people say this was truly dreadful. I first raised this issue when we debated the Transfer of Execution of Sentences Bill, which must have been nearly two years ago. Senator Norris and many others have raised the matter. However, we have not received a satisfactory answer as to what is happening in Shannon. If the Leader has any thoughts on what we can do about this issue, I would be most grateful to hear them. As the House has constantly expressed its concern about this issue, it must continue to do so in view of the voices being raised in America saying this is perfectly all right.

**Mr. Ryan:** In regard to what Senator Brian Hayes wants debated, it is worth recording that this country has the second highest level of income inequality in the OECD and is only surpassed by the United States. In the United States a debate is beginning in newspapers as diverse in their ideologies as *The Washington Post* and *The Wall Street Journal* about the implications of inequality. Hurricane Katrina brought it to people's attention. I would like the Leader to arrange a debate on inequality in Ireland, although there is no urgency because we will not solve it overnight. There is a huge issue of people being stuck, of social mobility and of class mobility declining in the United States and we do not want that to happen here, although I do not want to suggest for one second that the Government is endeavouring to turn us into such a rigid, class-based society.

On the matter raised by Senator Henry, this morning's edition of *The Guardian* suggests that prisoners are being interrogated for the United States in countries which are members of the European Union or are, at least in a couple of cases, aspiring to be members. If the EU does not guarantee that the standard of human rights it claims to uphold is being upheld in the teeth of pressure from the United States, then the whole concept of the EU as a space of freedom, democracy and human rights is gone. If even 30 prisoners in eastern Europe are regarded as not being covered by the rules by which the EU claims to be covered, then we are in serious trouble.

Will the Leader arrange an urgent debate on telecommunications? We now have the extraordi-

nary situation where our privatised — disastrously, in my view — major telecommunications provider is apparently to be taken over by a Swiss state company. We have the situation where the Corrib gas field is, to a significant extent, owned by the Norwegian Government. I do not have any ideological baggage about privatisation but what is quite clear in this case is that it has been a monumental disaster. The reason broadband uptake is so bad is that Eircom cannot make money out of it and is endeavouring to hold on to its monopoly. We are coming to the stage where the question of returning the telecommunications network to public ownership is long overdue. If we do not return it to public ownership, we will end up building a parallel, publicly owned telecommunications network because Eircom clearly will not do the job.

**Mr. Morrissey:** I did not have an opportunity to participate in yesterday's Order of Business and raise the issue of transport. I would like to add my support to the debate which will take place in the next few weeks. The Government has set out its aspirations in regard to what it——

**Mr. Ryan:** I thought they were decisions.

**Mr. Morrissey:**——requires of a modern economy over the next ten years. It is important the various operators are brought in to discuss how they will sequence the developments with which they have been charged. The sequencing and timing will be important. If the various operators are not brought into the discussions, we may well have replication of transport modes in the same territory. For example, the Dawson Street area is a public transport corridor for buses which carry thousands of people daily. If a Luas is to go down that route followed by an underground metro, there will be three public transport corridors in the one area. We must look at alternative routes. One of the reasons for the delay in the delivery of Luas was the diversion of utilities. We must consider whether it is necessary since it delayed the delivery of Luas to a great extent.

Little consideration has been given to the fact there is a road network which shows that all roads do not necessarily have to lead to Dublin. We now have a Dundalk to Nenagh axis and a Carrick-on-Shannon to Rosslare axis, which is very welcome.

**An Cathaoirleach:** As the Senator said, we will be having a debate when he can raise all those matters.

**Mr. Morrissey:** As regards the Atlantic corridor, it is most important to put a timeframe on the completion of the Athenry to Ennis section to ensure the future viability of Shannon.

**Mr. Finucane:** The National Safety Council is a very well respected body and it is worth bearing in mind that last year, the Irish Insurance Federation gave it funding of €1.2 million and gave the same amount in 2001. Last year insurance companies made almost €400 million in profits and I regard the amount of money they gave to the National Safety Council as derisory. Last year the Government gave the council €4 million, at least €1 million of which was towards the metrification of signs.

In regard to the Government's safety strategy, it seems to be poor on delivery but good on promises.

**Mr. Ryan:** Aspirations.

**Mr. Finucane:** Only four of the 69 penalty point offences announced by the former Minister for Transport, Deputy Brennan, have been implemented. I would like the new Minister to come to the House to outline his plans on road safety and see whether they are different from those of the former Minister, so that we do not have this ongoing carnage on our roads.

**Mr. Leyden:** In regard to Senator Ryan, we will have to go back over the files on the Fine Gael-Labour coalition and the demolition of Irish Shipping, the dropping of the Athlone-Mullingar route and the fact it did not support the regional airport in Knock.

*(Interruptions).*

**An Cathaoirleach:** Does the Senator have a question?

**Mr. Leyden:** Senator Ryan is becoming irritating.

**An Cathaoirleach:** That is not relevant to the Order of Business.

**Mr. Leyden:** The Cathaoirleach has great patience. I would like to know what he knows about these matters.

**An Cathaoirleach:** The Senator should confine himself to the Order of Business.

**Mr. Leyden:** The regional health forums will be established this autumn. In accordance with a newsletter circulated to all public representatives——

**Mr. Browne:** We will probably read about them again.

**Mr. Leyden:** The timeframe is still accurate.

**Mr. B. Hayes:** Is it appropriate to use visual aids?

**An Cathaoirleach:** No. Senator Leyden cannot refer to publications.

**Mr. Leyden:** Even though it is a good newsletter.

**An Cathaoirleach:** The Senator cannot display the newsletter.

**Mr. Leyden:** I appreciate the Chair's ruling.

**An Cathaoirleach:** If the Senator will not obey the Chair, he should resume his seat.

**Mr. Leyden:** Pending the establishment of the health forums, the Leader should schedule regular debates on health.

**Mr. P. Burke:** Issues such as hospital waiting lists.

**Mr. Ryan:** Or secret waiting lists.

**Mr. Leyden:** That would give us an opportunity to discuss different health issues.

The Leader is a former Minister for Public Enterprise. Will she intervene regarding the proposed strike at An Post? I appeal to the Communications Workers Union in this regard——

**Mr. Finucane:** What about a vote of no confidence in the Minister for Communications, Marine and Natural Resources?

**Mr. Leyden:** I appreciate the dispute has been referred to the national implementation body but if the strike takes place, it could sound the death knell for small post offices. Given the proposal by the Minister for Social and Family Affairs to make payments electronically——

**An Cathaoirleach:** The Senator has been given great latitude. To be fair to other Members, he must conclude.

**Mr. Leyden:** We should play a role. We cannot stand by while a strike takes place.

**Mr. Finucane:** The Senator should get his Christmas cards out early.

**Mr. Norris:** I strongly support Senator Henry's comments regarding so-called "extraordinary rendition". The phrase is sinister and it shows a slide in linguistic terms to use such euphemisms. It also calls into question the way in which the American administration uses words such as "liberty", "freedom" and "democracy". It has devalued them to a point where they are absolutely meaningless. The Leader raised this matter on the Adjournment and she described the Government's response as "waffle". I can only

[Mr. Norris.]

agree with her. Senator Henry, the Leader and I have asked questions about this issue and we have been met with obfuscation.

The Gulfstream airplane passed through Shannon Airport repeatedly and it was involved in criminal activities such as the kidnapping and rendering of citizens to third countries for the purposes of torture. The excuse offered was that an unnamed official in the US administration said the plane was empty but that ignores the fact that part of American policy is plausible deniability. In other words, one should tell a lie in circumstances where one thinks one can get away with it. Even if the airplane was empty, that would be no excuse for refuelling and servicing it.

Would the Government have approved of the refuelling and servicing of empty cattle trains which it knew would be and had been used to transport Jewish people to Auschwitz? The principle is exactly the same. This issue needs to be investigated. A *prima facie* case can be made that a crime has been and continues to be committed under international law. Irish citizens have repeatedly given this information to the police at Shannon who have done absolutely nothing about it. Ireland is one of a number of countries that has been reported to a United Nations sub-committee to be investigated for complicity in this practice. This practice will backfire and it is the responsibility of this Parliament to make sure the appropriate people are made accountable.

Could the Leader arrange a debate on medical education? I have been contacted by a number of constituents who indicated their children had the required high number of points to enter medical school this year but they were disadvantaged. They were told there were no places in medical schools even though students from outside the European Union with lower grades were accepted as a money making exercise. Our first responsibility is to provide a medical education to our own students who have the appropriate qualifications.

I agree with Senator Morrissey. We should not attack somebody on this side of the House who raises intelligent questions about the Transport 21 plan. It is an important and exciting initiative but it needs to be monitored and Senator Morrissey is perfectly right to say so. I attended the launch of the document.

**Mr. Dooley:** We saw the Senator on television.

**Mr. Norris:** I spoke to one of the people who will have a central role in its implementation about the timescale for the metro. He said the geology of Dublin is different and unique. If such arguments are trotted out again by senior people, we will be in trouble.

**Mr. Brennan:** Will the Leader ask the Minister for the Environment, Heritage and Local Government to clarify why a number of local authorities are making the establishment of management committees to administer private housing estates a condition of planning permission? This is causing a great deal of concern as householders must pay an annual charge to private management committees. However, they are questioning their legality, particularly as a condition of planning permission.

I support Senator Leyden's call on the Leader to use her good offices to ensure no postal strike takes place.

**Mr. Coghlan:** Despite the pronouncements of the Minister for Community, Rural and Gaeltacht Affairs on the An Daingean-Dingle matter, the Transport 21 document clearly refers to Dingle.

**An Cathaoirleach:** Has the Senator a question?

**Mr. Coghlan:** As the Leader is a conduit between the House and the Government, will she assure the House that this is official Government policy? This document was only published on Tuesday. I take it that is the up-to-date position and I look forward to hearing the Leader's reply.

The UK has 32,000 convenience stores and small shops. *The Guardian* reported yesterday that they are closing at the rate of 2,000 per annum and they are being gobbled up by the large multiples. A motion on the Order Paper states our communities "should be protected from predatory pricing by major multiples in order to seek choice and diversity in the food sector where multiples and local shops can compete on a level playing pitch". All Government Members will subscribe to that sentiment, as we do, and I would like the Leader's confirmation in this regard, given that the Minister for Enterprise, Trade and Employment will bring the groceries order before Cabinet next Tuesday.

**Ms O'Rourke:** The Senator is a good fellow to know things.

**Mr. Coghlan:** The Leader probably told me.

**An Cathaoirleach:** Members should be conscious that a motion was passed regarding the allocation of time for the Order of Business.

**Mr. J. Walsh:** I support Senator Brennan's comments regarding the decision of a number of local authorities to impose a planning condition requiring householders on private estates to establish a management committee, which results in charges of between €5,000 and €6,000 per annum. The Minister for the Environment, Heritage and Local Government is checking whether

there is a legal basis for this and local authorities may find themselves liable in this regard.

It was also reported that a local authority is charging a fee of €100 to applicants for social housing even though only a small percentage of them can hope to avail of such housing. Another local authority was taken to court regarding a tenant purchase. People had been failed administratively over a number of decades and not provided with contracts for their tenancies. As a consequence, local government is not functioning as envisaged. Will the Leader arrange for the Minister to come to the House for a debate on the empowerment of local democracy? The corporate policy groups provided for in legislation during the last session have not materialised. It is timely that we should have a debate on the empowerment of local councillors and the strengthening of local government.

**Mr. Quinn:** We should have the debate on transport very soon. Senator Norris referred to his enthusiasm for the metro while Senator Morrissey referred to a Dundalk to Nenagh axis. I travelled from Belfast and discovered that one cannot buy petrol or go to a toilet south of the Border without leaving the motorway. This decision by the National Roads Authority must be examined. Once one travels north of the Border, where petrol is more expensive, one can always purchase petrol without leaving the motorway. It is a decision I do not understand.

Yesterday a report stated that nursing homes are inspected only if they are private. I am not sure this is correct and would like the Leader to investigate. We do not need another debate on nursing homes but, if true, this is a serious situation.

**Mr. Glynn:** On the matter referred to by Senators Quinn and Leyden, the introduction of regional health fora should be done sooner rather than later. Some months ago, I received a letter stating this would take place in the near future. Nothing has happened. Regarding recent events in certain nursing homes and public institutions, the visiting committees of former health boards was an important watchdog. Regretfully, these no longer exist because we do not have representative fora.

On the matter referred to by Senator Norris, I asked the Leader about the number of doctors being trained. I am aware a report has been submitted to Government. It takes seven years to train a general practitioner so what happens in the meantime? In my political life of 26 years, this is the first time people are approaching me seeking a place on a doctor's panel. That a report has been submitted to Government is positive, but in the meantime how will people receive treatment? I ask the Leader to invite the Tánaiste

and Minister for Health and Children to the House as a matter of urgency.

**Ms White:** Hear, hear.

**Mr. Glynn:** I call for debates on health every other day and this is one that must be prioritised because people cannot access a general practitioner.

**Mr. Browne:** The long-awaited MRSA audit is due this afternoon, one and a half months behind schedule. I seek an early debate next week on that issue. It will be a major problem in the future and under the Health Act 1947 there is an onus on the health services to confine infectious diseases. We could be facing a major litigation battle if we do not act soon. The Government is not taking the issue as seriously as it should.

**Mr. MacSharry:** I ask the Leader, as I have done many times over the last three years, to invite the Minister for the Environment, Heritage and Local Government to the House to debate local government funding. At this time, many local authorities are drafting estimates and unless we have a debate in the Houses of the Oireachtas and take appropriate steps we will see exorbitant increases in commercial rates. I am concerned that many small businesses will find it more difficult each year to pay 50% of the costs for services enjoyed by all. I seek this debate at the earliest convenience.

**Mr. Cummins:** Value for money in respect of tribunals of inquiry was another aspiration of Government. The Government has decided the reduction of fees to lawyers at tribunals will be postponed until June next year. We are asked to believe €39 billion will be spent over the next ten years yet a promise made by the Minister for Justice, Equality and Law Reform on numerous occasions cannot be honoured. He should be asked to explain to this House why the fees are not being reduced as a matter of urgency.

**Mr. B. Hayes:** Hear, hear.

**Mr. Cummins:** Perhaps the Leader can invite the Minister for Education and Science to explain why repeat students are charged €236 when it costs €90 to sit the leaving certificate for the first time. Several hard-pressed parents seek an answer to this discrepancy.

**Mr. Scanlon:** I support Senator Leyden's call to bring An Post and the Communications Workers Union together. The losers are the postmen and postwomen in rural Ireland and the people serviced by these workers. The British and French postal service are hovering like vultures, ready to cherry-pick the market in the greater

[Mr. Scanlon.]

urban areas. The major losers will be those who live on boreens throughout the country. As a gesture of goodwill, can An Post pay the Sustaining Progress increment to pensioners who have been waiting since 2001?

**Mr. B. Hayes:** Hear, hear.

**Mr. Scanlon:** Young workers may be able to survive without the increases but pensioners have no time to wait for An Post and the CWU to engage.

**Mr. McHugh:** Figary Water Sports Development Company Limited is a private company in Donegal involved in the development of a marina in Fahan, north Donegal since 1998. Some €4 million of its money has been invested to date. Since 1998 it has lobbied for Government assistance or cross-Border funding. Two issues are outstanding and I believe solutions can be found through departmental intervention. These issues involve a bond and rental payment prior to 1998. Efforts should be made to contact the Department to resolve this because the project is ideal. While various projects in Donegal are awaiting funding, this one is proactive, community-based and involves yachts and sailing clubs. There is great potential for the economic and social infrastructure of Donegal. I ask the Leader's intervention on this issue with the Department of Communications, Marine and Natural Resources.

**Ms O'Rourke:** Senator Hayes raised the new practice of cherry-picking students of second level schools. Though there may be an entrance examination for the school, another examination is set so the school can thoroughly examine their entrants. This practice is despicable. The article in *The Irish Times* was interesting because it was to the point. A student may have potential but not academic honours. That student should be catered for and teachers are available for such exigencies. Some schools seek to develop a class culture whereby only an elite will attend. In turn, students at these schools will achieve the best results. It is a terrible educational path and we are due a visit from the Minister for Education and Science, which I will endeavour to arrange.

Senator Brian Hayes referred to the Ferns report and the debate on this will take place in two weeks. Senator Hayes also referred to a debate on the road safety report. The Senator also questioned if the Ludlow family knew this report would issue. I will verify this though I am sure the family did know. I cannot conceive of the family not being aware of the report on a loved one going to committee and being issued. I will make inquiries on this matter.

Senator Henry sought an update on the situation in Ethiopia from the Minister for For-

eign Affairs. She also raised a question about the transfer of prisoners legislation, but it is said that such prisoners are outside the rules of war at Shannon Airport. I fail to see why, however, and stonewalling was what I received in the reply. Everybody has endeavoured through various conduits to obtain a proper answer about what is happening there, but none of us has been able to do so. I just do not know what is happening and I am at the end of my tether. I thought the Adjournment debate might yield some useful answers, but it did not.

Senator Ryan spoke about inequality in Ireland and said that some of the prisoners are being helped by aspirant EU countries. He also sought a debate on telecommunications. The difficulty is that Eircom will not unbundle the local loop, which is the last half mile. The company has been at that for the past seven years, but will not unbundle the local loop. It is like a mantra but I do not see why it cannot do so. It will have to do it because the regulator is going to pounce any day now. Eircom thinks it should not have to unbundle the loop, but it will have to under European law.

Senator Morrissey has unbridled enthusiasm for the Transport 21 plan, while Senator Norris is invigorated about it. We will be having a debate on that plan and I expect to see both Senators in full voice on that occasion. Senator Morrissey made the point, which I think is fair, that various operators should co-operate. He does not want different modes of transport running on the one street. Senator Tuffy is in the happy position, as she told us yesterday, that she will have four modes of transport in Lucan.

**Mr. Ryan:** We will be lucky to see her again.

**Ms O'Rourke:** I composed a poem about it yesterday — "Oh to be in Lucan now that transport's here". Senator Tuffy will have access to the metro, Luas and heavy rail as well as bus corridors.

**Mr. B. Hayes:** And an airport.

**Ms O'Rourke:** She will certainly whizz about, will she not? I hope she gets through her convention, but that is another day's work.

**An Cathaoirleach:** The Leader should speak about today's Order of Business.

**Mr. Leyden:** Selection conventions can be difficult for many people.

**Ms O'Rourke:** I am dying for them.

**An Cathaoirleach:** Order please. I call the Leader to reply on today's Order of Business.

**Ms O'Rourke:** Exactly. They are only trying to wind me up, a Chathaoirleach. I rely on you to maintain order.

**An Cathaoirleach:** The Leader should not tease them.

**Ms O'Rourke:** Senator Finucane referred to the National Safety Council in the context of road accidents. I will try to arrange a debate on road safety next week. Senator Quinn has also been seeking such a debate for some time. Senator Finucane also said that the Insurance Federation of Ireland is patting itself on the back about how much it has given. In light of the huge profits involved, however, the sum is quite derisory, as the Senator said.

Senator Leyden wants an ongoing debate on health pending the establishment of the relevant fora. He also wants action to be taken to avert the threatened strike at An Post, even though the matter has gone before the national implementation body.

Senator Norris mentioned the waffling responses concerning US flights into and out of Shannon. He said the flights constituted a breach of international law. He also referred to medical education and the Transport 21 initiative and we will have a good debate on those matters. I hope that everybody who has raised these matters will be here to debate them when they come before the House.

Senator Brennan raised the issue of management committees in local authorities. It has become a feature of planning in some local authorities that management committees are established to run new housing estates. Such business plans must also provide parking facilities. Although planning applications can be well thought out and structured, the new provisos are becoming penal for planners. It is wrong to make the establishment of a management committee a feature of planning applications. I personally think it is not legal to do so.

**Mr. Morrissey:** Yes.

**Ms O'Rourke:** I will ask the Minister for the Environment, Heritage and Local Government to attend the House to address those issues. Yesterday, I received a letter about this matter, which is how I became aware of it.

Senator Coghlan spoke about convenience stores falling by the wayside in Britain. The Senator knows everything about the groceries order, but he noses around all the time.

**Mr. Coghlan:** I thought Senator O'Rourke was the informant.

**Ms O'Rourke:** I did not tell the Senator anything about the groceries order. However,

Senator Coghlan raised a valid point about Dingle — that on future road maps the town will appear as Dingle, not An Daingean. That was clever.

**Mr. Coghlan:** I take it that is the Government's position.

**Mr. P. Burke:** More confusion.

**Ms O'Rourke:** Senator Jim Walsh referred to the proposed local authority corporate policy groups. It is a great name, but we do not know what it means. He stated that only private nursing homes are being inspected. It is as if there is a veneer of incompetency because I would not believe entirely in public nursing homes.

Senator Glynn raised the issue of health fora, but I understood that matter had already been raised on an Adjournment motion last week or the week before.

**Mr. Browne:** Senator Bannon raised it.

**Mr. B. Hayes:** Yes, Senator Bannon raised it.

**Mr. Finucane:** Give him a copy of the script.

**Ms O'Rourke:** Senator Glynn and Senator Henry also raised a question concerning doctors' training. As I understand it, the entrance parameters will be widened considerably come the next academic year. The Senators asked what people will do in the interim, but one cannot produce doctors in one year. They are not available in such a short time because their training lasts seven years. I hope we will have a debate on the matter soon, however.

Senator Browne sought a debate on the MRSA report, which is due to be published this afternoon.

Senator MacSharry raised the matter of local government funding. The Small Firms Association and IBEC are up in arms about this. Small businesses in particular are finding it difficult to cope with business rates. I have come across that issue on several occasions. Do local authorities require the bevy of programme managers, area assistants and all the rest that they have? There is a huge amount of staffing, yet one cannot find the relevant person when one telephones because they have gone to another seminar.

Senator Cummins said the proposed reduction of legal fees has been put off until next June. I do not know what influences were brought to bear in that matter, but I noticed it and was quite upset about it. The Senator also asked why the repeat fee for the leaving certificate examination was €236, while the initial fee is €90. As students have had an initial whack at the leaving certificate, it costs that much to repeat it.



[Ms O'Rourke.]

Senator Scanlon raised the dispute at An Post and asked that money due under Sustaining Progress be paid to the company's pensioners. We would all agree with that because they are not a party to this dispute.

**Mr. B. Hayes:** Hear, hear.

**Ms O'Rourke:** Senator McHugh referred to a company that is developing a marina in Inishowen. There are two issues involved: first, the company has invested €4 million, and, second, the issue concerns the bond and rental payment. Those matters are delaying the development of the marina.

Order of Business agreed to.

### **Commissions of Inquiry: Motion.**

**Ms O'Rourke:** I move:

That Seanad Éireann requests the Joint Committee on Justice, Equality, Defence and Women's Rights, or a sub-committee thereof, to consider including in public session the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow, and the observations made thereon by former Commissioner Wren and Mr. Justice Barron, and to report back to Seanad Éireann by 31 March 2006 concerning:

- the Report of the Independent Commission of Inquiry into the murder of Seamus Ludlow and the observations made thereon by former Commissioner Wren and Mr. Justice Barron for the purposes of making such recommendations as the Committee considers appropriate and any changes to legislative provisions; and
- the legislative and other changes, if any, required in relation to the notification to the next of kin of inquests in relation to murders or deaths in suspicious circumstances.

Question put and agreed to.

### **Railway Safety Bill 2001: Second Stage.**

Question proposed: "That the Bill be now read a Second Time."

**Minister of State at the Department of Transport (Mr. Callely):** I am pleased to introduce the Railway Safety Bill 2001 to the Seanad. I should acknowledge that it was the Leader of this House who, as Minister for Public Enterprise with responsibility for transport matters, published the Bill. I congratulate Senator O'Rourke on having done so.

**Ms O'Rourke:** I thank the Minister of State.

**Mr. Callely:** The laws governing railway safety date back, in the most part, to Victorian times. They are no longer appropriate for the railway systems of today and need to be updated. Safety is and must remain top of the agenda in the provision of rail services. This applies to both customers and staff working on the railway. The number of people using rail services is, I am glad to say, increasing on a regular basis and it is essential for all involved that standards of safety keep pace with the ever-increasing demand.

We have heard the great news concerning Transport 21, the ten-year transport investment plan the Department of Transport launched last Tuesday. The plan will result in a significant enhancement and expansion of the railway network at national level, including the western corridor, and in the greater Dublin area. Therefore, it is imperative that we have in place a modern regulatory framework for overseeing railway safety.

This Bill will ensure that the ongoing investment in our railways is accompanied by the introduction of effective formal safety management systems and that these systems are independently validated. The primary purposes of the Bill are as follows: to establish an independent statutory public body, the Railway Safety Commission, with wide-ranging powers of inspection, investigation and enforcement; to establish a functionally independent railway incident investigation unit within the commission to investigate railway accidents; to require railway undertakings to put in place a formal safety management system and describe the components of that system in a document called a "safety case"; to establish an independent statutory public body, the railway safety advisory council, comprising representatives of organisations with an interest in railway safety; and to provide for the testing of safety-critical railway workers for intoxicants.

The Bill provides a modern, but flexible, means of independently overseeing the safety of our railways. It covers not only the Iarnród Éireann network but also the Luas system, the planned metro network, about which I am particularly delighted, heritage railways and other railways that interface with a public road or another railway.

Many of the provisions of this Bill are implementing requirements of the EU railway safety directive adopted in April 2004. For example, the directive requires that each member state establishes a railway safety regulator and appoints an independent railway accident investigator. Senators are probably aware that the Railway Safety Commission has been established on an interim basis pending the enactment of this Bill and I understand the post of chief accident investigator will be advertised in the coming weeks.

This means we will be in a position to implement the aforementioned provisions quickly.

The EU railway safety directive also requires that railway operators and infrastructure managers be certified by the safety authority on the basis of formal safety management systems. While these and most of the requirements of the EU railway safety directive are being implemented through this Bill, certain other more technical requirements of the directive will be transposed through regulations to be made under this Bill.

Lessons learned from other countries have been taken into consideration in the provisions of the Bill. The Bill does not replicate the safety regime of any one country, rather, it takes account of different regimes and experiences in other countries and it defines a framework appropriate for the scale of the Irish railway network and the nature of its operations.

In addition to the modernisation of the law relating to railway safety, the Government has already invested significant money in modernising the railway infrastructure and in the purchase of new rolling stock. In 1999, a high-level task force recommended the implementation of a 15-year railway safety programme comprising three five-year tranches. It first addressed the highest risks on the network and focuses on reducing overall risk, thus improving safety.

The Leader of this House, Senator O'Rourke, brought the proposals for the first safety programme to Cabinet and it was she who secured over €600 million for the funding of the safety programme covering the period 1999 to 2003. Since the commencement of the programme in 1999, in excess of €800 million has been invested in the infrastructure and safety management systems of Iarnród Éireann. By the end of 2013, over €1.4 billion will have been expended on railway safety, resulting in a much safer network for both passengers and staff. This major investment has resulted in a significant reduction in risk from the physical infrastructure. For example, 418 miles of track have been renewed, 260 miles of fencing have been erected and nearly 800 level crossings have been closed or upgraded.

The safety culture in Iarnród Éireann has also been enhanced through improved training, the development of company-wide standards and the development of management tools such as the risk-assessment model and the infrastructure asset management system. It is worth mentioning that while this investment is safety-related, resulting in reduced risk and an improvement in safety indicators, the programme contributes significantly to the overall business performance of Iarnród Éireann and contributes to significant benefits to customers through reduced journey times resulting from track renewal and upgrading. In addition, since 1997 the Government has, through Iarnród Éireann, undertaken a signifi-

cant programme to renovate and replace ageing rolling stock and significantly expand the fleet. This has involved the doubling of the DART rail carriage fleet and the purchase of 163 diesel railcars, 120 intercity railcars and 67 intercity carriages. By the end of 2007, when all the currently ordered rolling stock will have entered service, we will have one of the youngest fleets in Europe, if not the world. This represents a tremendous advancement in a relatively short period.

Much work has been done to improve accessibility and all rolling stock will be fully accessible. Considerable work has been done at nearly every railway station in this regard. Some of the new carriages will not only have fully accessible features to facilitate mounting and disembarking but will also have fully accessible toilet facilities in each carriage. This is the class of railcar we are acquiring.

Part 1 of the Bill includes standard provisions in regard to such matters as the Short Title, interpretation, orders and regulations. Part 2 deals with the establishment of the Railway Safety Commission. Part 3 places general duties of care on railway undertakings, persons working on railways and other persons. Part 4 deals with safety management systems, safety cases and related issues. Part 5 deals with the investigation of railway incidents. Part 6 deals with the making of regulations on specified matters and the review of legislation by the commission. Part 7 deals with the enforcement powers of inspectors of the commission and the investigation unit. Part 8 deals with the establishment of the railway safety advisory council and sets out its membership and functions.

Parts 9 and 10 of the Bill set out a detailed regime for the testing of safety-critical railway workers for drugs and alcohol. This is a significant innovation in the area of railway safety. Railway unions must be consulted in the drafting of the binding codes of conduct in this regard. I have included powers to test safety-critical workers at random, and in circumstances that are reasonable, while they are at work. The Attorney General has confirmed to me that this provision will withstand constitutional scrutiny on the basis that the balance struck by the Legislature between the private rights of individuals and those of the public is proportionate. In giving this advice, he was conscious of the limited application of the random testing provisions to safety-critical railway workers and the potentially catastrophic consequences for large numbers of people of mistakes in the operation, maintenance or repair of the railway system. I cannot stress this point strongly enough.

Part 11 of the Bill deals with works on a public road in the vicinity of a railway. Part 12 provides for serious offences such as attempting to derail a train by obstructing a railway line, exposing others to danger on a railway and deliberate

[Mr. Callely.]

damage to a railway. Part 13 deals with various procedural matters such as prosecution and the service of notices. Part 14 deals with amendments to legislation relating exclusively to CIE. Part 15 deals with miscellaneous matters and Part 16 updates the Transport (Railway Infrastructure) Act 2001. Schedule 1 details the various enactments repealed and Schedule 2 details the existing statutory functions relating to railway safety regulations which are to be transferred to the new railway safety commission.

The new regulatory framework and the major investment the Government continues to make in our railways will lay the bedrock for safe rail travel in the future and will assure the travelling public that safety is and will continue to be of paramount importance to this Government. I ask Senators to facilitate the early passage of the Bill into law and I commend it to the House.

**Mr. P. Burke:** I welcome the Minister of State to the House and wish him well with this Bill. Fine Gael will not delay the passage of the Bill through the House. While I also welcome the opportunity to speak on this important legislation I regret the fact that it has taken so long to reach the House. When the Bill was first introduced in the Dáil in 2001, many speakers commented on its importance. In the intervening period, four years have passed and we are extremely fortunate that there has been no significant rail crash or catastrophic accident during this period. The Bill is long overdue and the emphasis should be on ensuring its swift delivery.

The main aspects of the Bill, which provides for the monitoring and inspection of railway infrastructure and the investigation into and publication of reports on railway accidents, are long overdue. The publication of reports on railway accidents is needed urgently, particularly in light of the arrival of the Luas system and other ambitious rail plans, which the Minister of State outlined this morning. The question of whether any of us will still be in the House to see any of these projects realised is a debate for another day. The need for increased rail safety and the structure to provide it are clear prerequisites.

The Bill, which will hopefully be swiftly implemented, provides for wide-ranging enforcement powers. It puts a new regulatory framework for rail safety in place and will apply to all railways to which there is public access, including those rail lines operated by CIE, Luas and the proposed metro system. The Bill's remit also covers aspects of industrial railways that interface with public road and rail networks. The Bill places the primary duty of care on railway undertakings to ensure the safety of people for whom they are responsible, which is a very prudent, necessary and welcome measure.

In the wake of a rail accident at Knockcroghery, County Roscommon, the Minister for Public Enterprise acknowledged in 2001 that the standard of rail safety was completely unacceptable and that the rail safety inspectorate was inhibited from effectively doing its work because of Irish Rail's failure to provide full and timely information. This is not good enough and the travelling public needs and deserves better.

I hope this legislation can effect a sea change in how our rail operators view and deal with safety issues. In the past, Irish Rail has rarely admitted its own inadequacies in terms of the provision of rail safety. Its strategy has often been to avoid carrying out essential safety measures beforehand, blame staff for incidents when they occur and deflect responsibility for rail safety inadequacies from the company. The scapegoating of staff and the deflecting of responsibility must end because they undermine rail safety.

We need to move beyond merely blaming drivers. I am happy to see that the protection of whistleblowers is an integral part of the Bill. Such protection will be important in ensuring a change in how rail safety is dealt with. We will never have any systematic change in corporate culture unless the anonymity and job security of whistleblowers are guaranteed. Workers must not be afraid to report infringements of rail safety carried out by their employers.

In recent years, there have, thankfully, been far less heavy rail incidents. However, we cannot become complacent. What has come to the fore is the number of incidents which have occurred since the arrival of the two Luas lines. Greater security must be introduced to ensure these accidents do not occur and measures needed to prevent such accidents from reoccurring must be enacted. This will involve extensive co-operation between rail operators, the new railway safety commission and local authorities. It is crucial that the commission takes a proactive stance from its inception.

The high level of overcrowding on rail commuter services must be immediately investigated. It has been communicated to me that many commuter services to Dublin, such as the Drogheda and Maynooth commuter services, are frequently subject to extensive overcrowding, which is a disaster waiting to happen. Allowing people to be herded into overcrowded trains cannot be justified. Increasing the number of people using public transport is laudable because we need to persuade people not to travel by car but we cannot place the public in harm's way. We must set standards in this respect. The capacity to facilitate the numbers seeking to board our commuter trains is lacking although the genuine desire not to leave anyone behind on the platform is understandable. However, safety cannot be compromised. Rail tragedies in the UK have

often brought home to us the need to ensure that safety is the paramount consideration.

Overcrowding is merely one of a range of rail safety breaches which cannot be tolerated. A colleague recently informed about an incident on the Kildare line where the lighting failed and it became impossible to open the train's doors at each station. A number of my constituents have complained to me about four occasions in the last two months when the train to Westport broke down between Athlone and Dublin. I am sure everyone in the House has experienced or heard of rail horror stories.

I welcome the fact that the new commission will have teeth and hope it will aggressively pursue all rail safety infringements. It must ensure that rail operators do not focus solely on commercial considerations, as they have traditionally done. Public transport providers of any kind must place the travelling public to the fore of their considerations. The safety of the public and company employees must be to the fore and the commission must not tolerate any excuses from rail operators. The reporting of rail investigations must be swift or confidence in the commission will be undermined. In the past, the reporting of the outcomes of rail accident investigations has been prolonged.

One of the most important sections in the Bill, at least from an employee's perspective, is that concerned with drug testing. This provision is welcome and justified. I welcome the fact that the people who will assess samples taken from employees will be independent of Irish Rail. This measure is crucial, given the potential for bullying or intimidation of employees.

The aspect of the Bill that deals with criminal prosecutions is also vital and I hope the commission will not be tame in this regard. The commission's powers of detention and enforcement must be taken seriously by the rail industry from its inception. I am hopeful that the commission will not be tame in this respect either because the stakes are too high given that any oversights could lead to greater threats to public safety.

I welcome the Minister of State's announcement that 418 miles of rail track have been renewed, 260 miles of fencing have been erected and approximately 800 level crossings have been closed or upgraded. However, there are still unmanned level crossings in some areas, a number of which are in my county. There is a level crossing at Kilnageer outside Castlebar, County Mayo, one at Knockaphunta in Castlebar and one at Straide, County Mayo, on the Ballina line. There are three unmanned level crossings at Claremorris. There have been accidents at all these crossings, some of which were very serious. Tragedies have occurred at Knockaphunta. New signalling systems are being put in place which will speed up the trains. It should be possible to

include the opening and closing of barriers at the unmanned level crossings in this work.

The signalling upgrade on the Sligo line will be completed this year but on the Westport and Ballina lines it will continue until 2008. There is plenty of time to link the unmanned level crossings into the system and set up automatic barriers where accidents are waiting to happen. There has been a significant increase in the population in these areas which gives rise to more traffic using the level crossings. I urge the Minister of State to consider those areas.

**Mr. Callely:** We will be as helpful as we can in that regard. I will see what can be done to complete those upgrades between 2005 and 2006. The officials have taken a note of the Senator's comments and will respond in writing.

**Mr. P. Burke:** Iarnród Éireann recently sold some quite new freight carriages. Coca-Cola located in Ballina because of its proximity to the rail network. The Government should examine the delivery of freight. There are independent operators in Europe willing to run the freight business and this service should be opened up to competition. Rather than referring an interested freight operator to CIE, the Department of Transport should evaluate whether there is a case for an independently operated freight system here. The Minister of State should consider this because Iarnród Éireann neither wants to run freight nor let somebody else run it. If we are to take cars and lorries off the roads this is an ideal opportunity to do so, as we will pump a large sum of money into public transport and rail services over the next ten years.

Will the Minister of State provide a solid assurance that the railway safety commission will be answerable to the Oireachtas, not just by publishing investigation and annual reports but by answering the day-to-day queries from Members? Recently we have seen that the Minister for Transport does not answer questions about the National Roads Authority, and the Minister for Health and Children does not answer questions about the Health Service Executive, leaving public representatives in the dark. This is not good enough. I seek an assurance that the Minister for Transport will personally answer questions on the commission and its work. I hope the Minister of State will clarify this matter in his reply to Second Stage.

**Mr. Dooley:** I too welcome the Minister of State to the House and acknowledge how much time he has spent in the Seanad in recent weeks dealing with legislation. This Bill is one of the most important to come before us in this session. It has been around for some time and I am happy that it is now in the Seanad and moving towards its final stages. We on this side of the House will

[Mr. Dooley.]

do anything necessary to ensure its speedy passage. I welcome Senator Paddy Burke's comments that his colleagues will co-operate in the passage of the Bill.

The origins of the Bill lie in a derailment in Knockcroghery in 1997 as a result of which an independent review was established. The subsequent report showed that under-investment in the rail infrastructure had compromised rail safety leading to the derailment. This lowering of safety standards due to poor investment led to other minor accidents over the years.

The Government at the time decided to take a proactive approach. It had two options, one, to do nothing and allow the rail infrastructure to disappear over time, keeping services on certain lines at a reduced speed; or two, to grasp the nettle, find the money and invest in the infrastructure. This was difficult because it involved making up for the sins of omission of successive Governments which did not invest in upgrading the rail infrastructure.

We should all recognise the efforts made by the Leader of this House, Senator O'Rourke, who as Minister for Public Enterprise fought her corner in Cabinet when maybe there was less money available than now. She can take pride in the work she did to lay the foundation for Transport 21. It is critically important to enact this Bill and we do not want it to be delayed in this House.

The DART has been upgraded recently, with more frequent and longer trains, and the extension of some of the facilities around the rail lines. Commuter services into Dublin from various areas on the outskirts have also increased. In County Clare the trains on the Ennis to Limerick line are more frequent which is most welcome.

Work has been done to reduce the number of accidents, which is at the root of the Bill. Now we are ensuring the legislation is put in place to prevent further derailments. It is important also to reduce the risk of accidents, in line with international best practice. The powers of inspection, investigation and enforcement created for the proposed railway safety commission, about which Senator Paddy Burke spoke, will ensure that future rail operations in an expanded environment will minimise risk. The obligation the Bill places on railway companies to prepare a safety management system that will be documented in the safety case to which the Minister of State referred will ensure the development by the railway companies of a new focus on safety, on a new ethos of safety and on the maintenance of safety standards. That is critically important with the extra investment being made, and the new companies being involved. Luas, for example, is clearly a separate company to Iarnród Éireann. We will see a great deal more activity in terms of upgrading the western rail corridor and the extra work in and around Cork. With all these compan-

ies involved, and all the different projects going on, it will be critical that the overarching provisions of the Bill are in place to ensure there is no fall-off in safety standards.

The establishment of the railway investigation unit as part of the railway safety commission is important, particularly as it will provide the wide-ranging powers necessary to ensure that the cause of accidents is investigated at an early stage, and established without delay or equivocation. It is only through understanding why accidents happen that we can increase their prevention and ensure nothing like the case referred to occurs in the future. The provision to establish the independent statutory public body, the railway safety advisory council, comprising representatives of various organisations with an interest in rail, rail procurement, rail management and operation, is important because it brings together the significant players in the sector, ensuring best practice is followed at all times.

It would be remiss not to recognise today the proposals made by Government in the past few days with regard to the expansion not just of rail infrastructure but of the entire Irish rail network and transportation network, including roads. It is significant that the Government has taken the decision to reopen the western rail corridor and extend it. The line from Ennis to Galway will open up a significant commuter belt which will be welcomed by Clare and the entire western region. We would all like to see the western rail corridor extended all the way from Limerick to Collooney without delay, and onwards to Sligo, but the Government efforts to extend the line on a phased basis are welcome. The extension works need to be expedited.

The rail spur to Shannon Airport, which will ultimately tag onto the western rail corridor, was mentioned in the Transport 21 plans but not as specifically as I would have liked. I know Iarnród Éireann is currently conducting a feasibility study on the spur, and if a positive business case can be made for it through that study, I hope the Government will be in a position to provide the necessary funding to put it in place. It is essential that the western rail corridor provides access to what is a key piece of infrastructure in the west. I know the Government is serious about the national spatial strategy and the plank of balanced regional development is in line with the recent transport announcements, ensuring that the key access points to the region, particularly Shannon Airport as part of the gateway strategy — Shannon being recognised as a gateway town — are taken into account. I hope some work can proceed in that area.

It is important that the western seaboard be recognised as having the potential to correspond with the eastern coast in terms of having the Atlantic corridor road along the west coast. Together with the western rail corridor it will

assist in providing a counterbalance, and create the potential for developing growth both in investment and in tourism infrastructure in the west.

Senator Paddy Burke raised a number of points, including the issue of level crossings. We must address that matter without delay — I am aware Iarnród Éireann is working on it. In resolving the issue we must take into account the needs of those affected, in particular farmers. Within the farming community there are specific groups of people who need to be assisted in this regard. I am thinking first of dairy farmers, who need to move cows in the mornings and evenings. Beef or cattle farmers only have to herd their cattle on a daily basis and do not have to bring their animals to and fro. They can perhaps afford to take them by tractor, trailer or truck and find a bridge rather than go directly across the railway line. We must however give due consideration to dairy farmers who need to move their cows twice daily. We need to consider putting in place the necessary bridges or underpasses. I understand that from a safety point of view it is probably easier to construct an underpass than a bridge, but at any rate investment is needed to protect our dairy farmers.

I agree with Senator Paddy Burke regarding freight. Those of us who travel to and from Dublin on a weekly basis, usually very early in the morning or late at night, find that the roads are becoming increasingly cluttered with heavy commercial goods vehicles, particularly at night, avoiding the congestion that tends to build up during the day. Many people involved in Irish transportation systems probably share my view that our railways are an underutilised asset, particularly at night, when standard commuter services are not in operation. Without any cost to the State, we could, as Senator Paddy Burke noted, allow international operators to utilise, through some kind of tendering or contract process, the infrastructure which is there. They could then deliver a freight service which would not conflict with what Iarnród Éireann has become very good at, namely passenger traffic and management. I would like to see that happen as quickly as possible.

To some extent there has been an effort to undermine the great work done in particular by the Minister of State, Deputy Callely, in getting the metro included as part of the Transport 21 agenda. Any modern European city the size of Dublin has an underground travel system. Considering how Dublin is growing, it is important we put such an infrastructure in place, because surface travel has limited capacity. This is the time to make the investment and put the infrastructure in place so that the city can continue to grow.

I was disappointed to hear the comments of one individual, whom I will not name, but who is involved in the airline business. This person has done extremely well from the growth of Dublin's

population, and incidentally provides a very good service in his area. He has developed his business on the back of a thriving economy and a growing city, yet in his mind the issue is only about the passengers he wants, and how they get to the airport.

The metro link will provide much more than a service to the airport. It will serve the airport but will go onwards to Swords. There is a substantial developing community in that north County Dublin area which will use the metro on a daily basis to get to and from the city. I do not see why the person I mentioned should make the comments he made, undermining a great achievement of the Minister of State in ensuring the metro was included in the transport plan, and blackmailing the Government into pandering to his agenda in order to increase his profits and make his company more attractive on the stock market. I hope that people will see his comments in that light, rather than as those of someone who has a real interest in the development of a transport infrastructure for this country. It is quite clear that this man does not have such an interest, and little heed should be paid to his comments.

**Ms Terry:** I welcome the Minister of State to the House. We should all share an interest in supporting this Bill because railway safety is of significant importance. I thank Senator Dooley for admitting that there were periods when the economy was not doing well and insufficient money was available to do all that we wished. In 1997, for example, the then Minister for Public Enterprise, Senator O'Rourke, secured IR£600 million to provide for safety on the railways even though not much money was available at that time. I will remind Senator Dooley of his comments when future claims are made that insufficient money is available to address child care and other issues. The times have changed and the strong economy allows us to introduce measures that were impossible for previous Governments.

Regrettable incidents took place on the railways and, more recently, on the Luas. We must take steps to ensure that such incidents do not recur. When this Bill is implemented, it will greatly contribute to railway safety.

Senator Burke raised the ongoing safety issue of overcrowding among passengers. Such circumstances arise from the significant demand that exists for rail services. Health and safety obligations are being ignored on a daily basis along the Connolly to Maynooth line and many people are put at risk by being squashed into carriages. I know of incidents where people have collapsed, pregnant women have felt unwell and children were placed in danger. When large numbers of people want to travel by train, health and safety issues arise that will not be addressed until measures are put in place to protect passengers.

[Ms Terry.]

People are concerned that trains are unsafe. Passengers on the aforementioned line also face dangers in terms of stone throwing. Concerns exist in such situations that a missile may come through a window.

In light of the recent terrorism incidents on trains and buses in London, what safety measures are being put in place here to reduce such a risk? While I hope similar events will never transpire here, we must be prepared for the worst. I would like to learn what precautions will be taken by the railway safety commission to prevent terrorists from causing mayhem. Has the Minister of State given thought to this issue?

What kinds of hazardous wastes or dangerous chemicals are currently being carried on our railways? Are major emergency plans in place to deal with an accident if one should occur? Such a plan should involve hospitals, the Garda and fire services. We must be prepared for human errors and other incidents because these can cause major catastrophes.

Not only must we ensure the safety of passengers on trains but we should also protect them as they enter and leave railway stations. Two stations in my area, Coolmine and Clonsilla, are located beside roads and bridges which were built when horses and carts were the main forms of transport. Such roads now carry enormous amounts of traffic, with which pedestrians must compete in order to board trains. The local authority has long sought pedestrian footbridges from Iarnród Éireann for passengers to access the stations. The Minister of State's officials might provide an update on measures taken with regard to these stations.

The provision of car parking facilities for train passengers is a growing problem. This is a safety issue because the shortage of parking spaces in many railway stations results in indiscriminate parking in surrounding areas. This legislation will provide for safety but I ask the Minister of State to consider whether the matters I raised can be addressed.

**Mr. Wilson:** With the agreement of the House, I will share my time with Senator MacSharry.

**Acting Chairman (Dr. Henry):** Is that agreed? Agreed.

**Mr. Wilson:** I welcome the Minister of State, Deputy Callely, to what has now become the Thursday club. I want to speak to the Railway Safety Bill 2001 and address some of the issues arising from the announcement by the Minister and his colleague of the Transport 21 initiative.

The primary purpose of the Railway Safety Bill is to establish an independent statutory public body, the railway safety commission, with wide ranging powers of inspection, investigation and

enforcement. It will require railway operators to put in place a formal safety management system and describe the components of that system in safety case documents. A railway incident investigation unit will be established within the railway safety commission. A second independent statutory public body, the railway safety advisory council, will comprise representatives of organisations with an interest in railway safety. The Bill also makes provision for the testing for intoxicants among railway workers employed in safety-critical areas. I welcome all those initiatives. Has the Minister of State checked the constitutionality of the provision for the testing of safety-critical railway workers for intoxicants? I would like him to comment on that because the Government might run into difficulty in terms of that provision.

As was stated by previous speakers, following a derailment at Knockcroghery in November 1997 the then Minister for Public Enterprise who is now the Leader of the Seanad, Senator O'Rourke, obtained agreement from Government for the provision of IR£600 million to improve the safety of our railways. That was very much welcomed. As my colleagues, Senators Dooley and Terry outlined, money was scarce at that time and to secure a package of IR£600 million was a great achievement. I compliment the Leader and her officials on the work they put into preparing this Bill.

IRMS consultants were tasked with reviewing all aspects of the safety of the Iarnród Éireann rail network and of the legislative framework for regulating railway safety. In its report published in late 1998, IRMS concluded that historically the Iarnród Éireann network had been a safe railway but also recognised that there had been a shortfall in investment which at the time was impacting on safety. IRMS recommended that substantial investment was required urgently in infrastructural renewal and that it was necessary to introduce more formal systems and procedures within Iarnród Éireann to further improve safety standards. Since its 1998 report, IRMS carried out two follow up reviews of the safety of Iarnród Éireann's network. In its 2001 report it found that Iarnród Éireann had made substantial progress in improving the safety of its railway infrastructure. That is to be very much welcomed.

This Bill is designed to put in place a modern regulatory framework for railway safety and careful consideration was given to IRMS's recommendations and to regulatory regimes in other countries. The Bill comprises 16 Parts, which the Minister of State eloquently outlined. It covers not only the Iarnród Éireann network but the Luas, the planned metro network and heritage and other railways which have an interface with the public road network or other rail lines.

I wish to comment on the Transport 21 initiative, the €35 billion transport package launched

last Thursday by the Minister, Deputy Cullen, and the Minister of State, Deputy Callely. I compliment them on that initiative. As I have stated here previously, we do not have a railway in Cavan. To quote from what an eminent Member of the other House, who is follically challenged like myself but has not given into it and wears a cap, has said, “the only dart we have in Cavan is a dartboard and even they are becoming scarce because of insurance considerations”. We welcome the initiative to bring the railway to Navan by 2015, which would facilitate commuters living in Cavan. There is a railway line in Cavan which goes as far as Kingscourt. While it is not possible to include that line under the initiative at this stage, I request that money be provided to maintain it to ensure that when money becomes available in the near future, it could be put into operation. I congratulate the Minister of State and his team on their work.

**Mr. MacSharry:** I join with others in welcoming the Minister of State to the House. I am delighted to have this opportunity to make a few points on this Bill, which I welcome. I am sure that neither the Minister of State nor the Minister, Deputy Cullen, would not mind if I singled out the Leader of the House and former Minister in this area, Senator O'Rourke, for particular mention. At a time when IR£10 million was a great deal of money, she succeeded in securing the equivalent of €650 million to improve the system. I have first-hand knowledge of this in that CIE was closing the Sligo to Dublin line in the early 1990s. Due to major investment in that line overseen by the then Minister, Deputy O'Rourke, and successive Ministers, the line was brought up to the required standard.

I welcome this Bill. While the rail safety record here is good, the UK has not had the same luck in that respect and we could learn from its experience. It is important that we have this comprehensive Bill which provides for the establishment of the commission with an investigative division and an advisory council which will be representative of all the unions, consumers and the disabled. That is to be welcomed. It is good that we have, for want of a better expression, a HACCP system that relates to rail transportation, particularly with all that is planned over the coming years. I welcome the considerable work that has been done on our rail network, the work on the Sligo line being a case in point. That rail line has been replaced and the signalling system has been upgraded to a modern standard to cater for the needs of today.

Most of the previous speakers went into the detail of the Bill, but I will not do that as I do not want to delay the House. I wish to comment briefly on the Transport 21 initiative. I congratulate the Minister of State, the Minister, Deputy Cullen, and the Government on the huge invest-

ment to which they have committed over the coming years in our transport infrastructure. I do not want to be negative but I want to point out the needs in my corner of the country, the north west. The people there are delighted that the western rail corridor is set to extend to Claremorris. However, I cannot but express disappointment that the rail corridor will not extend all the way to Collooney. I do not fully understand that reason for that. I know there is a cost consideration, but many years ago wearing a different hat I attended a conference in Limerick when the spatial strategy was at embryonic stage and submissions were being received in respect of it. The phrase commonly uttered at that time was the need for “capacity before demand”. If there are gateways to Sligo and Letterkenny and we put in the infrastructure to provide capacity before we have the demand, we would be poised to meet the demand that will come on stream.

Dublin will be under huge pressure in the future with 1 million people coming to live here during the next ten years. We should invest now in the transport infrastructure in areas such as Sligo. There is not a kilometre of motorway north of a line from Dublin to Galway and west of Mullingar, nor are there any plans to build one. There are no radiotherapy services or gas supply in that part of the country. It would be beneficial if the Government could have a little more vision in the context of provision for that area. The people in Sligo, Letterkenny and that part of the country are eager to take their proportion of the number of extra people who will come to live here and thereby relieve the pressure on resources in Dublin. I welcome all the investment in transport in Dublin, in the metro and the Luas; it is fantastic and the Government is to be commended on it. I do not want to be unduly negative and I acknowledge that this initiative is the most historic announcement in terms of transportation infrastructure in the history of the State, but I ask the Minister of State and his colleague the Minister, Deputy Cullen, to use their good offices in Cabinet to try to get across the point across that the north west is open for business and is ready, willing and able to do its bit. I ask the Ministers to try their best to give us that little bit extra we need to perform to our potential.

**Mr. McDowell:** I have only had the opportunity to speed read the Bill on which I wish to make a number of brief points. I appreciate that it is normally the role of Opposition Members to say it has been an awful long time since a Bill has come through the other House and that it has taken a long time to get here, but in this case that seems to be peculiarly true. The Bill went through the Dáil shortly after the election in late 2002 and three years have elapsed since it was passed there. From a quick read of the Minister of State's speech, I did not see any explanation for



[Mr. McDowell.]

the reason it has taken so long to bring it to this House. I appreciate that the commission is already *de facto* in position. Perhaps the view is that it did not require statutory backup but, nonetheless, there seems to have been an extraordinary delay in the Bill coming to this House and I presume there is some explanation for that.

The main point I want to make is very complimentary of the Leader of this House. When people look back on her term as Minister for Public Enterprise they will probably see the issue of rail safety and the investment she secured for the permanent way as her major achievement. It is a Department that has seen many failures over the years, with many plans announced and ditched, and a failure to progress many of its plans to completion. However, in this particular case, thankfully, we have made some progress.

The progress arose, as others have said, from the incident in Knockcroghery in the late 1990s and the IRMS report that was completed shortly thereafter. I remember reading the report at that time and I, like many others, was genuinely shocked at the level to which our permanent way had deteriorated. For example, many of the bridges were clearly decrepit, almost falling down. Some of the photographs printed in the rail safety report were genuinely frightening. This was a function of the neglect of the railways over a long period of time.

In essence, we only have a radial service emanating from Dublin, which is under-used for most of the week and serves people who commute to the city from close by or who go down to the country or come up to Dublin at weekends. Frankly, the service had fallen into disuse. The rolling stock had not been replaced and hidden dangers in the system had been overlooked for many years. If anything makes the case for an independent inspectorate that will identify problems in the service and infrastructure, it is the IRMS report that was published a number of years ago.

It is evident from the review group report, completed a number of years after the IRMS report, that much improvement has been made and I want to genuinely compliment the then Minister for Public Enterprise, Senator O'Rourke, on the effort she expended in securing such improvement. In so many other countries, action of that kind only takes place following a serious accident. We are blessed in having managed to avoid any serious accident, excepting that which took place in Cherryville in 1983.

I accept the general proposition that we need a rail safety commission that is separate from the rail operators. However, I am not clear as to how the operation of the commission will intersect with the Health and Safety Authority. The HSA has an overarching responsibility for accidents, safety procedures and ensuring that such pro-

cedures are properly followed. There must be, at least, a decent working relationship between the two bodies. Was consideration given to the possibility of integrating the commission into the Health and Safety Authority, so that it could benefit from the experience the HSA has built up in policing safety procedures in other industries? I am unsure how the bodies will relate to one another.

The main issue is one of resources. I accept the general proposition that we should place a statutory duty of care on rail operators, on Iarnród Éireann, Luas and so forth, to look after the safety of their customers. However, we need to be honest and admit that a legal, statutory duty of care is one thing, but what is important is resources. CIE and Iarnród Éireann are State-owned and resourced. The bulk of the subsidy given to CIE goes towards the railways. The experience of three or four years ago proves that if CIE does not have the money, it cannot make the railway safe.

To declare that Iarnród Éireann has a statutory responsibility to ensure a safe railway system is fine, but in practice that responsibility devolves to the Department of Transport and, indirectly, to the Department of Finance. It is up to the Departments to make the resources available, which can be considerable, to ensure we have a safe system, that bridges are underpinned, level crossings are safely operated and so on. As well as placing a legal, statutory responsibility for safety on the operators, we also need a political commitment to fund the operators and that must be acknowledged in the Bill.

The issue of overcrowding has been raised by almost every speaker today. It is a major issue. I was interviewed recently on Today FM and was asked my opinion on safety belts on buses. To be honest, it had not struck me before, but it obviously arose in the context of the tragic accident in County Meath. The conditions that apply in DART trains every weekday morning, in commuter trains around Dublin and in the mainline trains leaving Dublin after 3 p.m. on Friday can be awful. A few years ago I was returning from Galway, having attended a funeral there. A woman got on the train in Loughrea. We were standing in the area between two carriages because there was nowhere else to stand. She asked the ticket collector if she would get a discount, given the fact that she could not get a seat. The collector shrugged. He was obviously used to getting a certain amount of abuse every week. It is the norm and widely accepted by those who use intercity trains on Fridays that the standard of accommodation is awful. If one does not get on the train at the terminus, one will not get a seat. This is intolerable.

I appreciate there is a difficulty in providing a large amount of rolling stock, which is not used during the week, simply to provide adequate

services at the weekends. However, the issue must be addressed because if there is an accident some day, it will be made so much worse by virtue of the overcrowding. Questions will then be put to the Minister of State, or to his successor, as to why he did not deal with this issue. Again, this comes down to resources. We need to provide the rolling stock for Iarnród Éireann in order to ensure that it can provide proper and safe services on Fridays. If that means that we have to limit —

**Mr. Callely:** That will be done.

**Mr. McDowell:** We will wait and see.

**Mr. Callely:** The trains are ordered.

**Mr. McDowell:** They have been ordered several times.

**Mr. Callely:** Some of them have arrived.

**Mr. McDowell:** We need to limit the number of passengers. We cannot continue to allow the large numbers of people who arrive at Heuston Station on Friday to board the trains. We cannot do that because sooner or later there will be a tragic accident and questions will be asked.

Others have mentioned Transport 21 and I feel like a broken record complaining about this but it is genuinely disappointing. I have complained about integrated ticketing in the past. The website of the Department of Transport is fantastic because it allows one to look at press releases dating back to 1997. I entered Midleton into the search engine this morning to ascertain how often the extension from Cork to Midleton had been announced. It was first announced in 1998 and again in 1999 by the then Minister, Senator O'Rourke. It was included in the national development plan in 2000. The extension was announced again in 2004 as a definitive plan with an amount of money provided and now it has appeared again in the Transport 21 plan launched two days ago. I hope it happens but the Minister of State must understand that people are deeply sceptical about this. One could take half a dozen different transport proposals, trace them back with the benefit of the Department's website, and see that they have been announced so many times that the credibility of the Minister and his Department is now zilch.

I read, very carefully, the contribution of the Minister for Finance, Deputy Cowen, to the presentation of the Transport 21 plan. There were ifs and buts in what he said. When the Minister for Finance says that the money is being provided but is predicated on the presumption of 4.5% growth, which is as much as most people believe we can manage, and that he still only intends to spend approximately €5 billion per annum on the public

capital programme, which is what we are already spending, then alarm bells should, justifiably, start to ring. Essentially what he is saying is that he thinks the plan is a good idea and will remain so in ten years time, but we may not be able to afford it and other priorities may arise. Furthermore, even though the current Minister for Finance thinks it is a good idea, his successor may not agree.

The metro was first announced in 2000, by the then Minister, Senator O'Rourke, and almost everybody thinks the metro is a good idea, except Mr. Michael O'Leary. Why has it not happened? It has not happened, not because the Department of Transport wanted to stop it, although there are some officials who are not enthusiastic, but because the officials in Merrion Street will not sign the cheques. It also has not happened because in recent years whenever we think we cannot afford a project or are not enthusiastic about providing money from Exchequer funds, we have taken to saying we will do it by way of a public-private partnership, PPP.

In the past I have been reasonably enthusiastic about PPPs but they are not a panacea. There are many projects in which the private sector is not interested or which would necessitate paying it far too much to stimulate its interest. We must, in the first instance, provide Exchequer funding and if there is private sector interest also, then that is fine. However, we cannot predicate a major project on there being private sector interest because we cannot guarantee that. Frankly, if the interest is not organically present, then frequently we end up having to pay far too much for private sector involvement in projects. When I see that €8 billion of the plan's budget is predicated on private sector interest, then I get worried. I worry whether we can afford, or will choose to afford, to complete all elements of the plan, assuming the current Government is in power for a significant part of the next ten years.

I would like to ask the Minister of State a few questions about Luas. I assume the requirement for safety procedures and so on under the Bill will apply to Luas. Since the Bill has been on the stocks since the Luas came into operation, have the various provisions that already apply to the Luas system a benchmark of safety procedures under which they operate? Is it the operator, which is a French company, or the rail authority that is responsible for ensuring that the safety procedures are in operation? It appears that we are saying that if the service is not safe it can slow down. I am not sure this is a sufficient basis on which to proceed.

Part 9 has invited a fair bit of interest, not least from our colleagues in the trade union movement, with whom I disagree on this issue. The Bill provides that the same levels of intoxicants must be present in the blood of a crucial safety worker in order for an offence to be committed. I am

[Mr. McDowell.]

strongly of the view that we should take a zero tolerance approach to this issue and that individuals who are responsible for trains, which may carry hundreds of people, should not be permitted any safe level of alcohol. I know it is being done on the basis that workers and drivers in other positions are allowed to have one or one and a half drinks, therefore, in the interests of fairness and equality, it should apply to rail workers. I do not believe this should be the case. I do not think we should even contemplate the possibility that someone who is responsible for the safety of hundreds of people should have any level of alcohol in his or her blood. My inclination is that there should be zero tolerance in that regard. I agree with what my colleagues in the trade union movement said about the need for an independent person to take and process the sample. As Senator Wilson said, there may be a constitutional issue, which the Minister of State must clarify.

I welcome the Bill. I would like to think that much of what it provides for is already in operation. However, it is well to get it onto the Statute Book.

**Mr. Morrissey:** I welcome the Minister of State to the House and, more important, the legislation. We should thank the interim commission which has been dealing with the issue for a number of years. I would like to raise a few aspects in this regard, which I am pleased the Minister of State raised in his speech. This relates to the type of model we hope to mirror. My concern was that much of the legislation would be based on the UK model and experience. We know the dreadful history of the UK model. At a time of unprecedented investment in the railway network, we must not underestimate investment in safety procedures. I am pleased that the Minister of State assured us he will not follow the experience of any particular country. My concerns would be increased greatly if we modelled ourselves on the UK experience.

The second issue I wish to address is the level of investment. In recent years, approximately €650 million has been invested in this area. Given the improvement in intercity and suburban train services, including the Spencer Dock project, there must be further investment in the many level crossings throughout Dublin in particular. These crossings close for approximately four minutes at peak times because of the signalling. Signalling operations in Coolmine, where I live, and other areas must be examined because people know that if they are caught, they will be delayed for four minutes, and there is a temptation to make a dash before the light turns red. We must examine level crossings in urban areas such as Dublin and Cork, including the Miletton line. When travelling here yesterday, I saw two

cars blocking the Luas at Queen Street. An ambulance, which had its blue light flashing, was also blocked. Everyone was stuck because the traffic on the quays was blocked. The safety issue cannot be overestimated.

The other aspect in which I would urge caution is in the area of regulation, which can stifle business. It is important that responsibility for safety should remain with the operators and the responsibility of the commission should not extend into that area. In the end, the buck should stop with the various operators. There is a major difference between the various operators. There is a limit on the number of people Dublin Bus can allow to sit and stand on a double-decker bus because of axle weights. However, there is no such limit on suburban trains. I asked the inspectorate to examine the Maynooth line and it said there was no health and safety case to be answered. This is a matter of great concern to the general public. This morning, I travelled into town by car rather than taking the 7.20 a.m. train from Castleknock. Why would one not take the train which costs just €3.20 return? It is because there is no space. At least one has space in one's car. One might have to travel on a gridlocked road, but one will take one's chances.

I hope that as a result of Transport 21 the uncomfortable travel arrangements endured by too many people will come to an end. People may think that public transport is stress-free and travelling by car is stressful, but it is currently as stressful to use public transport during peak times. I hope that over the next couple of years we will see an end to the dreadful practice of overcrowding on trains.

Another issue that must be examined is how people get to and from trains. Access to and egress from railway stations throughout Dublin is less than safe. We do not have proper pedestrian bridges. Some old bridges are preserved structures, therefore, footpaths cannot be built across them and they cannot be widened or made higher. Given the increasing numbers of people who will be using public transport as a result of the increased investment, there is a breakdown of communications between local authorities and Irish Rail in regard to who has responsibility for this issue. This is another area I would like to see addressed.

In welcoming Transport 21, the Government should be congratulated on putting forward a package that focuses attention and public debate on how the service can be delivered speedily. During the past two or three years, commuters have been experiencing levels of traffic which the DTO forecast for 2015. We have already reached this level and investment is that many years behind. While this is a ten-year plan, I hope the sequencing can be tweaked to bring parts of it forward. There is nothing like competition to force operators to get on with the job. While a lot

of money is being invested in roads, the metro and Luas, it is unfortunate that so little is being invested in buses under the plan. Competition might force better sequencing. The longer the delivery time, the greater chance there is of not delivering on the plan. The success of the plan will depend on early delivery of services, because this is what the public will buy into.

I welcome this Bill. The continued investment in our railways to ensure safety has to be paramount. Discussions must take place with the unions on the issue of intoxication. At what stage is safety taken seriously if people put in charge of public transport are not alcohol and drug free? Public investment in transport must come with reform of work practices. There must be zero tolerance on the issue of substance abuse in public transport.

**Dr. Henry:** I welcome the Minister of State to the House and I also welcome the Bill. All the points I wished to make have already been made. I support the point made that the commission must be answerable to public representatives. Bodies have been created that are independent of the Oireachtas and, as in the case of the National Roads Authority, eventually become answerable to no-one. Senator McDowell referred to the importance of looking at the health and safety legislation at the same time as looking at the worthwhile provisions in this Bill. We must be absolutely sure that these provisions dovetail and that there is no possibility of conflict between them.

The overcrowding on trains is a very serious problem, but it is taken for granted. I remember an accident on the DART years ago in Dalkey where it was the people standing on the train who were injured. It has also been the findings of investigations into other rail crashes that those who were standing are far more vulnerable. I believe it happened in Cherryville as well. I hope that we address this difficult issue which happens generally at the weekends, although frankly I have rarely been on a train to Cork that was not overcrowded. I share Senator MacSharry's disappointment that the western rail corridor will not be continued to Collooney. We still have a sort of partitionist attitude about that part of the country. It seems to get extraordinarily isolated in all the deals that are done for it. Transport between Sligo and Letterkenny is very difficult.

I would finally like to make a point about this legislation and accidents on the DART, Luas and so on. Accidents involving the Luas have nothing to do with the Luas, but with cars going through the lights. Enforcing the Road Traffic Acts regarding cars is needed to deal with these accidents. I have not once seen a Luas going through the lights, yet I repeatedly see cars going through the lights, particularly at places like Queen Street and at the end of Gardiner Street. I suggest that

accidents on the new Luas lines to be introduced will be curtailed by the enforcement of the Road Traffic Acts and not by this legislation. Nonetheless, I do welcome the Bill and I hope it goes speedily through the House.

**Mr. Finucane:** I am pleased that the emphasis has been on safety and on the improvements in safety over the past few years. Like many other people, I am bitterly disappointed in the way Iarnród Éireann has scaled down freight activities. It has obviously scaled down for economic reasons, but what disappoints me is the lack of incentive for companies to go into rail freight. I come from Foynes and in the past there was a traditional railway line operating from Limerick to Foynes. There was a very effective service for the Mogul mining company, where the ore and other deposits were transported to Foynes by rail. It made economic sense to bring this material from the different locations and it also took heavy trucks off the busy N21.

In recent times, there have been mining activities in Lisheen and in Galmoy and those mines are not very far from a railway line. The company states that it is cheaper to transport goods by road, which may be true, but there is much pressure put on our road network by heavy trucks and that is disappointing. Such restrictions should be built into the planning conditions, which are quite onerous for mining operations. There should be some incentive or encouragement for companies to use rail so the pressure can be taken off roads. It is a far more sustainable way to transport the ore. The line in Foynes has been lying idle as there is no longer any great transport activity.

The recent announcement on rail transport and rail services shows the lack of foresight in the past when railway lines were closed. I now live in Newcastle West, which is thought to be one of the fastest expanding towns in Europe. It has become a dormitory town for many industries in the surrounding area.

**Mr. Dooley:** That is good public representation.

**Mr. Finucane:** Quite a number of people will drive to Limerick as the road network is very modern. They can buy a house in Newcastle West as it is much cheaper than in Limerick city and its suburbs. If they live on the Newcastle West side of the city, they will often get to their factory destination quicker than if they lived on the opposite side of the city. However, the retrograde step was taken many years ago to close down the railway line. It is a pity we did not have some foresight on that occasion. Charleville Station is very modern and Kilmallock is quite close by. The train passes through Kilmallock and the station there needs upgrading. We should look at opening Kilmallock Station for certain train times

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as it is very important for an expanding town and community. In the other direction, we have been looking at opening up the line from Ennis to Claremorris. While that is desirable, we should look at the extended network and see where it is possible to open stations, such as that in Kilmallock.

The train service has improved considerably to different locations. However, people in Sligo will be envious when they see these aerodynamic trains operating from Cork next year and compare it with the final part of the line to Sligo, where the train must slow down to 15 km/h. I wonder whether those in the west still feel deprived. Opening up the line to Claremorris and extending it to Sligo in the future is a very long-term project. Regrettably, people do not think in the long term and there is an immediacy when taking decisions. Much of what is in this transport plan takes a long-term viewpoint. Many of the measures to be taken will occur after the next general election. That is why people are dubious about the plan. The Government embraced too much in this plan and went for the big bang launch. There were similar launches in the past, such as that for the National Development Plan 2000-06. That road infrastructure and much of the rail infrastructure was a component of that plan but it did not happen.

There was a big launch for the national spatial strategy but who talks about it now? There was also a big launch for the reform of the health service but the past year has shown the type of difficulties that prevail there. Similarly, much of the transport launch this week was for the optics to give the impression the Government is doing something for the future. However, I wonder about the scale of, and intention behind, all of this. It has left many people behind. I read in one of the newspapers today about the Taoiseach planting a tree five years ago at the location of a proposed community college in Athy. The tree is progressing but the people have not seen the school, despite a commitment given. It is why people must be dubious when they see the grand scale of the transport plans.

There was considerable hostility among members of the business community who were inconvenienced and lost out economically during the construction of the Luas lines, lines which have not met. We were all aware of the publicity and of the criticism levelled at public representatives. However, that was a small scale project. The Minister said St. Stephen's Green will be like Grand Central Station. That is nonsense. Some 69 lines meet in Grand Central Station in New York City. The Minister should get real in respect of St. Stephen's Green.

**Mr. Wilson:** Proportionately.

**Mr. Finucane:** "Proportionately" was the word for which I was looking.

I am sure Senator Dooley will react to my sentiments on the following issue. He will be aware of the concern in the mid-west region about the open skies policy. To a certain degree, people in the area have embraced the open skies concept. The Minister said it will happen. The Mid West Regional Authority and the business interests in the area have accepted it but have asked for a number of years to develop the infrastructure. The important infrastructure in the area is a spur line from the Limerick-Ennis line to Shannon but all that is in the plan for the future is a feasibility study. When will that be undertaken? What will happen in regard to that infrastructure?

With regard to tourism in that area, thank God for the person who was described as a "bootboy" in the House yesterday. He is a reputable man in Ryanair. As far as people in the area are concerned, he has energised it because he has brought in many flights from different parts of Europe and, as a result, the area has picked up. However, what happens when these tourists want to go to the west? The Ennis-Galway road is Third World infrastructure.

The transport plan announced earlier this week is good on promises but what about the performance aspect? People are measured on performance and not on promises, especially by a sceptical, cynical public which looks at issues in that way. The open skies policy is likely to hit the mid-west region in the near future and will have a financial impact on the region. This transport plan was a chance to give something back to the area but that was not done. I would say "a lot to do, more to be done". As a representative of the mid-west area, I am a little disappointed and I do not think the Mid West Regional Authority will look at it as something it wants. Members of the authority have told me that if the plan is to be implemented over five years it will not provide the infrastructure in the area.

**Mr. Dooley:** It wanted the river crossing and the Gort-Crusheen bypass, and it got them.

**Mr. Finucane:** Senator Dooley spoke earlier and I listened with great interest to what he said. He praised all and sundry. It is not for me as an Opposition Member to do that. Many of the commitments made have not been delivered.

**Mr. Dooley:** The Senator should give some credit.

**Mr. Finucane:** I will give credit where it is due.

**Mr. Dooley:** The Senator does.

**Mr. Finucane:** I am a constructive politician.

**Mr. Dooley:** The Senator is on a negative track today. It is not like him.

**Mr. Finucane:** It is not negative. Senator Dooley represents the mid-west region. I read in a newspaper that he is likely to be a candidate in Clare in the next general election, and good luck to him.

**Mr. Dooley:** It is up to the delegates.

**Mr. Finucane:** I hope the issues about which I spoke do not come back to haunt him. I will remind the people in the area that when I spoke about the open skies policy and the changes to be made, Senator Dooley said I was negative. I will tell *The Clare Champion* what he said to me. Senator Dooley likes publicity.

**Acting Chairman (Mr. J. Walsh):** The Senator has one minute remaining.

**Mr. Finucane:** This confrontation is terrible. It was so peaceful earlier.

**Mr. Dooley:** Now comes the positive bit.

**Mr. Finucane:** I will not go over the issue of Midleton, Navan and the signs erected by the poor Minister for Communications, Marine and Natural Resources, Deputy Noel Dempsey, which read "Dempsey Delivers". Part of what was promised in 1999 will be delivered in 2010 and the other part in 2015. God help the poor Minister if he must wait that length of time. Having made my usual constructive contribution, I will sit down.

**Mr. Kitt:** I am glad to contribute to the debate and welcome the Minister of State, Deputy Seán Power. We are all aware that after the derailment in Knockcrochery in November 1997, the then Minister commissioned an independent review on safety. Like other Senators, I compliment the former Minister, Senator O'Rourke, who fought hard at Cabinet level for funding for her Department and to try to make safety an issue.

Listening to the debate on Transport 21 in recent days, I was amazed to hear people say all we have done is make a few railway lines safe. It is important to make railway lines safe. Over the years perhaps this issue was not given the attention it deserved by Iarnród Éireann and CIE. However, during Senator O'Rourke's and Deputy Brennan's time in the Department, a strong emphasis was placed on safety. For example, near Tuam, Iarnród Éireann sought to lift the line but only for the intervention of the former Minister, Deputy Brennan, we would not have it back. Thankfully, it has been included in Transport 21 in the context of the line from Ennis to Claremorris. We will press hard for that work to be done as quickly as possible.

I was in the House in 1975 when the decision was taken to abolish freight and passenger services on the Sligo-Limerick line. In Opposition, I fought as best I could to keep it open because I knew it was an important line which passes through my constituency. Unfortunately, the Government of the day did not see it that way, although I am thankful the line was left.

**Mr. Finucane:** What year was that?

**Mr. Kitt:** The decision was taken in 1975 to abolish these services on this line.

**Mr. Finucane:** The year 1997 is usually the one mentioned.

**Mr. Kitt:** I am sure the then Minister, Peter Barry, did his best but Iarnród Éireann, unfortunately, had, and always has, a very negative attitude. We will have a battle with Iarnród Éireann to try to provide this service which is so badly need.

When I think of the railway lines and safety, I think of the Asahi plant in Mayo and the dangerous goods which were transported to it by rail. It was very important to have a railway there. Even with the railway line, there was the odd accident. Of course, there were similar accidents on the road involving Asahi. I have always made the point that with the growth of the timber industry in the north west and west and with plants such as Masonite in Carrick-on-Shannon, Clonmel and Waterford, there is a strong case to be made for bringing timber goods along the line from Sligo to Limerick and down to Waterford. It is still my ambition and, I am sure, that of the Government to try to divert as much timber to the railway line because probably too much of that product is being transported by road. The same could be said for cement, coal and other products.

I am glad Senator Finucane referred to freight. However, I am also concerned about the way many of the level crossing at smaller railway stations have been changed. I am  
1 o'clock sure it is a great idea for a computer to open and close gates at railway stations, and I am all for the use of computers. I am not sure how this will work given the current delays in services. It will be all well and good if trains arrive on time but it is hard to beat a level crossing manned by a local person. Is the Minister of State happy with the conversion to the automated system? Unfortunately, many rail accidents involve cars and other vehicles and many questions remain regarding such accidents.

I refer to the train station at Athenry, County Galway. Every station has a turnout, which allows trains to switch tracks. For a reason that has never been explained, the turnout was removed at Athenry Station a number of years ago. We fought hard for this decision to be reversed but

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we were told that could not happen. However, it must be changed because Transport 21 provides that the Ennis to Athenry rail line should be open by 2009 at the latest. The turnout must be addressed first.

The provision of a service between Ennis and Athenry and, ultimately, Galway to serve north Clare and south Galway is important. We are lucky an early morning service is provided between Athlone and Galway serving Ballinasloe, Woodlawn and Athenry but I support the provision of additional stops at Oranmore and Renmore, which have large populations. People in these areas would welcome a commuter service. Such a service should be provided in Galway, given the important role it would play for commuters and students who currently cannot reach Galway city by train until 10.15 a.m. at the earliest, as they are dependent on the train from Dublin. Such issues must be examined.

The legislation provides for matters relating to light rail and the metro and, for that purpose, proposes to amend the Transport (Railway Infrastructure) Act 2001. Ambitious and welcome plans have been announced for a metro and Luas and DART extensions in Dublin. The spur to Dublin Airport is particularly important, given that Dublin must be the only capital city in Europe without a rail link to its airport. I attended a conference in London two weeks ago and my travel options from Heathrow Airport to London city centre were amazing. They were also available at reasonable prices. The frequency of service and fares are issues that can be dealt with later.

I have been a member of the western inter-county railway committee, which was set up by Fr. Micheál MacGréil, since 1979. Even though I resigned from the county council in 1991, the committee was good enough to co-opt me. The committee is glad that it will have a presence on the western rail corridor implementation committee and I hope Fr. MacGréil will take up this position. If the rail corridor programme is to be fast tracked and the line extended to Claremorris, such representation will be needed. I also hope the Department of Community, Rural and Gaeltacht Affairs will be represented on the implementation committee, given that the Department has been heavily involved in the western rail project. Last Tuesday the Minister spoke in Claremorris about his role and that of his Department in securing the extension of the line north of Claremorris to Collooney through the erection of fencing and the removal of undergrowth. A positive outcome of the decentralisation programme is the move of the National Roads Authority to Ballinasloe and the railway commission's offices to both Ballinasloe and Loughrea. This will greatly benefit the west.

I am delighted that most of the roads projects under the national development plan are coming in ahead of their deadlines. The Loughrea road project has been completed a few months ahead of its deadline. I had the honour of walking the new road last Monday with other Oireachtas Members and county councillors to raise money for Loughrea Lions Club and Loughrea Athletic Club. It was historic to walk the road before its official opening in three weeks. It is an excellent road, which has been very much welcomed by the people of Loughrea, who have experienced gridlock for many years.

Railway safety is an important issue and I hope the Minister of State will respond to the issues I raised regarding level crossings, signalling and the transport of goods such as timber, cement and coal on the rail network.

**Dr. Mansergh:** It is clear from the Bill's Title that it dates back to 2001, when the Leader was Minister for Public Enterprise. Her initiative on the rail safety programme was a major turning point in the history of the rail network in Ireland because, until that time, it was pretty much scrimp and save and care and maintenance.

**Ms O'Rourke:** I thank the Senator.

**Dr. Mansergh:** The safety record, partly thanks to the grace of God, has been good on our railways but a number of high profile accidents across the water underline the fact that many casualties can result from such incidents. This issue deserves the priority it has been given but it serves a dual purpose. At the same time the railway is made safe, its capacity to carry traffic at higher speeds is increased.

I question the definition of "train" in the legislation, which states, "'Train' means a vehicle with flanged wheels designed to operate on a railway for whatever purpose, and includes carriages and rolling stock". A beet train has wagons and bogies, not carriages and, therefore, the definition does not adequately cover goods trains. The Minister of State might examine that before Committee and Report Stages. Section 4(3) states the Act "does not apply to the operation of railway infrastructure solely for industrial use...". I presume that refers to the Bord na Móna rail network. Perhaps the Minister of State could clarify that point.

I agree with the functions being assigned to the railway commission. I approve of the inclusion of specific provisions regarding the attendance of members of the commission at Oireachtas committees. In the past people felt they had discretion to refuse to attend.

I listened with a mixture of amusement and frustration to Opposition statements on the Government's record on railway investment since 1997. Very little can be said on initiatives taken

on the other side of the House. The Leader quoted from *Building on Reality*, which stated there would be no more investment in rail. That was proposed in the context of the DART, which Pádraig Faulkner mentions in his memoirs. The new carriages that we are still using were put on railways. I recall a conversation with the late Deputy Jim Mitchell who was the then Minister for Transport. Those decisions were implemented during the Fine Gael-Labour Party Government and they drew a line under that.

In the 1987-94 period there was not much investment on this side of the House. Arrow trains were introduced, a sop when all investment was in roads. The initiative for the Dublin-Belfast railway came from the North. Rail investment has taken off since 1997. The Book of Estimates for 1997, produced by Deputy Quinn, provided for zero funding for rail. A complete transformation has taken place since then. I see new green trains at Limerick Junction, due to come into service at the end of the year. Works on the DART lines have been completed and the Luas has been a stunning success.

Although people criticise the capacity of this side of the House to deliver, much change, investment and improvement has taken place. In the 1997 rainbow coalition Government 20 point plan there is no reference to public transport. No thought was given to dealing with congestion. I would have liked the Opposition to be more positive when making comparisons.

The comments by the Ryanair chief executive about the airport metro plan being a waste will probably go into the annals in the same way as remarks describing Knock Airport as foggy and boggy.

**Ms O'Rourke:** He is a bootboy.

**Dr. Mansergh:** I use Ryanair from time to time but if there were not a rail link from Stansted I would not do so. The Government is investing in a facility from which Ryanair will benefit to considerable extent and in this context the remarks are outrageous.

**Mr. Wilson:** Hear, hear.

**Mr. P. Burke:** He has got Senator Mansergh excited.

**Dr. Mansergh:** I resent the attitude that if one is sufficiently wealthy and successful one can be arrogant and rude and can attack the Taoiseach in terms the Opposition would hesitate to use.

**Ms O'Rourke:** Except the Labour Party.

**Dr. Mansergh:** A degree of respect for the country from which one has launched a hugely successful enterprise across Europe would not be

out of order. If one can afford to buy a taxi licence, which is a complete abuse, and one lives in Gigginstown House, one does not have the same problems in getting to Dublin Airport as ordinary people.

**Mr. P. Burke:** He is a transport expert and one must recognise that.

**Ms O'Rourke:** He is a rich pig.

**Dr. Mansergh:** Ordinary people coming through Dublin or from Dublin at rush hour must spend much time travelling.

Regarding waste, let us consider the waste of tarmac as we seek to accommodate more and more cars and the waste of energy as people wait in traffic for hours while travelling to the airport. The access to Dublin Airport is grossly inefficient under any economic criteria and that must be considered.

**Mr. P. Burke:** Mr. O'Leary is correct on the price of car parking in Dublin Airport and he is correct about Aircoach, a great service.

**Dr. Mansergh:** The price of car parking is outrageous and the reason Mr. O'Leary is objecting is because he hoped to build his private terminal and charge customers. This is transparent and the chairman of Aer Rianta, in evidence to the Oireachtas Joint Committee on Transport, stated that many operators in Dublin Airport were totally opposed to the metro. I wrote to him on this matter and now they have revealed themselves. Apart from this element there has been a general welcome for the metro.

**Mr. P. Burke:** Senator Mansergh is being unfair to Mr. O'Leary. We would not be able to fly out of this country without him.

**Dr. Mansergh:** He may be very progressive on air travel but in terms of surface travel this is 1960s discredited transport economics.

**Ms O'Rourke:** I could not agree more. I heard our spokesman speak on this matter earlier. I take great umbrage that these comments are made about the Taoiseach. If Deputy Kenny were Taoiseach, and he never will be—

**Mr. P. Burke:** The Leader will be surprised, Deputy Kenny will be the next Taoiseach.

**Ms O'Rourke:** Senator Burke will be very high up in that case.

**Dr. Mansergh:** In what year will that happen?

**Ms O'Rourke:** The next century. If Deputy Kenny or, perish the thought, Deputy Rabbitte were Taoiseach I would say the exact same thing.



[Ms O'Rourke.]

For an aviation bootboy, as I described him yesterday, to treat the legitimately elected Taoiseach in this way is obnoxious. Mr. O'Leary earns his money from the people of this land and I do not know why his treatment of a democratically elected Taoiseach does not spark a revolt. I commend Senator Mansergh for the strong manner in which he has spoken, as I do myself. Of course Mr. O'Leary facilitated travel for millions of people but does that entitle him to be an obnoxious, hateful pig and a bootboy? I do not think so. There is such a thing as manners but he does not have any. What a silly person he is but we are here to talk about the Railway Safety Bill and I am here to praise it, as it is my Bill.

I thank the Minister of State for coming to the House and the officials with whom I laboured long and dutifully. This Bill was published four years ago and we worked strongly on it. The Bill was part of the prongs of the safety arrangements put in place. I remember a railway engineer writing to me from Scotland when we were investigating railway safety. He wrote that if I drafted this legislation I would sleep easy in my bed as the railways of the country would be safe. That is exactly what I was able to do and I am glad I have said this.

The dreadful Knockcroghery accident, in which nobody was killed because they were cushioned by the walls, occurred on the same day as the inauguration of President McAleese. We could have been at funerals that day rather than the inauguration. I did not rest and came to the Cabinet on three separate occasions seeking the guts of €1,000 million. On the first day I was laughed out of it, but not so much on the second day. On the third day, they said "Yes" and we went ahead with the railway safety work. I wish to thank all those who took part in that work and devised the strategies. Three funding tranches were required to get it working, otherwise the railways would have been dead.

In 1984, the coalition Government said there would be no more investment in railways. I often wonder how the Minister of the day rested easy knowing there had been a severe rail accident in 1981 resulting in many deaths. In addition, numerous warnings had been issued by CIE that it could not keep the trains going. How could one be a Minister with responsibility for public transport and sleep easy knowing that safety measures were not being carried out? It was the most remarkable *volte face* I could ever have envisaged and I could not do it myself. I informed the Cabinet that I could not remain in office if this was not done. The action was taken then and it means that everything planned in the Transport 21 initiative can happen. It could not have happened, however, if the tracks had not been made safe. One may as well stay at home if the tracks and level crossings are unsafe. Some 800 or 900

safety improvements have been undertaken and thank goodness for that because they were such a bugbear.

A great fuss has been made because the ESB is getting private contractors to undertake work. CIE also engaged outside contractors because it did not have the personnel or know-how to do that safety work. That was allowed because people knew their jobs depended upon it, as did the continuation of the railways.

I will always be grateful and appreciative of the opportunity I had, not just figuratively but literally, to put my stamp on the railways of Ireland. I mean no disrespect to the Minister of State, Deputy Callely, for whom I have a high regard, but a Minister with responsibility for the railways should be a rural Deputy from outside Dublin. Trains are needed in rural areas. I consulted a book, which I am launching next week, and noted that most of the previous Ministers with responsibility for public transport were from outside the capital. They would need to have been because they knew the role railways play in Irish life.

I am glad that a provision for drug and alcohol testing is included in the Bill, which is very important. The matter may have been questioned constitutionally and in other regards, but I am glad the provision has been included because it is very necessary.

Railway journeys are recorded all over the world and people appreciate them as well as being interested in the mysterious nature of international rail travel. In Ireland, people kept on saying they wanted new trains but I suggested that we have to get the tracks right before new carriages are introduced. New railcars are currently being put into operation because the essential safety measures have been put in place.

I want to record my thanks to Senator Mansergh because when I was pushing this agenda in Cabinet and not getting very far, behind the scenes he did his usual diplomatic stuff and was able to ease my path to a certain extent. It was a fight worth having and one worth winning. The people of Ireland will benefit, not just now but for years to come. It was the first major upgrading of the railways.

I recall seeing the fish-plate following the train crash in Knockcroghery which is about 15 miles from Athlone. A CIE official pointed out that the fish-plate dated from 1872. I thought to myself, "This has never been looked at since 1872 and here we are putting trains on them and packing those trains with people". I got a big shock which affected me deeply. I remember thinking that there was only one way out of the situation no matter what it cost. The choice was quite stark because one could have opted to close the railways apart from the main lines from Dublin to Cork, Galway and Belfast. That would have left us with no rail network.

Interestingly, the year I came into Government in 1987, when there were major cutbacks because of everything that had occurred in the previous four years, a proposal was put to us by the Department of Finance that we should stop the railway at Athlone and not go further west over the Shannon to Galway. I remember laughing at that suggestion.

**Mr. P. Burke:** The odd train still stops at Athlone.

**An Cathaoirleach:** Order.

**Ms O'Rourke:** Of course, it stops to let passengers off.

**Mr. P. Burke:** I mean that it breaks down.

**Ms O'Rourke:** I am sure it does. Imagine, however, that a Minister in that coalition Government stood over the lack of repair of railway tracks around the country. It is a holy disgrace.

**Mr. P. Burke:** To be fair, there were several Ministers, including Senator O'Rourke's predecessors.

**An Cathaoirleach:** Order, please.

**Ms O'Rourke:** Of course there were, but I do not know how they lived with the job or managed to carry it out responsibly.

The Senator is correct in stating that the trains stop at Athlone to let people off. I had a vision that a train would stop in the middle of the bridge at Athlone while crossing the Shannon. In my vision everybody would say, "This is as far as we are going". The Department of Finance's proposal was laughed out of it, of course, because no matter what cutbacks were to be entertained trains would still be crossing the Shannon in the same way as Sarsfield's men did.

I thank the Minister of State for attending the House to introduce this Bill. The measure raises many memories in my mind of the safety regime upon which my Department embarked four years ago. These events have exercised my mind as I listened to today's debate. I thank our party's spokesperson on transport, as well as the Opposition spokespersons, who referred so kindly to my role in the legislation. I appreciate their comments. The Minister of State also referred to me in his script for which I thank him. I thank his officials in particular for all the work they have put into the Bill.

**Minister of State at the Department of Transport (Mr. Callely):** I thank Senators for their varied and interesting contributions to this

debate. I am particularly pleased that the House has demonstrated its commitment to promoting rail safety by supporting the modernisation of the regulatory framework as proposed in this Bill. I appreciate the good wishes that have been expressed concerning the launch by my Department of the Transport 21 plan. I appreciate the kind comments about that plan that have been expressed to me both in the Chamber and outside it. I have been promoting some of the projects since my appointment to the Department of Transport.

**Ms O'Rourke:** That is true.

**Mr. Callely:** I was happy to be in a position to lead the way in developing some of our rail capacity as reflected in the Transport 21 plan. I am particularly pleased that that initiative has now come to fruition in a manner I envisaged even before assuming my current portfolio.

As the Leader of the House knows, when other countries examined rail safety issues they decided to expand their rail fleet capacity. An important lesson was learned in some of those countries because such expansion led to severe problems which in certain cases caused injury both to train passengers and railway workers. The Leader of the House must be congratulated on securing the three investment tranches for safety issues over that 15-year period from when she initiated it in 1999 to 2013. In that time, we will have spent €1.4 billion, which is some achievement. Senator O'Rourke had to make a political call on what should come first and what should constitute the foundation of the legislation. She certainly emphasised that it should be founded on the structural and safety aspects. She made the correct call and I congratulate her in that regard. It is important that this be put on the record.

A number of questions were asked, to which I will try to respond, albeit very briefly. The Bill provides for a modern regulatory framework for a modern and expanding railway transport network. It should serve us well for many years. The two principal features are the creation of an independent railway safety regulator, the railway safety commission, and the appointment of an independent rail accident investigator. The Bill is innovative in that it provides for the testing of safety-critical workers for alcohol and drugs and makes it a criminal offence to be intoxicated while working on a railway.

A number of Senators, including Senator Paddy Burke, who is present in the House, referred to overcrowding. This will be addressed through the provision of the modern rolling stock and additional capacity. Senator Paddy Burke should note that section 69 of the Bill empowers the railway safety commission to make regu-

[Mr. Callely.]

lations limiting the number of passengers permitted to stand on a train at any given time.

A valid point was made by Senator Paddy Burke on level crossings. Much good work was done in this regard and significant progress was made. We should not lose sight of this fact. Iarnród Éireann is putting in place a programme for addressing the outstanding issues associated with level crossings. I have asked my officials to speak to the Senator about the issues he raised. He will be impressed and satisfied with the response he will receive.

On the issue of freight, an EU directive provides for the opening up of the freight market. With effect from January 2006, private operators will be able to enter the Irish market if they so wish.

Senator McDowell referred to the Health and Safety Authority. There will be some overlap in the responsibilities of that authority and those of the railway safety commission. A memorandum of understanding is being negotiated to avoid any difficulties in this regard.

On the question of overcrowding on intercity trains, I am delighted to be able to indicate to Senator McDowell that 67 new carriages are already earmarked for the Cork route, to which he referred. They are to be in use by the end of 2006. Much good work is also being done on other routes. A total of 120 intercity railcars are to be put in place on other routes by the end of 2007. Iarnród Éireann is introducing seat reservation systems for intercity services on a phased basis. A safety case system is already in use on the part of Connex Transport Ireland, the operator of Luas.

Senator Terry referred to dangerous goods being carried by Iarnród Éireann. They are carried in conformity with EU directives and regulations. She also mentioned the Madrid incident. I am pleased to indicate that, following that incident, Iarnród Éireann carried out an extensive review of the recommendations on railway security and safety, most of which are already being implemented.

Senator Terry also referred to park-and-ride facilities. I fully support their development and it is very important that they be strategically based. It has been put to me that we should only have rail-based park-and-ride facilities but I do not support that view. I have indicated quite clearly that I am open to both rail-based and bus-based park-and-ride facilities. There is scope for both. The Senator also referred to the throwing of stones at trains. The Bill makes this an offence.

Some Senators on the Government side made some very interesting points. Senator Mansergh made a fair point on the definitions of “rolling

stock” and “train” but their definition in the Bill meets his concerns. The issue is well covered.

On Senator Wilson’s point, the Attorney General has confirmed to me that the provisions will withstand constitutional scrutiny on the basis that the balance struck by the Legislature between the private rights of individuals and those of the public is proportionate. In giving this advice, he was conscious of the limited application of the random testing provisions to safety-critical railway workers and the potentially catastrophic consequences for large numbers of people of mistakes in the operation, maintenance or repair of the railway system. I cannot stress this point strongly enough. I thank the Senator for giving me the opportunity to clarify this issue.

Senator Dooley, the spokesman on transport, referred to a number of issues. I thank him for his kind and positive comments on the Bill. I know he has a particular interest in two of the points he made because he has raised them with me on a number of occasions. The first concerns the need for a Shannon rail link. I am pleased to confirm that the feasibility study on the Shannon rail link will be undertaken on behalf of Iarnród Éireann in the coming months. I hope we will be able to return to the Senator with positive news thereon. I am aware of his deep anxiety to see real progress regarding this issue given the benefits that would accrue to the Shannon region as a consequence. We will examine closely the outcome of the study and my officials and I will take the opportunity to discuss it with the Senator.

I thank the Leader for her very positive contribution. She is quite correct.

**Ms O’Rourke:** It would be strange if I did not speak in favour of my own Bill.

**Mr. Callely:** As the Senator put it, it is her Bill. I salute her and pay tribute to her on its very progressive and innovative provisions.

Question put and agreed to.

Committee Stage ordered for Tuesday, 8 November 2005.

*Sitting suspended at 1.40 p.m. and resumed at 2.30 p.m.*

**Employees (Provision of Information and Consultation) Bill 2005: Report and Final Stages.**

**An Leas-Chathaoirleach:** Before we commence, I remind Senators that a Senator may speak only once on Report Stage, except for the proposer of an amendment who may reply to the

discussion on the amendment. Also on Report Stage, each amendment must be seconded.

**Mr. Quinn:** I move amendment No. 1:

In page 4, line 7, after “employment” to insert the following:

“(excluding an individual supplied for the temporary use of an employer by an employment agency within the meaning of the Employment Agency Act 1971)”.

This amendment speaks for itself, the matter having been discussed on Committee Stage. We are talking about the agency worker being part of the original agency rather than the temporary employer. The Minister of State has covered this issue with his own amendment.

**Mr. Coghlan:** Has the Minister of State covered this issue with his own amendment?

**An Leas-Chathaoirleach:** Amendment No. 1 is not grouped with other amendments.

**Mr. Coghlan:** I second the amendment. As Senator Quinn noted, we debated this issue on Committee Stage. Both Senator Quinn and I fail to see how a person in very temporary employment, particularly an individual who might be employed for one week or a few weeks, could be regarded as an integral part of a temporary employer. I do not see the point of regarding such an employee as part of a temporary employer, however, the Minister of State had his own view on the matter. I incorrectly thought that he had covered this issue himself.

**Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen):** The distinction I drew on Committee Stage was between employees who are on a contract of service and employees who are on a contract for service. Employees on a contract of service tend to be with a company for a very long time. A contract for service tends to be much shorter. This distinction is recognised by the Revenue Commissioners and others and it would be extremely undesirable to exclude people who are long-term employees in a company, even if they are supplied by an agency. This would be the effect of amendment No. 1, which nobody would wish to see happen.

Agency workers can work for the same company for several years and they ought to be entitled to information and consultation. I discussed the matter with the Parliamentary Counsel following Committee Stage and I was assured that what I said on Committee Stage about the distinction between a contract of service and a contract for service was correct. The concern

about agency workers outlined by Senators Quinn and Coghlan on Committee Stage and today is groundless.

**Mr. Quinn:** The point I made on Committee Stage was that an agency worker is effectively part of the original agency and not the temporary employer. However, the Minister of State’s explanation has put my mind at rest.

Amendment, by leave, withdrawn.

Government amendment No. 2:

In page 4, to delete lines 30 and 31, and substitute the following:

“‘relevant workforce threshold’ has the meaning assigned by section 4;

‘trade union’ means a trade union which holds a negotiation licence under Part II of the Trade Union Act 1941, as amended;

‘undertaking’ means a public or private undertaking carrying out an economic activity, whether or not operating for gain.”.

**Mr. Killeen:** This is, in effect, the amendment proposed by Senators Quinn, Coghlan and White on Committee Stage. I was concerned about accepting the amendment on Committee Stage because I was unsure whether the wording was what the Parliamentary Counsel would suggest so I undertook to return on Report Stage. The wording in my amendment is slightly different to that of the original but it effectively accepts the amendment proposed by Senators Quinn, Coghlan and White on Committee Stage.

**Mr. Quinn:** I thank the Minister of State for this amendment, which covers the points that Senators Coghlan, White and I wished to cover, and appreciate the fact that he responded to us with this amendment.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 3, 21, 24, 25, 28 and 59 are related and may be discussed together. Is that agreed? Agreed.

Government amendment No. 3:

In page 4, between lines 34 and 35, to insert the following:

“(3) For the avoidance of doubt, a reference in this Act—

(a) to the negotiation of an agreement establishing information and consultation arrangements or to such an agreement that has been negotiated, or

[An Leas-Chathaoirleach.]

(b) to an Information and Consultation Forum,

includes, unless the context otherwise requires, a reference—

(i) to the negotiation of more than one such agreement or, as appropriate, to more than one such agreement that has been negotiated, or

(ii) to more than one such Forum.

(4) *Subsection (2)* is without prejudice to section 11(a) of the Interpretation Act 1937.”.

**Mr. Killeen:** A very similar amendment was tabled by Senators Quinn, Coghlan and White on Committee Stage and I promised to return on Report Stage. The other amendments arise from the acceptance of amendment No. 3 and have the same effect. This amendment clarifies that employers and employees can agree on more than one information and consultation agreement. This situation tends to arise when there are very different kinds of employment in the one location or, more likely, when a company had several sub-offices. I am advised that the wording of the amendment meets the necessary requirements.

**Mr. Quinn:** I thank the Minister of State for his response. It appears that he has dealt very efficiently with the issues in amendments Nos. 3, 21, 24, 25, 28 and 59.

**Mr. Coghlan:** I equally appreciate the response of the Minister of State.

Amendment agreed to.

Amendment No. 4 not moved.

**An Leas-Chathaoirleach:** Amendments Nos. 5 to 8, inclusive, and amendment No. 20 are consequential on amendment No. 9. These amendments may be discussed together. Is that agreed? Agreed.

Government amendment No. 5:

In page 6, line 6, to delete “or”.

**Mr. Killeen:** Amendment No. 5 arises from an amendment tabled by Senators O’Toole and McDowell on Committee Stage. Amendment No. 5 does not quite do what they intended but I was impressed by part of their argument and the Bill is considerably strengthened by the inclusion of this particular amendment, which concerns the right of the employee to get information about the number of employees in an undertaking. It is

a reasonable amendment which strengthens the Bill considerably where the original amendment would not have done so. The other amendments arise from amendment No. 5.

**Mr. Quinn:** I wish to raise a minor point regarding the placing of the reference to the employee’s representative in amendment No. 7. It seems to be in the wrong place. If amendment No. 5 does not resolve the issue we put the cart before the horse. I am being pernickety about this amendment because I would like the Minister of State to take note of it. While it solves the problem, it could be tidied up because the reference is in the wrong place. I understand what the Minister of State wishes to achieve, and he is doing so here, but he might consider it again before it goes to the Dáil.

**Mr. Killeen:** The original proposal would have sought to give trade unions the right to request information on employee numbers. In these amendments I have provided alternate methods besides the narrow one originally available. It is not quite what the Senators seek but it improves the Bill because it gives employees several alternatives for getting effectively the same information.

Senator Quinn is quite right to advert to the fact that it links with section 6. We have checked that with Parliamentary Counsel.

Amendment put and agreed to.

Government amendment No. 6:

In page 6, between lines 6 and 7, to insert the following:

“(b) received under *subsection (4)* by the Court or a nominee of the Court, or”.

Amendment agreed to.

Government amendment No. 7:

In page 6, to delete line 9 and substitute the following:

“(2) Without prejudice to *subsection (4)*, following a request from one or more employees or employees’ representatives (or both), the”.

Amendment agreed to.

Government amendment No. 8:

In page 6, line 12, after “employees” to insert “or employees’ representatives (or both)”.

Amendment agreed to.

Government amendment No. 9:

In page 6, between lines 17 and 18, to insert the following:

“(4) One or more employees may request the Court or a nominee of the Court to make the request referred to in subsection (5) of the employer and to do the other things mentioned therein.

(5) Where a request under subsection (4) is received by the Court or a nominee of the Court, the Court or the nominee shall:

(a) notify the employer as soon as is reasonably practicable that a request under that subsection has been made,

(b) request from the employer details of the numbers of employees in the undertaking during the period referred to in subsection (1), and

(c) issue a written notification to the employee or employees who made the request under subsection (4) confirming the number of employees in the undertaking during the period concerned.

(6) Where the Court or its nominee requests information from the employer under subsection (5)(b), the employer shall provide the information requested not later than 4 weeks from the date of receipt of that request (but that period of 4 weeks may be extended by agreement between the employer and the Court or its nominee).”.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 10 to 14, inclusive, are related and may be taken together by agreement.

**Mr. Quinn:** I move amendment No. 10:

In page 6, to delete lines 24 and 25 and substitute the following:

“6.—(1) Without prejudice to *section 11*, and subject to *subsections (3) and (4)*, the employer shall arrange for the election or appointment of one or more than one employees’ representative under this section.”.

The point in this amendment is that employees’ representatives are not read as mandatory in all circumstances. It also aims to ensure that they belong only to their own employers. I am concerned that it might be regarded as mandatory rather than an option.

With regard to amendments Nos. 11 and 12 it is critical not to limit the methods of appointment to a proportional representation election. Many small businesses have their traditional means of appointment and PR is too clumsy for them. I am

anxious that the appointment method is not closed off. If one is to have a representative it is not necessary to have a PR election in small companies. The elimination of the word “appointment” would cause me concern. It is critical not to limit the options but to maintain them as they are.

**Mr. Coghlan:** I second the amendment and support Senator Quinn’s arguments. He makes an important point about mandatory versus optional provision. His comments in support of small businesses and their different ways of operating are correct.

**Mr. Killeen:** I have checked with Parliamentary Counsel about the effect of amendment No. 10 which would *de facto* move what is in section 6(3) to the top of that section, 6(1). I am satisfied that what Senators Quinn and Coghlan are trying to achieve is already the *de facto* situation.

I was concerned about the equal weight given to election and appointment and would like to have had more time to consider the point. However, that is not quite the issue in these amendments.

We had a long discussion on section 6 on Committee Stage. It could only ever represent the best balance we could achieve between the various interests. For the purpose of information consultation all employees in the undertaking elect or appoint the relevant number of representatives and the representational role is clearly confined to employees in that undertaking. That covers the concern raised in amendments Nos. 11 and 13, which sought to insert “in that employment”, which is superfluous.

With regard to amendments Nos. 12 and 14 the Labour Court is a highly respected industrial relations body and it is as safe a place as possible to which to refer a matter of this nature. The concerns expressed in those amendments are not well-founded. We have struck a particularly good balance in a tricky situation with section 6.

**Mr. Quinn:** I had not realised amendment No. 14 was included in the group but it might be superfluous because it is covered by section 15. It is very rare to prescribe findings for the Labour Court. Would the Minister of State consider that to be unnecessary?

**Mr. Killeen:** It is open to the Labour Court to take whatever action it deems necessary. It has a great deal of experience in this area and I am more than happy to leave it with the discretion in that instance.

Amendment, by leave, withdrawn.

Amendment No. 11 not moved.

**An Leas-Chathaoirleach:** For the information of Senator McDowell who has just come into the House, amendment No. 12 was discussed in his absence. It was agreed that we would take several amendments together including this one. However, I might allow the Senator one minute's latitude.

**Mr. McDowell:** I move amendment No. 12:

In page 6, to delete lines 26 to 28 and substitute the following:

“(2) Subject to the provisions of subsection (3) and Schedule 2 of this Act, the employer shall arrange for the election of an employees' representative under this section.”.

I am obliged to the Leas-Chathaoirleach for his indulgence. I apologise for my late arrival, I got caught in the gridlock on the quays which unfortunately is a reality of life in Dublin, even at lunchtime on a Thursday.

I see that amendment No. 14 is also part of this group. It states that if a court finds in favour of a complainant and finds fault with the process of a particular election one of its powers is to order a new election. When we debated this on Committee Stage the Minister of State indicated that he understood this to be an implicit power. I reintroduced it on this Stage because it is not clear to me that it is implicit.

I assume the Minister of State has had the opportunity to reconsider it with his officials and decide what is the position. If he tells me that it is implicit and the power clearly resides with the court I am happy to withdraw the amendment.

I suspect that others have already dealt with amendment No. 12. It specifies that the process should be one of election rather than selection or appointment, the principle being that somebody who represents employees should be elected by them and not simply appointed.

**Mr. Coghlan:** I second the amendment.

**Mr. Killeen:** Senator McDowell is correct regarding amendment No. 14. I am assured that the Labour Court has full discretion in this area, including the discretion to hold fresh elections. I suppose that may well be the likeliest outcome in any event.

Before Senator McDowell arrived, I pointed out that the principle of amendment No. 12 was interesting. What we have tried to do in transposing the directive is to allow the maximum flexibility. It is also very much in our interests to ensure that whatever local arrangements have traditionally been in place would be invoked on

this occasion to ensure that companies embrace the opportunity which this Bill affords them.

Having spoken to many people, I have been made aware of numerous different practices in many places. The Bill would suffer quite badly by the exclusion of “appointed” as it appears right through the Bill. If it were to be deleted on one of the occasions, or altered, it would have to be altered elsewhere, so it would not be practicable to do so in this instance. It is clear that “elected” is the first choice. We went through this in some detail before, and in situations where people are not offering, the option of “appointment” only then comes into play. That is something I considered since the last occasion and might consider further in the future, but I am happy with the situation as it now stands.

Amendment, by leave, withdrawn.

Amendments Nos. 13 and 14 not moved.

**An Leas-Chathaoirleach:** Amendment No. 15 is out of order as it was negated on Committee Stage.

Amendment No. 15 not moved.

**An Leas-Chathaoirleach:** Amendments Nos. 16 to 19, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

**Mr. Quinn:** I move amendment No. 16:

In page 7, line 1, to delete “nominee” and substitute “a nominated officer”.

I am merely repeating the point made earlier with regard to the trigger mechanism, so that it can avert any mischievous action by a non-representative minority, and is therefore more representative of larger companies.

My concern is that in this area, one crank could delay everything. If an employer employs a large number of people, there is always one crank somewhere along the line. We all know such people exist. That is why we made the argument for a minimum requirement of 15% of employees in the undertaking. The case was well made and I am interested to hear if the Minister for State has reconsidered.

**Mr. Coghlan:** I second the amendment for the reasons Senator Quinn has outlined, in order to overcome anything that might be vexatious. This would create safer practice.

**Mr. McDowell:** I am not sure if Senator Quinn and I should state our differences once again. For the sake of balance on this one occasion, the amendment in my name which was negated on Committee Stage and disallowed today seeks to

do away with the threshold. It goes without saying that I would oppose any amendment which seeks to make the threshold higher.

The basic principle behind my amendment was simply that this is a facility which should be available. If, for firms of a certain size, it is a good thing to have information and consultation with employees, there should be an obligation on the employers and employees to put the process in place without requiring a threshold to trigger it.

**Mr. Killeen:** I have had a further look at this matter since the last occasion and have discovered that in Denmark, Germany, Greece, Italy and Spain, a trigger mechanism is provided in such legislation.

The point the Senators make in these amendments is that they would prefer a higher figure. The figure we have used comes from the Transnational Information and Consultation of Employees Act 1996 and is already in use. It appears to have worked particularly well and has not thrown up any difficulties. I would be reluctant to introduce a new formula in this legislation when one in previous legislation has been working particularly well. I am not persuaded that we should change.

**Mr. Quinn:** I thought that amendment No. 16, which suggests deleting “nominee” and substituting “a nominated officer”, would help clarify the matter, but I take the word of the Minister of State if he believes it is covered. I am willing therefore to withdraw the amendment.

**Mr. Killeen:** I apologise to Senator Quinn for not referring to amendment No. 16. We had a long discussion about whether a nominated officer would be preferable to a nominee of the court. It seems to me that there are some advantages in allowing the court to have a nominee. Situations arise where there are people of a particular expertise, perhaps, but also particular relations with employers and employees in some companies who might be quite successful in doing something which someone else could not do. On balance, leaving it to the nominee is the better arrangement.

Amendment, by leave, withdrawn.

Amendments Nos. 17 to 19, inclusive, not moved.

Government amendment No. 20:

In page 7, line 15, after “the Court” to insert “or the nominee”.

Amendment agreed to.

Amendment No. 21 not moved.

**An Leas-Chathaoirleach:** Amendment No. 22 is a Government amendment. Amendment No. 23 is an alternative to amendment No. 22. Amendment No. 26 is related to amendment No. 22 and amendment No. 27 is an alternative to amendment No. 26. Amendments Nos. 22, 23, 26 and 27 may be discussed together by agreement.

Government amendment No. 22:

In page 8, line 11, after “employees” to insert “to which the agreement relates”.

**Mr. Killeen:** I welcome amendments Nos. 23 and 27 tabled by Senators Quinn and Coghlan. My alternative amendments are tabled on the advice of legal counsel. They perform exactly the same function but I am advised this is a better way to deal with the issue.

**Mr. Quinn:** I thank the Minister of State for responding so accurately. I understand why he is using slightly different words. With regard to amendments Nos. 22, 23, 26 and 27, I appreciate that he listened to us and has taken our views into account.

**Mr. Coghlan:** I thank the Minister of State for taking the matter into account and for dealing with it in his own manner. I accept that he has been assured by his legal advisers that his amendments achieve the same purpose.

Amendment agreed to.

Amendments Nos. 23 to 25, inclusive, not moved.

Government amendment No. 26:

In page 9, line 22, after “employees” to insert “to which the agreement relates”.

Amendment agreed to.

Amendments Nos. 27 and 28 not moved.

**An Leas-Cheann Comhairle:** Amendment No. 29 is a Government amendment. Amendment No. 30 is an alternative to amendment No. 29 and amendment No. 32 is related. Amendments Nos. 29, 30 and 32 may be taken together, by agreement. Is that agreed? Agreed.

Government amendment No. 29:

In page 11, lines 10 and 11, to delete “collective representation” and substitute “to exercise the right to information and consultation through employees’ representatives”.



**Mr. Killeen:** A strong case was made by Senators Quinn and Costello with regard to the wording of this section. I am prepared, by means of amendments Nos. 29 and 32, to accept the proposals contained in amendment No. 30.

The wording used in section 11 describes the systems of information and consultation that may exist under the Bill. I am conscious of the importance of being accurate and, on the advice of the Parliamentary Counsel, I propose wording that more closely mirrors the language of the directive and the intentions of Senators Quinn and Coghlan.

**Mr. Quinn:** I felt that the wording in the Bill was defective with regard to “collective representation” because the directive does not make such a provision. Our intention for the amendment is to align it with the directive. The opt-out criteria should be higher in order to avoid the risk of abuse by minorities. I accept the Minister of State’s proposals with regard to amendments Nos. 29 and 30 and his assurance that this issue will be addressed in later amendments.

**Mr. Coghlan:** I concur with Senator Quinn’s remarks with regard to mischievous minorities but also accept the Minister of State’s proposals.

**Mr. Killeen:** My advice was that the phrase “to exercise the right to information and consultation through employees’ representatives” was a better form of wording than “to be informed and consulted through their representatives” because the former mirrors the directive.

Amendment agreed to.

Amendment No. 30 not moved.

**Mr. Quinn:** I move amendment No. 31:

In page 11, line 12 to delete “10 per cent” and substitute “25 per cent”.

The minimum requirement of 10% of employees in the undertaking provided for in subsection (2) is subject to the approval of the majority of employees to whom the direct involvement system applies. We propose to increase the minimum requirement to 25%. The opt-out criterion should be higher to prevent abuse by minorities. I hope I have presented a strong case to the Minister of State.

**Mr. Coghlan:** I second the amendment.

**Mr. Killeen:** This matter is similar to the subject of the discussion we held a few moments earlier. As I outlined on Committee Stage, the directive leaves considerable discretion to member states in setting out national procedures.

We used this discretion to tailor the legislation to Ireland’s workplace culture.

My policy approach in transposing the directive has been to provide maximum flexibility to employers and employees to devise arrangements which best suit their particular circumstances. Regardless of the percentage we propose, the matter is ultimately subject to approval by a majority of the relevant employees. Given that condition, a level of 10% represents a good balance.

Amendment, by leave, withdrawn.

Government amendment No. 32:

In page 11, lines 17 and 18, to delete “collective representation” and substitute “representation through employees’ representatives”.

Amendment agreed to.

**Mr. Quinn:** I move amendment No. 33:

In page 11, line 28, after “When” to insert “preparing for or entering negotiations or”.

This amendment will require parties to act reasonably. For example, a trade union would not deliberately be able force an employer into a standard rules situation by default. This amendment is worthy of consideration.

**Mr. Coghlan:** I second the amendment.

**Mr. Killeen:** This amendment refers to section 12 of the Bill, which I have been examining in its entirety. I am satisfied that the section as it stands meets the requirement. I understand what Senators Quinn and Coghlan are trying to achieve but the directive contains broad wording with regard to this area. I am unwilling to tamper with the wording of section 12 because it is already capable of capturing the intent of the proposed amendment.

**Mr. Quinn:** In light of the Minister of State’s confidence in section 12, I withdraw the amendment.

Amendment, by leave, withdrawn.

**An Leas-Chathaoirleach:** Amendment No. 35 is an alternative to amendment No. 34 and amendments Nos. 36, 43 to 51, inclusive, and 65 are related. Amendments No. 34 to 36, inclusive, 43 to 51, inclusive, and 65 may be taken together by agreement. Is that agreed? Agreed.

Government amendment No. 34:

In page 11, after line 46, to insert the following:

“(4) An employees’ representative shall be paid his or her wages (within the meaning of the Payment of Wages Act 1991) for any period of absence afforded to him or her in accordance with *subsection (3)*.”.

**Mr. Killeen:** I made a promise to revisit this issue on Report Stage. A number of amendments were proposed by both sides of the House and an interesting discussion ensued. I have given considerable thought to a number of issues arising from these proposals.

These amendments are grouped because they address the issue of protections given to employee representatives under the Bill. Provision is being made to allow representatives to take paid time off while exercising their functions under the legislation, to provide them with the right to make complaints to a rights commissioner and, in the event of a complaint being upheld, to obtain compensation for any penalisation by an employer with regard to the exercise of functions under the legislation. These changes were proposed by Senators O’Toole and McDowell.

Eleven amendments are required to make provision for the bringing of a complaint because they are consequential on each other. A new schedule, Schedule 3, will be added to the Bill. The grouping of these amendments is the most efficient way of addressing these issues because we will otherwise discuss them out of context. By separating them into distinct units, we will lose the common train of thought that runs through them.

On Committee Stage, Senators O’Toole and McDowell made the point that it would be useful to specify that employers must allow paid time off to employee representatives. Having considered that point, I included it in this format. Clearly, employees should not suffer financial losses for undertaking representative duties. The wording I used in this amendment reflects that used in other relevant legislation, most notably the Transnational Information and Consultation of Employees Act 1996, which has been adapted to link it to the provisions of this Bill for allowing reasonable paid time off to representatives.

The purpose of the other Government amendments in this group is to provide for redress for employee representatives who are penalised under section 13 of the Bill. The Bill already provides that an employer shall not penalise an employee representative and section 19 provides that it is an offence for an employer to do so.

However, Senator McDowell pointed out the need to specify a mechanism in terms of penalisation of employee representatives in these information and consultation arrangements. Arising from Senator McDowell’s comments, I am pro-

posing to include a provision which allows for specific steps by which a representative who believes that he or she has been penalised may make a complaint to a rights commissioner. The rights commissioner’s decision can be appealed to the Labour Court and the decisions of both rights commissioners and the Labour Court are enforceable by the Circuit Court. Provision is also made for the payment of compensation to employee representatives found to have been penalised.

The number of amendments involved can be explained by the fact that inserting these new provisions affects many other sections and, therefore, many technical adjustments are required in other sections on the advice of the Parliamentary Counsel in order to ensure consistency between the new and existing provisions. We have taken legal advice on that and have been assured that this is the way to do it.

It is worth noting that there are no provisions for redress for employee representatives who are penalised in many key pieces of employment rights legislation. Most do not even provide for the protection of employee representatives. Where such protection exists in the Transnational Information and Consultation of Employees Act, there is no redress provided, nor are there offences or penalties relating to the matter. The 2005 Health and Safety Act provides that an employer shall not penalise an employee for, *inter alia*, being a safety representative and that the employee has recourse to a rights commissioner, if he or she has a complaint. It is not an offence under the Health and Safety Act for an employer to penalise an employee.

In this Bill we have made strong provision for the protection of employee representatives by making it an offence, with appropriate penalties, if an employer commits a breach. The amendments I propose will provide strong and effective new protections for employee representatives. I was impressed by the case made in this regard and that is the reason I brought forward these amendments on this Stage.

**Mr. McDowell:** I express thanks to the Minister of State for taking on board much of the content of our amendment No. 35. There are four points in our rewriting of section 13, two of which the Minister of State has fully taken on board. The first relates to paid leave or paid absence from work for employee representatives. As the Minister set out, he has taken that on board and I thank him for that. The more substantial part of the amendment related to the setting out a process for redress in the event that an employee representative was penalised or bullied in some fashion. I am grateful to the Minister of State for also taking that on board.

[Mr. McDowell.]

There were two other points in this amendment in my name and that of Senator O'Toole, to which I assume he is less well inclined. One is the placing of an obligation on the Minister to specify the facilities that should be made available to employee representatives. It should go without saying that if a person is given a responsible position as an employee representative he or she should be given some facility whereby he or she can do the job. We were anxious to ensure that the position would not effectively become meaningless simply by being starved of resources or facilities to do the job. The way in which I chose to approach this was by proposing that the Minister would make regulations specifying the facilities that should be made available to the employee representative.

A second point, on which we had a lengthy discussion on Committee Stage, relates to whether the employee representative should be allowed to call on assistance. This question falls into two categories. In the first instance, and this would apply most often in companies which are already unionised, there is the question of whether an employee representative can call on the assistance of a professional union representative who would be more *au fait* with procedures. I argued on the previous occasion, and still do, that this facility should be open to an employee representative to use at his or her discretion. Furthermore, an employee representative should be entitled to call on people with accountancy or with other expertise which might be of use, for example, in interpreting information about the financial position of a company if it were to be tendered at a meeting. Rather than employee representatives going into a meeting with a blank canvass and little expertise, we considered it important that they should be entitled to call on whatever assistance and outside expertise they need.

I thank the Minister of State for having responded positively on two of the points. Between now and when the Bill gets a hearing in the other House he might give some thought to the other points.

**Mr. Quinn:** The Minister of State listened to the argument made by Senators McDowell and O'Toole for acceptance of their amendment. I do not have a problem with question of paid time off. While that would not have been readily accepted by employers a generation or two ago, it is recognised as being necessary now if this system is to work.

I have a problem with the version of amendment No. 35, but it has been well covered by the Minister of State's wording in Schedule 3. I understand the gist of what the Minister of State is attempting to do. The balance struck takes

account of the point — if not wholeheartedly and 100% but sufficiently to recognise the need for it — made by Senator McDowell on Committee Stage. The version the Minister of State inserted in Schedule 3 covers the areas concerned and is probably more efficiently covered than would otherwise be the case.

**Mr. Coghlan:** I accept the balance struck by the Minister of State.

**Mr. Killeen:** I only spoke about the parts of the amendment in the names of Senators McDowell and O'Toole that I was accepting; there are also the other two elements. The definition of what constitutes penalisation in the Senators' amendment is based on the Industrial Relations (Amendment) Act 2004. The Act provides a dispute resolution mechanism in situations where it is not the practice of the employer to engage in collective bargaining negotiations. It makes provision for complaints of victimisation to be made to a rights commissioner by an employer, a trade union or accepted body or an employer on behalf, or with the consent, of the employee.

The definition of penalisation used in the Bill, as drafted, is based on the code of practice on employees representatives. This was agreed by the social partners and is similar to section 17(1) of the Transnational Information and Consultation of Employees Act 1996. On balance, we have probably captured the essence of what the Senators are trying to achieve.

There is the question of the making of regulations by the Minister setting out the minimum facilities to be afforded to employee representatives and it is considered that provision of this nature is unnecessary. The Minister has power under section 42 of the Industrial Relations Act 1990 to request the Labour Relations Commission to draw up a code of practice concerning industrial relations. The Labour Relations Commission has also the right on its own initiative to draft codes of practice for submission to the Minister. Before submitting a draft code of practice to the Minister, the commission must seek and consider the view of organisations representative of employers and workers and any such other bodies as the commission considers appropriate. I am sure everybody would agree that the LRC has an excellent track record in this regard.

In September of this year we requested the LRC to prepare a code of practice to assist employers and employees in implementing the provisions of the new legislation. I believe that, on balance, people will be very well served between the provisions of the Bill and provisions in the code of practice, which is an excellent piece of work by the LRC.

**Mr. McDowell:** I accept without question the Minister of State's bone fides on this issue, but unfortunately we must put ourselves in the position of an employee representative who has been appointed because the law requires it and because the required threshold of workers in a particular workplace want it, but the employer does not want to facilitate this process and has no time for it in the first instance. It is not difficult to imagine that if an employer is badly disposed to the idea that he or she will freeze out the employee representative, not give him or her any facilities and refuse to meet a union representative, if there is one, or any additional expert help, if the employee representative wants that. It is in those hard cases that we seek to make some sort of prescriptive arrangement. While it is probably fair for the Minister of State to say that in most cases that will not be necessary, as he said, unfortunately, there are likely to be cases where it will be.

I do not know whether I understand the Minister of State's reply to suggest that he proposes to make some sort of prescriptive directive under the 1990 Act. I take it he probably does not, but I urge him reconsider the issue before the matter comes before the other House. I do not propose to press the amendment.

**Mr. Quinn:** On amendments Nos. 36 and 65, I would have preferred to have noticed an aspect previously and it is probably too late to insert an amended wording now, but I would like the Minister of State to clarify or even further amend the section, if possible. I refer to page 13, subsection (2), line 43. Would it be possible for the Minister of State to add to the text the words "something which cannot be justified on objective grounds"? I would appreciate if he could give some consideration to that. It is probably too late to amend the text now, but I would like to think he could do so.

On amendment No. 65, I would like to clarify the text and to think that it could be amended, although it is probably too late to do so. I think there is a *faux pas*. I would like to add to subsection 1(1) the words "Such a complaint may be referred to a rights commissioner only after recourse to the internal dispute resolution procedure, if any, usually used by the parties concerned has failed to resolve the complaint". I am concerned that any person could go to a rights commissioner without even checking what is the internal procedure. I would like the Minister of State to give some thought to this proposed amendment to amendment No. 65. It would strengthen the Bill. I did not notice the need for it earlier. Problems could arise if an internal procedure is in place and someone was to ignore it and go straight to a rights commissioner. I believe

it would be better to have that provision stitched into the Bill, in some form or other, and the wording I suggest is that "such a complaint can only be referred to a rights commissioner, only after recourse to the internal dispute resolution procedures, usually used by the parties concerned, have failed to resolve the complaint". This would strengthen the Bill. I know it is too late to do that now, but I believe it is a mistake to leave it out.

**Mr. Killeen:** To deal with the latter point first, on a point of principle, I have no difficulty in going to the other House, taking amendments there, and coming back to Seanad Éireann with them. I did that with a previous Bill and if it improves this one, I have no difficulty doing so again. I will look at that, but I am quite strongly of the view that what Senator Quinn is trying to achieve has already been achieved.

On the point made by Senator McDowell, I do not propose to make regulations in this area. I am more than happy that the code of practice prepared by the LRC will meet the requirements. The point made by the Senator is valid but the code of practice will deal with the issue adequately.

Amendment agreed to.

Amendment No. 35 not moved.

Government amendment No.36:

In page 12, between lines 4 and 5, to insert the following:

"(6) *Schedule 3* has effect in relation to an alleged contravention of *subsection (1)*.

(7) If a penalisation of an employees' representative, in contravention of *subsection (1)*, constitutes a dismissal of the representative within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the representative in respect of that penalisation both under *Schedule 3* and under those Acts."

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 37 to 42, inclusive, may be discussed together, by leave of the House.

**Mr. Quinn:** I move amendment No. 37:

In page 13, lines 5 and 6, to delete "one or more than one employee or his or her representatives (or both)" and substitute the following:

[Mr. Quinn.]

“or the majority of employee representatives, or by written request of at least 15 per cent of employees”.

In tabling this amendment, Senator Coghlan and I are trying to avoid spurious claims that are not realistic. The amendment aims to avoid circumstances where one employee, even in a model with employee representatives, could perhaps vexatiously or maliciously refer a complaint to the Labour Court. It aims to preserve that option only for the direct model, where it is appropriate and necessary. That is the objective of amendment No. 37 and amendment No. 38 deals with the same issue. These amendments are designed to prevent a situation where one person could avoid going through the normal procedures, in a vexatious manner, and I believe it would be of benefit to the Bill if the amendments were accepted.

**Mr. Coghlan:** I second the amendment.

**Mr. Killeen:** Members will remember that on Committee Stage we provided a role for the Labour Relations Commission in the dispute resolution process, after internal company procedures have been exhausted and before referring matters to the Labour Court. That is the most effective way to deal with such issues. I have sympathy with the point made by Senator Quinn and I have examined this matter very carefully. Initially, I thought that what he is suggesting might be the right thing to do. However, on reflection, I believe it is safer to allow an individual employee to be in a position to make a complaint. It is entirely possible that an individual employee would have a difficulty and, after all, the complaint is going through the process of an internal mechanism and then the LRC where, if it were frivolous, it would be shot down immediately.

In the interests of preserving the rights of the individual, on balance, it is better to give the right to complain to the individual in the Bill, although I understand Senator Quinn’s point. In view of the process envisaged here, I do not see any danger that the right we want to give the individual would be abused in any way because I think the people dealing with the complaint would spot an abuse from a mile away.

**An Leas-Chathaoirleach:** Is the amendment being pressed?

**Mr. Quinn:** I will not press amendment No. 37, in light of the Minister of State’s views, but I would like him to take the matter into account and to ensure that he is satisfied before the Bill returns to the Dáil. It is a genuine concern and it

has happened in the past where one individual decides not go through the procedures. On the other hand, I understand the Minister of State’s point, that there have been occasions where one person has a legitimate case but has not been heard by the internal procedures process. However, I would be reluctant to believe that this is not a worthy consideration and perhaps the Minister of State will re-examine it between now and the time of the Bill’s referral to the Dáil.

Amendment, by leave, withdrawn.

Amendment No. 38 not moved.

Government amendment No. 39:

In page 13, line 44, to delete “The” and substitute “As regards a dispute referred to it under *subsection (1) or (5)*, the”.

Amendment agreed to.

Amendment No. 40 not moved.

Government amendment No. 41:

In page 14, line 1, to delete “or” and substitute “or, as the case may be,”.

Amendment agreed to.

Government amendment No. 42:

In page 14, line 3, to delete “or” and substitute “or, as the case may be,”.

Amendment agreed to.

Government amendment No. 43:

In page 14, between lines 19 and 20, to insert the following:

“(10) The Court may refer a question of law arising in proceedings before it under this section to the High Court for determination and the decision of the High Court shall be final and conclusive.”.

Amendment agreed to.

Government amendment No. 44:

In page 14, line 22, after “15” to insert “or on the hearing of an appeal under *Schedule 3*”.

Amendment agreed to.

Government amendment No. 45:

In page 14, line 35, after “*section 15*” to insert “or an appeal under *Schedule 3*”.

Amendment agreed to.

Government amendment No. 46:

In page 15, line 1, after “dispute” to insert “or appeal”.

Amendment agreed to.

Government amendment No. 47:

In page 15, to delete lines 3 to 12, and substitute the following:

“(1) If—

(a) a party to a Court determination fails to carry out in accordance with its terms a determination of the Court in relation to a dispute under *section 6* or *15*, or

(b) a party to a complaint under *Schedule 3* fails to carry out in accordance with its terms a decision of a rights commissioner or a determination of the Court under that *Schedule* in relation to the complaint, within the period specified in the determination or decision or if no such period is so specified within 6 weeks from the date on which the determination or decision is communicated to the parties, the Circuit Court shall, on application to it in that behalf by one or more of the parties to the dispute or complaint, without hearing any evidence (other than in relation to the matters aforesaid) make an order directing the party concerned to carry out the determination or decision in accordance with its terms.”.

Amendment agreed to.

Government amendment No. 48:

In page 15, line 14, after “Court” to insert “or a decision of a rights commissioner”.

Amendment agreed to.

Government amendment No. 49:

In page 15, line 14, after “determination” to insert “or decision”.

Amendment agreed to.

Government amendment No. 50:

In page 15, lines 17 and 18, after “determination” to insert “or decision”.

Amendment agreed to.

Government amendment No. 51:

In page 15, between lines 20 and 21, to insert the following:

“(3) In an order under this section providing for the payment of compensation of the kind

referred to in *paragraph 1(3)(c)* of *Schedule 3*, the Circuit Court may, if in all the circumstances it considers it appropriate to do so, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in *section 22* of the Courts Act 1981, in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Court or the decision of the rights commissioner is communicated to the parties and ending on the date of the order.”.

Amendment agreed to.

Government amendment No. 52:

In page 16, line 47, to delete “shall be” and substitute “is”.

**Mr. Killeen:** This amendment is technical in nature and, on the advice of the Parliamentary Counsel, aims to ensure consistency throughout the Bill.

Amendment agreed to.

**An Leas-Cheann Comhairle:** Amendments Nos. 53 to 55, inclusive, are cognate and may be discussed together, by leave of the House.

Government amendment No. 53:

In page 17, line 18, to delete “*section 19* or *18*” and substitute “*section 18* or *19*”.

**Mr. Killeen:** These amendments are all technical in nature and are required to correct the order of section numbers listed in *section 20*.

Amendment agreed to.

Government amendment No. 54:

In page 17, line 26, to delete “*section 19* or *18*” and substitute “*section 18* or *19*”.

Amendment agreed to.

Government amendment No. 55:

In page 17, line 32, to delete “*section 19* or *18*” and substitute “*section 18* or *19*”.

Amendment agreed to.

**An Leas-Chathaoirleach:** Amendments Nos. 56 to 58, inclusive, are related and may be discussed together, by agreement.

Government amendment No. 56:

In page 17, line 36, to delete “March” and substitute “12 March”.

**Mr. Killeen:** This arises, indirectly, from the discussion on a previous day, where Members strongly believed that we should ensure consistency between the Bill and the wording of the directive. These amendments are technical in nature and arise from that earlier discussion.

Amendment agreed to.

Government amendment No. 57:

In page 17, line 38, to delete “undertaking,” and substitute “undertakings,”

Amendment agreed to.

Government amendment No. 58:

In page 19, line 24, to delete “purpose” and substitute “purposes”.

Amendment agreed to.

Amendment No. 59 not moved.

**An Leas-Cheann Comhairle:** Amendments Nos. 60 to 63, inclusive, are related and may be discussed together, by agreement.

**Mr. Quinn:** I move amendment No. 60:

In page 20, lines 20 to 22, to delete all words from and including “but” in line 20 down to and including “representatives” in line 22.

This amendment is technical in nature. The elaboration in the Bill text is superfluous and unnecessary. The aim of amendment No. 62 is to preserve the management position to where they have competence and to seek protection where immutable decisions are taken elsewhere, for example, a company head office in another country. This is the concern if we do not include the wording submitted in the amendment. If the amendment is accepted, section 4(2) would state:

Consultation shall take place:

(a) while ensuring that the method, content and timeframe thereof are appropriate;

(b) at the relevant level of management and representation, depending on the subject under discussion;

(c) on the basis of information supplied by the employer and of the opinion which the employees’ representatives are entitled to formulate;

(d) in such a way as to enable the Forum to meet the employer and obtain a response, and the reasons for that response, to any opinion they might form;

(e) with a view to reaching an agreement on decisions referred to in *paragraph 3(c)*

that are within the scope of the employer’s powers to raise within the timeframe at *paragraph (a)* and within the competence to respond within the rationale required at *paragraph (d)*.

The concern is to limit the exposure that decisions might be taken outside the State. We can foresee a situation where companies based in Ireland might have decisions made elsewhere, and this must be taken into account. I would like the Minister of State to consider this aspect.

Amendment No. 63 proposes to reduce the exposure an employer has and to avoid disputes over a *carte blanche* assumption or presumption by employees. This is the reason for suggesting that amendment No. 63 should be accepted. It covers a situation where decisions are being made elsewhere and are not made inside the competence of local management in Ireland. This aspect is worthy of consideration.

**Mr. McDowell:** Amendment No. 61 seeks to amend the standard rules by providing that the forum should meet at least four times a year. I can anticipate the Minister of State’s response in that he will probably say there is provision for the forum to meet in any event in exceptional circumstances where the employee representatives wish to do so.

This goes to the core of the Bill in that we must ask ourselves why we are providing for the forum in the first instance. Of course, it is being provided for in exceptional circumstances where there is a crisis and when serious changes in work practices and serious levels of redundancies are being contemplated. We expect the mechanism will be used most often in these circumstances.

However, it would be a good thing to inculcate a culture of information and consultation whereby, on a regular basis, there is a forum where employee representatives and employers meet to consult about matters that concern them both and to provide information about how the company is doing and the nature of its plans. If we accept the proposition that it should be a routine matter as well as a crisis management issue, it appears reasonable that the forum should meet at least four times a year, which would not be particularly onerous on anyone, rather than twice a year, which is the current provision.

Since we are discussing the other amendments with this amendment, I have some difficulty with Deputy Quinn’s amendment. It is not difficult to envisage circumstances whereby a meeting of the forum takes place and there is a discussion on future plans, and essentially the local employers, the Irish representatives of an American multinational corporations, may say after the event

that they did not know what was coming down the line.

I do not know how multinational corporations work. Perhaps they do not always keep their Irish management fully briefed on their international plans. I suspect that in many instances multinational corporations shift from one country to another without first informing local management. I appreciate that this puts local employers in some difficulty because they cannot be found guilty of not transmitting information they did not have. However, if we were to accept the principle behind Senator Quinn's amendment, we would be going too far, because it would, in effect, be acknowledging that even if they did know that it was intended to move elsewhere, because it was not within their competence to do anything about it, they would not have to transmit that information. I do not think we could accept this proposal.

**Mr. Killeen:** As regards amendment No. 60, which would seek the removal of the wording "unreasonably withhold consent to proposals made by employees or their representatives", we must look at this proposal in the spirit of the legislation. It appears to be sensible to include this provision. If we omit it, we are *de facto* saying that, in any circumstances of their choosing, employers could unreasonably withhold consent to proposals. That would not serve us well in this instance.

Senator McDowell correctly anticipated what I might say about amendment No. 61. We must include a provision that is not unnecessarily onerous. Twice a year appears reasonable, particularly when one takes account of the fact that there is provision for additional meetings should they be required. The wording used in section 4 of Schedule 1 is the same as that used in the directive. We have been trying to reflect as closely as possible the wording of the directive. On balance, people would find it difficult to argue with this provision.

I have examined amendment No. 62 carefully. We should remind ourselves that the intention of the information and consultation directive on the Bill is to ensure that information and consultation are provided by employers systematically and on an ongoing basis so that employees can acquire an informed understanding of the challenges faced by the business. Of course, there are situations where decisions can be made outside the country. However, I do not think we would serve the purposes of this legislation well if we were to provide for them directly as would be the case with the amendment. We need to stick to the spirit and intent of the Bill.

Senator Quinn is correct that there are circumstances where it is entirely possible that decisions could be made without reference to Irish manage-

ment. Nevertheless, the directive we are trying to transpose, and the culture we are trying to encourage, requires we do so in accordance with the wording in the Bill. I would be very concerned if we were to make this kind of exception, because it would have the effect of undermining considerably what we are trying to achieve.

On amendment No. 63, there is a requirement on employers to provide financial resources to members of the forum to assist them in their duties as is reasonable. It does not appear to impose an overly onerous obligation on them. The code of practice comes into play in that regard.

**Mr. Coghlan:** Senator Quinn is correct. He is aware within his own industry that decisions are often made outside this jurisdiction and are, in fact, imposed.

**An Leas-Chathaoirleach:** Is the amendment No. 60 being pressed?

**Mr. Quinn:** No.

Amendment, by leave, withdrawn.

**Mr. McDowell:** I move amendment No. 61:

In page 20, line 34, to delete "twice a year" and substitute "at least four times a year".

**Mr. Coghlan:** I second the amendment.

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

Amendment declared lost.

**Mr. Quinn:** I move amendment No. 62:

In page 21, line 30, to delete "powers." and substitute "powers to raise within the time-frame at *paragraph (a)*, and within the competence to respond within the rationale required at *paragraph (d)*."

In light of what Senator McDowell said, it could be abused in some circumstances. However, there is a case to be made to which I referred. I would like the Minister of State to reconsider the matter. I do not have better words, but it appears there is a problem. In the past, decisions have been made outside the State. As the Minister of State and Deputy McDowell said, it could be abused. Perhaps the Minister of State will consider the matter before the Bill is debated in the Dáil.

Amendment, by leave, withdrawn.

Amendment No. 63 not moved.



**Mr. Quinn:** I move amendment No. 64:

In page 22, lines 19 to 22, to delete all words from and including “by” in line 19 down to and including “representation.” in line 22 and substitute the following:

“on the basis of any appropriate in-house arrangements. In the absence of in-house arrangements voting in the poll shall take place by secret ballot on a day or days to be decided by a returning officer.”.

The Bill provides that where the number of candidates on the nomination day exceeds the number of members to be elected to a forum, a poll shall be taken on the basis of any appropriate in-house arrangements. It further provides that in the absence of in-house arrangements, voting in the polls shall take place by secret ballot on a day or days to be decided by a returning officer. The whole concept of this is to widen the scope of poll methods available and to leave the system we have as a fallback. I believe the use of the words “proportional representation” in the Bill is too elaborate, so the amendment is worthy of consideration.

**Mr. Coghlan:** I second the amendment.

**Mr. Killeen:** The wording used in the published text has been used in previous legislation, that is, in the Transnational Information and Consultation of Employees Act 1996 and it has not presented any difficulties. It would obviously be preferable that employers and employees avail of the flexibility of the legislation to negotiate and agree information and consultation arrangements. We need to remember that a fallback provision exists in Schedules 1 and 2. It seems to me that in a situation where the parties fail to reach agreements, we ought to have the fallback provision and that in that provision, it is necessary to be more prescriptive than it might be in other circumstances. That is why I want to use this wording.

**Mr. Quinn:** I am not happy with that. The Minister of State has given attention to it, but there is a strong case to be made for my amendment. I urge the Minister of State to reconsider this because it is a point that deserves more attention than has been given.

Amendment put and declared lost.

Government amendment No. 65:

In page 22, after line 32, to insert the following:

“Schedule 3

Redress for Contravention of *Section 13(1)*

*Complaints to rights commissioner.*

1. (1) An employees’ representative (the “employee”) may present a complaint to a rights commissioner that his or her employer has contravened section 13(1) in relation to the employee.

(2) Where a complaint under *subparagraph (1)* is made, the rights commissioner shall-

(a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,

(b) give a decision in writing in relation to it, and

(c) communicate the decision to the parties.

(3) A decision of a rights commissioner under *subparagraph (2)* shall do one or more of the following:

(a) declare that the complaint was or, as the case may be, was not well founded;

(b) require the employer to take a specified course of action;

(c) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances but not exceeding 2 years remuneration in respect of the employee’s employment,

and the references in the foregoing clauses to an employer shall be construed, in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(4) A rights commissioner shall not entertain a complaint under this paragraph if it is presented to him or her after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates.

(5) Notwithstanding *subparagraph (4)*, a rights commissioner may entertain a complaint under this paragraph presented to him or her after the expiration of the period referred to in *subparagraph (4)* (but not later than 6 months after such expiration) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(6) A complaint shall be presented by giving notice of it in writing to a rights commissioner.

(7) A copy of a notice under *subparagraph (6)* shall be given to the other party concerned by the rights commissioner concerned.

(8) Proceedings under this paragraph before a rights commissioner shall be conducted otherwise than in public.

*Appeals from decisions of rights commissioner.*

2. (1) A party concerned may appeal to the Court from a decision of a rights commissioner under *paragraph 1* and, if the party does so, the Court shall give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal, shall make a determination in writing in relation to the appeal affirming, varying or setting aside the decision and shall communicate the determination to the parties.

(2) An appeal under this paragraph shall be initiated by the party concerned giving, within 6 weeks (or such greater period as the Court may determine in the particular circumstances) from the date on which the decision to which it relates was communicated to the party, a notice in writing to the Court containing such particulars as are determined by the Court under *subparagraph (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subparagraph (2)* shall be given by the Court to any other party concerned as soon as practicable after the receipt of the notice by the Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Court, namely-

(a) the procedure in relation to all matters concerning the initiation and the hearing by the Court of appeals under this paragraph,

(b) the times and places of hearings of such appeals,

(c) the representation of the parties to such appeals,

(d) the publication and notification of determinations of the Court,

(e) the particulars to be contained in a notice under *subparagraph (2)*, and

(f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Court may refer a question of law arising in proceedings before it under this paragraph to the High Court for determination and

the determination of the High Court shall be final and conclusive.

(6) A party to proceedings before the Court under this paragraph may appeal to the High Court from a determination of the Court on a point of law and the determination of the High Court shall be final and conclusive.

*Paragraphs 1 and 2: supplemental provisions.*

3. (1) A rights commissioner shall furnish the Court with a copy of each decision given by the commissioner under *paragraph 1(2)*.

(2) A rights commissioner shall maintain a register of all decisions given by him or her under *paragraph 1(2)* and shall make the register available for inspection by members of the public during normal office hours.

(3) The Court shall publish, in a manner it considers appropriate, particulars of any determination made by it under *subparagraph (4)(a), (b), (c), (e) and (f) of paragraph 2* (not being a determination as respects a particular appeal under that paragraph)."

Amendment agreed to.

Bill, as amended, received for final consideration.

Question proposed: "That the Bill do now pass."

**Minister of State at the Department of Enterprise, Trade and Employment (Mr. Killeen):**

I thank the Cathaoirleach and the Members for their co-operation and for the amount of work they put into the amendments. I was impressed by the contributions made on Second Stage and the amendments on Committee Stage. If my colleagues in the other House come up with better ideas and I am minded to accept them, I will return to this House with them.

**Mr. Quinn:** I came into this without a great deal of experience of this kind of legislation. I am impressed by the Minister of State and by his officials and the amount of work that was put into the Bill. I found it very educational. It was good to have a Minister of State who responded to our concerns expressed on Second and Committee Stages.

**Mr. Leyden:** I thank the Minister of State and his officials. The Bill has had a successful passage through the Seanad. I was very impressed by the way he was prepared to listen and debate every issue in a thorough and detailed manner. I wish him success with the passage of the Bill in the other House.

**Mr. Coghlan:** I thank the Minister of State and his officials. I share the sentiments echoed by Senators Quinn and Leyden. He listened well on Second Stage and on Committee Stage. He struck his own balance having heard all the arguments. We may not agree 100%, but we are very appreciative of what he has done.

**Mr. McDowell:** I would like to be associated with the words of thanks offered to the Minister of State and his officials. In a sense, those of us on this side of the House made his job unusually easy in fighting ourselves to a draw and in allowing the Minister of State to say that he had considered both sides, while not actually accepting anything that either of us said. Nonetheless, that is the way of these things. It is

unusual for a Bill of this kind to come into the House without the prior sanction of the social partners. It is a pity that such is the case. On the other hand, issues which may not have got a airing have been aired here. I suspect that this is not the last we will see of this Bill and that the Minister of State may be back before us in a few months' time. I wish him well during the passage of the Bill through the other House.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to sit again?

**Mr. Leyden:** At 2.30 p.m. next Wednesday.

The Seanad adjourned at 3.45 p.m. until 2.30 p.m. on Wednesday, 9 November 2005.