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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*

(OFFICIAL REPORT—*Unrevised*)

Tuesday, 20 *February* 2007.

SEANAD ÉIREANN

Dé Máirt, 20 *Feabhra* 2007.
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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

Paidir.
Prayer.

Business of Seanad.

An Cathaoirleach: I have notice from Senator O'Rourke that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

> The need for the Minister for Education and Science to outline the progress made and future plans for a new second level school in Kilbeggan, County Westmeath.

I have also received notice from Senator Bannon of the following matter:

> The need for the Minister for Communications, Marine and Natural Resources to provide an update on the action the Government is taking to prevent the closure of rural post offices and to ensure their viability by including agricultural as well as social welfare payments through the post office network.

I regard the matters raised by the Senators as suitable for discussion on the Adjournment and they will be taken at the conclusion of business.

Order of Business.

Ms O'Rourke: The Order of Business today is Nos. 1, 2, 3, 4 and 23, motion No. 36. No. 1 is a sessional order as agreed by the Committee on Procedure and Privileges. I apologise. I am reading the wrong one.

Mr. Norris: That is tomorrow's order.

Ms O'Rourke: I regret that I appear to have the Order of Business for another day. I was given the order for 31 January. My apologies to you, a Chathaoirligh, and to the House.

The Order of Business is Nos. 1, 2, 3 and 4.

(Interruptions).

Ms O'Rourke: This is the first time there has been a mix-up; the Senator should not give out.

Mr. U. Burke: Donie is getting to you.

Ms O'Rourke: No. I am afraid the luncheon is getting to me. No. 1 is a motion which was referred to the Joint Committee on the Environment and Local Government for consideration and the committee has completed its deliberations. The proposed new regulations will amend the exempted development provisions of the Planning and Development Regulations 2001 to encourage the uptake of cleaner and cheaper energy from small-scale renewable sources in the home. These proposed changes to the planning and development regulations will facilitate a significant increase in the contribution of renewable energy technologies to meeting Ireland's energy needs and its renewable electricity generating capacity. This item will be taken without debate.

No. 2 is a motion which was referred to the Joint Committee on Justice, Equality, Defence and Women's Rights for consideration and the committee has completed its deliberations. The purpose of the proposal is to strengthen the capacity of the Union and the member states to combat transnational organised crime. This item will be taken without debate.

No. 3 is the Defamation Bill 2006 — Committee Stage, to be taken on the conclusion of the Order of Business until 5.30 p.m. No. 4 is the Communications Regulation (Amendment) Bill 2007 — Committee Stage, to be taken at 5.30 p.m. until 7.30 p.m.

Mr. B. Hayes: It is probably fair to say that in recent years there is an overdependence in the economy on the building of houses and property. It is important, therefore, that politicians use caution in terms of what they say about that property market. We now have a situation where both Government parties are making two different statements about stamp duty reform. This is not just about an election, auction politics and the like. This is about people's lives because substantial sums of money, and people mortgaged to the hilt, is now the reality for many young couples in this city and throughout the country. Will the Taoiseach agree with me that it would be more useful at this stage——

Mr. Dardis: It is spreading.

Mr. B. Hayes: It must be in the air.

Ms O'Rourke: That will be the day when there will be a female Taoiseach.

Mr. B. Hayes: The Leader should never say "never".

Ms O'Rourke: I thank the Senator.

Mr. B. Hayes: Will she agree with me that the current speculation regarding stamp duty reform is dangerous and worrying because the reality is that the only person who effectively created a slump in the housing market was the Tánaiste when he spoke out about this issue last

[Mr. B. Hayes.]

September and to which he further added over the weekend?

Mr. Finucane: He keeps on mentioning "slump".

Mr. B. Hayes: Every time he opens his mouth, it leads to another slump in the housing market. That is why I used the word "slump".

Mr. Finucane: He is the biggest slump in the State.

Mr. Dardis: What is the Fine Gael Party's position on first-time buyers?

Mr. B. Hayes: We know the Government is in disagreement over Cork Airport. I suspect more will be said on that today. As the date to the general election wears on, the disagreement between both Government parties on this and other issues is now a gulf.

Ms O'Rourke: We love one another.

Mr. B. Hayes: I am not so sure about that. This side of the House is not getting that sense of love. The effective slump in the housing market caused by the Tánaiste's remark affects——

Dr. Mansergh: It is a healthy cooling-off period.

Mr. B. Hayes: ——not only the construction industry but young couples and those mortgaged to the hilt. This must be addressed to ensure the economy continues to grow.

Mr. Dardis: A 12% annual reduction affects them.

Dr. Henry: Once again, prison doctors have spoken out about the dreadful conditions in which they must treat people in prisons, especially those with serious mental health problems. There is a lack of facilities for treating these people in prisons and there are no secure units outside of the prisons, apart from the Central Mental Hospital. It is difficult and dangerous to prescribe legal drugs to mentally ill people if they are taking illegal drugs at the same time. The Tánaiste and Minister for Justice, Equality and Law Reform, when appointed four years ago, announced that our prisons would become drug-free. What progress has been made on this? From what the prison doctors have said and from what I have witnessed, there appears to be none.

The Minister for Education and Science is introducing aptitude tests for some university courses. These are to be taken along with CAO points. Why and how have these courses been chosen? Who will design the aptitude tests? Today, there were reports of problems with teaching in the classroom encountered by primary school teachers. I have not heard that aptitude tests are being introduced for them. No aptitude tests will be introduced in areas where complaints are made about people being unsuitable for particular professions, yet tests are being introduced for areas where there have been no complaints.

Mr. McCarthy: The Government has instructed the board of Cork Airport to pay €100 million towards the costs of the construction of the new terminal there. Four years ago, the then Minister for Transport, Deputy Brennan, gave an unambiguous commitment to the both Houses of the Oireachtas and the people of the greater Cork region that once Aer Rianta was broken up and the airports were given autonomy, the new entities would start debt-free. What has happened in the past several days is economically devastating for those who use Cork Airport. It is not pleasant to be given this type of instruction from the Government. What has become of the Minister's clear commitment? Does a political guarantee to an organisation or group of people mean anything?

Mr. Norris: No, it does not.

Mr. McCarthy: The airports were told that in supporting the initiative to break up Aer Rianta, they would not have to bear the costs. The situation is now the opposite. Since the Cabinet reshuffle, the current Minister for Transport, Deputy Cullen, has been silent on the matter and then, out of the blue, this demand is made by the Taoiseach.

Regarding the stamp duty issue as raised at the Progressive Democrats annual conference, I urge the Government to re-introduce the first-time buyer's grant to assist young people in entering the housing market.

Mr. Minihan: We have heard Senator Brian Hayes on slumps. It is obvious to me that Fine Gael has no policy on stamp duty or taxation.

Mr. Cummins: The Progressive Democrats stole them over the years.

Mr. B. Hayes: We have caught Senator Minihan on the hop again.

Mr. Minihan: I make no apologies for my party setting out its agenda and its beliefs——

Mr. B. Hayes: And causing a slump.

Mr. Minihan: ——on how the system should be reformed. Nor do I make apologies for those people who are currently subjected to an unfair system of stamp duty in respect of which we recommend reform.

Mr. Finucane: Senator Minihan's party has presided over this system for ten years.

Mr. Minihan: I wish to speak about another slump.

A Senator: The slump to 1% in the Progressive Democrats' poll rating.

Mr. Minihan: I refer to the danger of a major slump in the Cork area as a result of today's announcement regarding Cork Airport. I endorse Senator McCarthy's comments in this regard. It is unacceptable in the context of the commitment made by the former Minister for Transport, Deputy Brennan, that Cork Airport would be debt-free. That commitment was clearly made. In response to an Adjournment debate 12 months ago, the current Minister for Transport, Deputy Cullen, told me that Cork Airport would have to carry some of the debt and that it was subject to rules and regulations *vis-à-vis* the Companies Act and so on.

The House must be told how the figure of €100 million was achieved. Where did it come from and what formulae were used to devise it? The undue influence of the Dublin Airport Authority in deciding the future of Cork Airport is unacceptable. In recent weeks, it has run advertisements in the national newspapers offering for sale ten acres of the landbank around Cork Airport, valued at up to €30 million. Not only is Cork Airport being saddled with major debt, the authority is also stripping it of any assets it might have for future development. If this development is part of the policy of encouraging competition between the airports, it is unacceptable.

I ask the Leader to arrange an urgent debate on this matter. I expect she will suggest it should be raised on the Adjournment. I will propose it as a matter for debate on the Adjournment tomorrow but I would prefer, given the seriousness of the issue, that there be a full debate. I urge the Leader to do all she can to bring that about this week.

Mr. Finucane: I was present in the House when the then Minister for Transport, Deputy Brennan, announced that the break-up of Aer Rianta would represent a new dawn for Cork and Shannon airports, which would henceforth operate as separate entities. He assured Members, in justification for the dismantling of Aer Rianta, that both airports would become debt-free.

A Minister is usually quick to contribute to radio programmes when there is good news to impart. This morning, however, it was announced on "Morning Ireland" that the Minister for Transport, Deputy Cullen, was not available to comment. It is understandable why he would avoid such comment. The rationalisation programme at Shannon Airport has been discontinued because it was apparently unsuccessful after 18 months. So many years after the initial announcement, there is great uncertainty in regard to the situation at Shannon Airport. If the Minister cannot speak on "Morning Ireland", perhaps he will come to the House and tell us what is happening with Shannon and Cork airports and whether there is a total reneging on the promises of the former Minister for Transport, Deputy Brennan.

Mr. Leyden: Will the Leader arrange a debate on the position of An Post in view of the leaked statement that up to 500 rural post offices will be closed under a rationalisation programme?

An Cathaoirleach: That matter will be discussed on the Adjournment today.

Mr. Leyden: Nevertheless, I seek a full debate on this issue as opposed to an Adjournment debate. A former chairman of An Post, Senator Quinn, is a Member of this House, as is a former Minister with responsibility in this area. I am a former Minister of State at the Department of Post and Telegraphs. The presence of Members with such experience will facilitate a detailed debate on what is a serious issue for the network of sub-post offices. Significant numbers of them have closed in my area in recent years and more will follow.

Such closures undermine rural communities but they can be averted if we have the right policies in place. By transferring money by electronic means via the banks, the Department of Social and Family Affairs is taking a considerable amount of work from the local post offices. Such business ensured they heretofore remained viable.

Mr. Norris: How refreshing it is to hear honest criticism of Government policy from that side of the House. It is a democratic practice and I welcome it. An Adjournment debate on the issue is appropriate but such a debate usually deals with one specific issue and I agree with Senator Leyden that it should not preclude a wider debate. As someone who, like most Dublin people, is one hop out of the bog, this seems to be the death knell for many rural communities. The post office is part of the web of rural life and I would welcome a wider debate on this aspect of life in this country.

I salute Senator Minihan. It was courageous of him to criticise a Government of which his party is a member. I do not say that to rub salt into the wounds and encourage further aggravation but it is important to have honest dissent. It was not just the then Minister for Transport, Deputy Brennan, who gave an undertaking that Cork Airport would be debt-free. The Taoiseach did so himself, not on the record in either House but at a news conference. I do not wish to be parochial about Dublin Airport but the airport authority was given hotels which it could sell off. Cork Airport is a very fine airport and we need to create a level playing field so that it has a reasonable chance.

[Mr. Norris.]

I laugh when I hear the sacred cow of competition being invoked. Let us not accept the notion of competition uncritically because it does a lot of damage. It was wrong to abolish the groceries order but everyone followed Eddie Hobbs like lemmings when he said the prices in the sample basket of goods would decline. In fact prices have risen.

I ask for a debate on business ethics in this country because it is scandalous that Dunnes Stores has moved against a small supplier. A very large company can secure special rights over another company, which it keeps in a dependent position because it has signed a contract as an exclusive supplier. Then it squeezes the supplier for every bit of profit it can get. Disgusting avarice was displayed by representatives of Dunnes Stores, which makes enormous profits, when they objected to an increase in profits of 1% and then ruthlessly closed down the supplier and threw a large number of people out of work. That is the unacceptable face of capitalism. Since we worship competition why do we not force companies such as Dunnes Stores to compete for suppliers, and prevent them from closing down decent companies and throwing people out of work?

Mr. Scanlon: I ask the Leader for a debate on An Bord Pleanála and its role in the planning process, particularly in one-off housing. There is something wrong when permission for a one-off house, granted by the local authority, is objected to by a person from Dublin city, 130 miles away, who spotted a hole being dug while out hillwalking. The objection was upheld by An Bord Pleanála. I appreciate it has a significant role in major developments and planning initiatives but a local authority will not grant permission for one-off housing unless it is viable and supplied with necessary services such as sanitation and safe access.

Mr. Coghlan: Senator Brian Hayes raised an important matter today, namely stamp duty reform, which is long overdue. The Exchequer does well from receipts from stamp duty but it needs to be reformed quickly. As Senator Brian Hayes said, the fact that the Government parties significantly diverge on the matter is dangerous for the stability of the market and has huge potential to inflict continuing damage.

An Cathaoirleach: Does the Senator have a question?

Mr. Coghlan: I do. That is the purpose of my remarks. We are all concerned about first-time buyers who are crippled by huge mortgages. The Leader agreed with us twice but still voted down the Housing (Stage Payments) Bill in this House which would have done so much to alleviate the situation for first-time buyers.

Ms O'Rourke: That is politics. Does the Senator want a debate?

Mr. Coghlan: Of course I want a debate but perhaps the Leader could tell me something because now there is a divergence between the Government parties. Maybe the Fianna Fáil element of the Government will come up with something. The Minister has written to me about stage payments but nothing has been delivered.

Mr. Quinn: Practically every commentator on the Irish success story has referred to the education system as its main basis. Investment in education in the past 30 or 40 years has been responsible to a large extent for our success. The news today of a report from the Department of Education and Science which suggests that a third of primary school teachers leave college without sufficient ability is frightening. We should draw attention to this, the country should be in uproar over such a possibility.

According to another report in today's newspapers, driving instructors are unregulated and a scheme is to be introduced to ensure instructors who have permission to teach motorists to drive will be regulated in future. I hope this idea does not fall by the wayside, it is essential we put in place a scheme as soon as possible.

On Saturday a major rugby match is taking place in Croke Park. I call on all political parties to ask their members to recognise this is an occasion of pride in Ireland that should not be used for any other function. I was in the lower west stand in Lansdowne Road some years ago at a football match between Ireland and England. Some of the visiting supporters behaved in a most dangerous and opportunistic way. I was frightened, particularly as my teenage son was with me. We saw what happened last year at the Love Ulster march in Dublin, where some people took it as an opportunity just to cause trouble. I urge everyone in Ireland to say this is an occasion of which we should be proud and we should stand behind those setting the example.

Dr. Mansergh: The Finance Bill will provide an opportunity to discuss matters such as stamp duty. There is a case for reform of stamp duty to make it fairer at the appropriate moment.

Mr. McCarthy: When Fianna Fáil need the PDs.

Mr. B. Hayes: In 20 years' time.

Mr. Cummins: It is catch up time.

Dr. Mansergh: I would not mind at all if a discussion of the matter helps to cool an overheated market but, equally, I would not like radical reductions to rekindle the market and we must bear in mind that we do not have property taxes. Stamp duty is an important source of revenue and we should not throw it away lightly. Much needs

to be done in the country and it must be addressed prudently in the preparation of a budget. A general election is at best an opportunity to outline some general plans.

Mr. B. Hayes: If in doubt, leave them out.

Mr. U. Burke: It would be unfortunate if the public were to assume the report by the inspectorate to the Department of Education and Science on the qualifications and abilities of first year teachers who have just left training college was as bad as was outlined. Students completing their courses in a college like Mary Immaculate College in Limerick are asked to teach in classes of 30 or more children. Some of those schools are in the more disadvantaged areas of the country and have serious discipline problems, etc. It would be very unfair to be critical of the calibre of teachers being trained at present, particularly given that students even at primary level have many difficulties and problems which can manifest themselves primarily at school.

The European Commission yesterday issued its Joint Report on Social Protection and Social Inclusion 2007. For the first time it indicates the poverty trap within which certain people live, particularly pensioners and the elderly. One in three people here is at risk of poverty and this is particularly true of those over 65. Some 20%, again mainly the elderly, are at risk because their incomes are so small relative to the incomes of others. We provide one of the lowest pensions in Europe. Those people who say that our pensioners are doing particularly well with €200 per week——

3 o'clock

Dr. Mansergh: We only had 2% or 3% increases in the mid 1990s.

Mr. Dardis: Senator Ulick Burke's party could not keep pace.

Mr. U. Burke: In the auction that took place over the weekend we were promised that within the lifetime of the next Government, if that party is in power, it will increase to €300.

An Cathaoirleach: The Senator has made his point.

Mr. U. Burke: The Minister for Social and Family Affairs, Deputy Brennan, will make a presentation in Europe next Thursday. When he returns he should come to the House to discuss the poverty trap in which many of our elderly find themselves because of the high cost of health care.

Dr. Mansergh: We gave free medical cards to the over 70s.

Mr. U. Burke: We cannot get access for many of those people to that system.

Mr. Kett: Last week Senator Daly sought an update on the progress of the Disability Act and the Leader gave a commitment in that regard. We should invite the appropriate Minister to the House to discuss all aspects of it nine months after its enactment. I would be particularly interested in hearing about the assessment of needs, which was one of the first aspects to come into place. I understand the HSE is interviewing candidates with a view to establishing teams to deal with one to five-year-olds in the first instance. As can be the case with the HSE, I am afraid it might be reinventing the wheel. Many voluntary organisations have been doing this work for many years and have the expertise in place. The HSE may be interviewing inexperienced candidates who will need to be trained. I hope the HSE will interact with the voluntary organisations. I ask the Leader to find the answer to that question in the first instance and perhaps even invite the Minister to the House.

Mr. J. Phelan: I agree with Senator Quinn's remarks on Saturday's match. I also hope that political parties would not spoil the event by holding protests. No more than his family, my family has been very involved in the GAA for years. I was very much in favour of opening Croke Park to other sports. However, when the day came and Ireland played against France, I could understand the emotion attached. Considerable emotion will be attached to Saturday's game. In many ways the stadium is a national monument. Saturday's match will give the Irish nation an opportunity to show how far we have come and to be able to stand up and pay respects to the anthem of our neighbour. While we might not agree with its words, we will be able to show our maturity and can pay it the same respect we would pay any other national anthem because it is no more than that. If I can get a ticket perhaps you, a Chathaoirleach, would look after me. I look forward to the match on Saturday.

Following on from the verdict in the Dublin Circuit Court yesterday where a two year sentence, the last year of which was suspended, was handed down in respect of a man who was involved in what the judge described as a cottage-industry producing cocaine in Lucan, may we have a discussion as soon as possible with the Minister for Justice, Equality and Law Reform who is responsible for that area but also with the Minister of State with responsibility for the drugs issue, Deputy Noel Ahern, on where the problems rests?

Last week I was shocked and horrified to hear certain remarks in the other House. Deputy Kenny raised the issue of drug abuse and the availability of drugs in towns and villages throughout the country. He made the point that pretty much every substance is available in most towns and the Taoiseach dismissed it. If the Taoiseach is that much out of touch with the reality on the ground in provincial Ireland he

[Mr. J. Phelan.]

needs to be removed from his position. We need to have an urgent debate with his brother, the Minister of State who has responsibility in this area, on the scourge of drugs. Even in a city the size of Kilkenny there are approximately 80 heroin addicts. A few years ago we had none. The Taoiseach refuses to admit there is a problem, based on his remarks last week. I call for a debate on that issue as soon as possible.

Mr. J. Walsh: I endorse the call by Senator Quinn for a debate on the report on primary teaching. The INTO was very quick out of the traps. Anybody who has a cushy experience of involvement with primary education would say there are many fine teachers in the profession but there are also many who should not be involved in the teaching profession. All the report does is underline that. It is not good enough, particularly in the context of a referendum which gives paramount importance to the position of our children, that we should allow a situation, purely for industrial relations purposes, where inadequate teachers are allowed continue in the profession. Neither is it fair to themselves, because of the stress and strain it imposes on them, if they are not performing. In every school there is a small number who have chosen the wrong career path and there should be a mechanism for correcting that in the interests of the education of children.

Given the commencement of talks between the consultants and the HSE today, I am surprised this item has not been raised on the Order of Business. The health services have been blighted with vested interests over many decades. I hope the seriousness with which the Minister has laid out her stall on this matter will be followed through. I hope there will be no half-way houses or compromises. The bad practices that are in the consultants contract must be eradicated. The entire health service should be geared primarily and absolutely towards the health of the people and the patients who use that service. Obviously those who work in it have a responsibility in that regard. It is appalling to hear well paid consultants and equally well paid representatives of those consultants prevaricate over a long period. I know from their comments today that they intend to delay what would be the inevitable. I would like to think this House would speak with one voice in support of a Minister who, perhaps, has been the first to show courage in this regard. If she succeeds, and I certainly hope so, other Ministers will take on vested interests within the parameters of their own portfolios.

Mr. B. Hayes: It is a bit late in the day for that.

Mr. Finucane: The consultants——

Labhrás Ó Murchú: I am pretty sure the Queen of England will not be particularly interested or concerned about what I have to say about the singing of her national anthem at the match and I am sure she was not very concerned about what happened on Bloody Sunday either.

Mr. Norris: How could she be?

Labhrás Ó Murchú: One thing that has worried me about this debate is the manner in which celebrities have been rolled out to steam roll the views of other people and the deep felt emotions which are held by so many people. One television poll showed that 70% opposed the singing of "God Save the Queen" in Croke Park. I am not making an argument for or against it, but I am worried that the debate is such that sections of the media and celebrities are being used in this way.

When people call for sensitivity, respect and tolerance, the first human reaction is to agree with it. We all agree with it. In recent times, language has taken on a different meaning entirely. Very often, Ireland has to show sensitivity with regard to "Amhrán na bhFiann" because it might give offence to people of another political view. "God Save the Queen" will give offence to people of a certain political view, particularly in light of the terrible events which happened in Croke Park and which were one of the first illegal acts of terrorism at that time. Would it not be wonderful if sensitivity and tolerance now extended to the point that when Great Britain comes here as a good visitor to us, it would recognise sensitivities and decide not to sing "God Save the Queen"?

Mr. Norris: Oh what rubbish.

Mr. B. Hayes: They came over in the 1970s when no one else would come. They came over in the 1970s at the height of the Provisional IRA's bombing campaign when the Scottish and Welsh teams did not visit.

An Cathaoirleach: Senator Dardis, without interruption.

Mr. Dardis: I was privileged to be in Croke Park for the French game It was not a privilege to be there at the end but it was certainly a privilege to be there at the beginning. It is important to understand that protocol and courtesy dictate that whatever team of whatever nationality comes to play our national team, its anthem is sung, whether it be in Croke Park, Lansdowne Road or anywhere else.

Mr. Norris: Hear, hear.

Mr. Dardis: It is also important for people to understand why two anthems are sung. The national anthem, "Amhrán na bhFiann", is played in any stadium in the Republic of Ireland because this is where the game is being played. "Ireland's Call" is played because it represents a 32-county team. I hope the courtesy we have

always extended will be extended again on Sunday. I recall very vividly that day in 1973 when England came over when others would not.

Mr. B. Hayes: Hear, hear.

Ms White: I remind everyone in the House that 1 million people watched the match between France and Ireland. This was the highest recorded number of people watching a television programme and came about because the match was held in Croke Park. Senator Ó Murchú should be free to give his opinion, whether it is politically correct or not.

(Interruptions).

An Cathaoirleach: This matter has been debated sufficiently and might take a wrong turn.

Ms White: It takes more courage not to be politically correct in this building.

Ms O'Rourke: Senator Brian Hayes raised the matter of the property market and said that current speculation is dangerous, and very worrying. Ard Fheiseanna or conventions come and go. We await what Fine Gael will unleash upon the unsuspecting public when it treads the boards.

A Senator: And Fianna Fáil's Ard Fheis.

Ms O'Rourke: Yes, we will have ours too. I thought the Progressive Democrats played a mighty hand last weekend and we will see how it all affects them.

Senator Henry spoke about the lack of treatment for people in prisons and the issue of trying to give out legal drugs when illegal drugs are prevalent in prisons. There is no doubt this poses its own conundrum. Senator Henry also asked about the aptitude tests which will be introduced for some university courses, who is setting these tests and for what courses. We have the Minister for Education and Science in our sights and will ask her to come to the House.

Senator McCarthy spoke about the €100 million cost to Cork Airport. I fully agree with him that a clear commitment was given in this House. There was no doubt that Cork Airport would be debt-free and start off life in a rosy hue, but this has not happened. I always felt that Bill was ill-conceived.

The Senator then referred to the issue of stamp duty and called for the re-introduction of the first-time buyer's grant. I would not approve of that at all. Builders pocketed the first-time buyer's grant.

Dr. Mansergh: That is right.

Ms O'Rourke: I do not mean they purloined it but €1,000 was added to the cost of houses. The Labour Party had a mighty good Ard-Fheis itself.

Mr. McCarthy: I thank the Leader. We will re-introduce the first-time buyer's grant later this year.

An Cathaoirleach: The Leader should be allowed to reply on the Order of Business.

Ms O'Rourke: Senator Minihan supported Senator McCarthy. At the time I found myself a lone voice in that debate. I was dismayed with the way everybody fell, hook, line and sinker for what happened. He said the attitude of the Dublin Airport Authority was unacceptable in terms of how it was shredding assets. I said it only once, and I will never say it again to anyone, that they might like to raise the matter on the Adjournment. It is up to Members what they wish to put on the agenda. Senator Minihan called for a debate on the matter.

Senator Finucane referred to the false dawn which was promised and the current uncertainty for Shannon Airport. He asked that the Minister for Transport would come to the House to discuss the issue.

Senator Leyden asked for a statement to be made about An Post. Are members of An Post staff protesting outside the House today?

Mr. Leyden: No. They called it off.

Mr. B. Hayes: It was cancelled.

Ms O'Rourke: Senator Norris saluted Senators Leyden and Minihan for their——

Mr. Norris: Independence.

Mr. B. Hayes: Dissent.

Ms O'Rourke: ——patent independence and honesty. He wants a debate on business ethics. He pointed to what is happening to Whelan's, the cold storage company.

Senator Scanlon called for a debate about An Bord Pleanála and one-off housing. I would like a debate on county councils and why they do not give permission for one-off housing. People say a particular county is bad and then one hears the next is worse. I cannot understand what is going on. Problems arise if a young man or woman wishes to build a house on his or her own site, even when he or she is from the locality and works there and his or her proposals include using a Puraflo system. County councils seek every possible way to prevent people achieving their legitimate ambition to build a house for themselves.

Mr. Norris: It is called good planning.

Mr. McCarthy: Says the member of An Taisce.

Mr. Norris: Yes, I am a member of An Taisce and I am very proud of it.

An Cathaoirleach: The Leader should be allowed to reply without interruption.

Ms O'Rourke: Senator Coghlan spoke about stamp duty reform. He said we are divergent in our opinions. Of course we are. That is what makes for good Government.

Senator Quinn referred to investment in education. He is concerned about the report of the Department of Education and Science on primary teaching, some of which we saw this morning. He also called for the swift regularisation of driving instructors. He stated the process should not be allowed to drag on. The Senator also referred to next Saturday and I thank him for so doing. I agree it will be a matter of pride for us. We can set an example to the world. We could all indulge ourselves a little but I do not think it is the time for that.

Senator Mansergh was very soothing in stating we will debate all issues relating to finance in the context of the Finance Bill. Senator Ulick Burke referred to trainee teachers. He asked us not to be critical. Why can we not be critical? I do not understand that.

Mr. U. Burke: To be fair.

Ms O'Rourke: Let us see the report first. He also referred to social inclusion and older people, one third of whom are at risk of poverty, and that we have the lowest rate of pensions. If we all follow the Progressive Democrats clarion call, pensioners will be getting €300 before we know where we are.

Mr. B. Hayes: In five years.

Ms O'Rourke: I am pleased to relate nobody found fault with that worthy proposal. I noted over the weekend on my travels that it struck a chord.

Mr. B. Hayes: Deputy Sexton will do well then.

Ms O'Rourke: Senator Kett sought a debate on the progress made to date on disability issues. Senator John Paul Phelan stated there will be much emotion next Saturday and an opportunity to show how we have matured. I fully agree with him. He sought a discussion on drugs. Nobody is more in touch than the Taoiseach with what people feel.

Mr. J. Phelan: He was not in touch last week.

Ms O'Rourke: I was not in the other House so I do not know what he said.

Mr. J. Phelan: I read his comments and they were completely off the wall.

Ms O'Rourke: Senator Jim Walsh called for a debate on the report on primary teaching because teaching is so important. He also referred to the commencement of talks with consultants today and that bad practices must be eradicated.

Senator Ó Murchú, who is entitled to his opinion — the Cathaoirleach would stand over this principle — made the point that ordinary people's beliefs were being overridden by those of celebrities and those expressed on television. It is a sensitive time and it is a time to stand up and show we are a sovereign nation, which we are happy to do. I hope everything works out.

Senator Dardis stated that protocol and courtesy dictate what is played. He referred to England's visit in 1973 when no other country would come here. The UK had been subject to major bombing, yet the team played here. We are grateful for those memories. One cannot eradicate memories or history but we can put our stamp on history, as we hope to do on Saturday. Senator White referred to the television audience of 1 million people. We can win the day by winning the match.

Order of Business agreed to.

Planning and Development Regulations 2007: Motion.

Ms O'Rourke: I move:

That Seanad Éireann approves the following regulations in draft:

The Planning and Development Regulations 2007,

copies of which were laid in draft form before Seanad Éireann on 25 January 2007.

Question put and agreed to.

Council Framework Decision on Organised Crime: Motion.

Ms O'Rourke: I move:

That Seanad Éireann approves the exercise by the State of the option or discretion provided by Article 1.11 of the Treaty of Amsterdam to take part in the adoption of the following proposed measure:

a proposal for a Council framework decision on the fight against organised crime,

a copy of which proposed measure was laid before Seanad Éireann on 15 June 2006.

Question put and agreed to.

Sitting suspended at 3.25 p.m. and resumed at 3.35 p.m.

Defamation Bill 2006: Committee Stage.

Sections 1 to 4, inclusive, agreed to.

SECTION 5.

Ms Tuffy: I move amendment No. 1:

In page 7, subsection (4)(*b*), line 24, after "person" to insert the following:

"or the publication to the second-mentioned person was in the course of the performance of duties of a secretarial nature by the second-mentioned person (being a person whose relationship if any to the first-mentioned person is primarily based on contract) and there were no reasonable grounds to believe that the first-mentioned person would suffer any significant injury by reason only of such publication".

I apologise to the Leas-Chathaoirleach and the Tánaiste and Minister for Justice, Equality and Law Reform because I have laryngitis today but I will do my best.

Tánaiste and Minister for Justice, Equality and Law Reform (Mr. M. McDowell): This is getting very hopeful.

Ms Tuffy: The purpose of this amendment is to make clear that where A sends a letter to B, which is read by A's typist, and B's secretary, there is no publication in law, unless there is a special injury, for example, if B's secretary is also B's wife and the letter makes a defamatory allegation against B. If, for example, one wrote to a county manager, criticising him one should be sure one was not in jeopardy of being accused of defamation. One should be free to allow for the fact that his or her secretary will open his or her post. This is a necessary provision.

Mr. M. McDowell: I have done a fair amount of libel law in my time and watched many other lawyers do much more than I ever did but I never heard of a case in which a secretary was sued for typing a letter. I have never even heard of a case in which there was a threat to sue a secretary for typing a letter. In respect of the definition of the term "secretary" there would be cases in which an employee, perhaps a manager or programme manager, might be asked to write a letter. I never heard of a case in which a person was sued simply because he or she was involved the in physical act of writing a letter. I am not aware of any jurisdiction that has felt it necessary to make this particular exemption in respect of secretarial functions. Accepting the amendment would, as opposed to curing an evil that has never yet come to light, give rise to further issues.

Ms Tuffy: I appreciate the Minister's comments. Is he satisfied, however, from a legal point of view — rather than one of experience — that the type of situation outlined is covered in law?

Mr. M. McDowell: Most secretaries who write letters are, unless it is staring them in the face, totally unaware of whether they are defamatory. They assume that their employers are persons of honour and decency and would only put forward observations that are true or whatever. I simply do not believe that a court would award damages of a significant amount against a secretary. Similarly, neither the postman who delivers a letter nor the person who opens it in the place in which it is received would be liable to be held responsible for its publication. If we choose to include various categories of innocent participants, the provision would have to be widened substantially. For example, if I wrote a defamatory letter about the Senator and sent it to Senator Jim Walsh, the latter's secretary would, in a sense, publish it when he or she opened it and placed it on his desk. However, no one would dream of suing Senator Jim Walsh's secretary for publishing the defamation to him. In such circumstances, we would be better off not trying to define a category of innocent participants in defamation. If we started down that road, one would be in a position to write a book on the subject.

Mr. Cummins: I suppose that would include Ministers and Ministers of State who blame their secretaries for sending out letters without their knowledge.

Mr. M. McDowell: If all the Members of the Oireachtas were to have visited upon them all the letters sent out in their name and be subject to the consequences attaching thereto, there would be very few of us in the Houses.

Amendment, by leave, withdrawn.

Question proposed: "That section 5 stand part of the Bill."

Mr. J. Walsh: Section 5(4) states: "There shall be no publication for the purposes of the tort of defamation if the defamatory statement concerned is published to the person to whom it relates and to a person other than the person to whom it relates in circumstances where ... it was not intended", etc. What is the position where a defamatory statement is made and where this subsequently, either directly or indirectly, finds it way to television, radio or other media outlets? Will the Minister clarify the position in that regard? I take it that it would constitute secondary publication and would, therefore, be deemed actionable. Matters of this sort can gather momentum as they proceed and even though a letter might not be meant for publication, a member of staff of some media outlet could publish it and claim that he or she had made an honest mistake.

Mr. Norris: I welcome section 5. In my opinion, abolishing the distinction between libel and slander and placing both in the category of defamation is a useful development. My soundings with people in the Law Library suggest that the Minister is very much in tune with the thinking of lawyers who operate in the area of libel. I

[Mr. Norris.]

wanted the opportunity to say that because it is probably the only complimentary statement I shall make this afternoon.

Mr. M. McDowell: I expect that further compliments shall flow in the course of the afternoon.

Mr. Norris: I do not think that will be the case. However, if he accepts my amendments, the Minister will be deluged with compliments.

Mr. M. McDowell: It is interesting that slander is not actionable without proof of special damage and except in certain cases. One of the latter instances is imputing dishonesty or criminality to a person, while another is imputing unchastity to a woman, a man or whomever. I am following the recommendations of the Law Reform Commission in merging the two torts. There is, however, a slight reluctance on my part in that regard because I am of the view that people make verbal statements in the heat of the moment and these should not be dealt with on the same basis as those which appear in written form or which are broadcast. The old distinction between slander and libel was not completely antediluvian or lacking in substance. People say things in the heat of the moment which, even after only 20 seconds, they would retract. People listening to conversations know that individuals say things that they do not really mean or over which they would not stand.

Mr. Cummins: We accept the Minister's apology.

Mr. M. McDowell: Senator Jim Walsh referred to section 5(4). The purpose of this subsection is that if one says something to somebody that is directed towards him or her, it is not defamatory. If one's secretary heard one, in an unintended way — for example, through the office partition — making a defamatory remark about somebody, that should not, of itself, constitute publication. This is a peculiar matter. There was a famous case involving Kirkwood Hackett *v*. Tierney in which it was claimed that Michael Tierney, the former president of University College Dublin who was related to me by marriage, had defamed a student in the presence of the college registrar. The latter stated that he had no recollection of the event and there was a question as to whether that was right or wrong. There must certainly be instances where people overhear conversations in an unintended way and where the mental element of defamation is not present because the remark was primarily intended to be heard by the listener only.

Mr. J. Walsh: What if the person who hears the remark is involved in the media?

Mr. M. McDowell: That is the point. If somebody proceeds to republish the remark, section 5(4) will not protect them in any way. The provision under discussion only extends to someone who was an unintended bystander. If the secretary to whom I refer heard it in an unintended way, contacted the local newspaper and stated that the remark was made in her presence, the publication to the local newspaper and that newspaper's publication to the public would not be saved by the provision.

Question put and agreed to.

Section 6 agreed to.

SECTION 7.

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

Mr. J. Walsh: This section involves a significant change in that plaintiffs and defendants will be obliged to swear affidavits. I stated on Second Stage that there is a certain peculiarity in that regard because people who are involved in serious crime are not obliged to present themselves to present any evidence and can remain silent. The Minister recently made an announcement, which I welcome, that the position will be corrected and brought into line with legislation introduced in the aftermath of the Omagh bombing.

I have a number of concerns regarding this matter because defamation is extremely serious for those who are defamed. In trying to create a balance, we must be cognisant of ordinary citizens who could be defamed and who might not, on foot of a range of circumstances, be in a position to obtain redress. While the media has argued long and hard in respect of this provision, we may be skewing matters too much towards the latter and away from ordinary citizens. I am, therefore, somewhat concerned with regard to people being obliged to swear affidavits. On the other hand, transparency is important. Later in the debate I will ask if the press will be required to make an affidavit in respect of an honest mistake, which would be important.

Under subsection (9), the defendant and the plaintiff will each have the right to cross examine. Why is the legislation so prescriptive on that issue? It is a statutory right to cross examine, but under the courts system they already have that right. If a plaintiff does not present themselves to give evidence, they can be called by the defendant in the case. Defendants are often reluctant to do that because the person then becomes their witness. This strikes a chord with the judge and jury, given that the person is one's witness but the evidence they give does not assist one's case. Perhaps we are skewing the legislation too much. Why is that necessary? Both the plaintiff and the defendant have the same obligation and, in any event, would be in a position to call a witness

from the other side and cross examine them on what is in their affidavit or anything relating to it.

I am also mindful of other cases that have cropped up in the courts. In those cases, specific allegations which involve defamation are made against citizens, the citizen goes to court and it transpires that those allegations were incorrect. However, because the plaintiff might have other failings and these are brought into play, the case is lost or damages are not awarded, despite the fact that incorrect and defamatory information was published. There have been a number of cases where the court has found that the person did not have a reputation to protect, as it were.

We need to be careful that we do not create a situation where people will find themselves being defamed but are unable to have that remedied because of the construction of the legislation.

Mr. Norris: It is interesting that my colleague on the Government benches is hesitating about this; I am too, for a number of reasons. First, it places a considerable burden on somebody who is trying to take this type of action. Bear in mind that this is generally an individual who is up against powerful vested interests. I note that at the Tánaiste's party conference, a great rally which was held last weekend, a gentleman there spoke against the privacy Bill. I hope the Minister will tell us later what is happening with that Bill. The gentleman was objecting to the Bill on various grounds, but he did not disclose the fact that he is the principal partner of a solicitors' firm whose major client is Mr. Anthony O'Reilly. That little bit of information might have been helpful.

I am on the side of the small person against big vested interests. What I most dislike about this Bill is that it is produced at election time, just as the Fine Gael Party launched its version in 2001 in advance of an election. With regard to the rights of the small person, this is a situation where somebody is expected to make not just one affidavit but perhaps a series of them as the trial process continues. One could end up with a trial within a trial. It is possible, for example, that somebody could swear an affidavit, there is a gap of two years before the trial is held, they make an honest mistake in the witness box and they are found guilty of a criminal offence. That is not a good idea.

This section is analogous with the provisions of another Bill, the name of which I cannot recall, dealing with personal injuries and insurance. I believe it was a mistake at that point, and now the mistake is being widened by its introduction in this legislation. It is to the disadvantage of the ordinary person who might make a genuine mistake. It does not trust the individual. The assumption behind the provision is that a considerable preponderance of people will perjure themselves. That is rather insulting to the Irish people. I do not believe a majority of people will do that and there is no need to deal with it in this way.

The Minister, unusually, does not appear to take into account the corrective system of the court in analysing this evidence. I share Senator Walsh's reservations but mine are stronger. It would be better to remove this section.

Mr. M. McDowell: The point about somebody making a mistake and being criminalised is absolutely without foundation, I regret to inform the House.

Mr. Norris: Would the Minister like them to be guilty?

Mr. M. McDowell: No. Subsection (6) provides that if a person makes a statement in an affidavit under this section that is false or misleading in any respect and that he or she knows to be false and misleading, he or she shall be guilty of an offence. That has nothing to do with making an honest mistake. It must be proved that the person knew it was false and misleading at the time they made it. The notion that something might have happened over a period of two years which might make one's recollection wrong would not be correct.

The genesis of this section was the Law Reform Commission's suggestion, in its famous document on defamation, that we should put the onus of proof on a plaintiff in defamation proceedings, that is, one should prove that the allegation against oneself was false. The commission said that this is the only area of tort law where there is no onus of proof on the plaintiff. When the Government considered this, there was a strong view that it was not an acceptable approach. We did not agree with the Law Reform Commission that the onus of proof should shift unreservedly to the plaintiff in defamation proceedings.

However, we were also confronted with another situation. It is not fanciful because it has happened. Somebody who has done something wrong but feels that the newspaper cannot prove that it is wrong, can sue the newspaper and get away with it without ever exposing themselves to any form of liability. This has happened and people have extracted money, apologies, contributions to charity and so forth, knowing well that the newspaper was spot on but calculating that it could never prove the matter and would have to back down. A Member of the House of Commons, Tom Driberg, sued the pants off a few newspapers, if I may use that phrase——

Mr. Norris: An appropriate image in the circumstances.

Mr. M. McDowell: ——for stories which everybody knew to be right. He never even had to testify in the cases. He simply demanded that they prove the case and then walked away from it. This provision simply requires that somebody swears an affidavit saying that what is in their pleading is correct. In other words, if the pleading

[Mr. M. McDowell.]

is false and they know it to be false, they commit perjury or expose themselves to being proven to be committing perjury if they proceed with the trial.

Senator Norris drew the analogy with the Civil Liability and Courts Act. Since the Personal Injuries Assessment Board and that Act came into operation the volume of litigation has plummeted. Furthermore, insurance premia have plummeted. The compensation culture is in full retreat. That happened because it was usual for people who, for instance, had broken their leg in a car crash to announce that they could no longer play golf and that they had to employ nurses and childminders. These particulars were put into pleadings, regardless of their truth, to pad out a case against the insurance company. There was never a requirement for someone to say it was true and to put their reputation on the line if it was not true.

4 o'clock

The purpose of adversarial justice is that one is asking a court to believe one. If matters are put down in writing without any belief in their truth in the hope of bluffing the other side, and someone profits from that in personal injuries or defamation cases or if someone frightens someone off with an assertion in their pleadings, they might as well go a little further and expose themselves to a criminal liability if they are just cheating the other side.

Senator Walsh asked if the plaintiff can call anybody they want. They can but if my newspaper has written an article about somebody and I call that person as a witness, that person is my witness but if he or she gives evidence, I am bound by the answers. If I said he did beat his wife on the occasion and he says he did not, I cannot suggest to him that she had 13 bruises, that she said he did it and so on. One cannot cross-examine one's own witness. That is the crucial difference. A witness who is called by one side is giving evidence in chief and one cannot cross-examine one's own witness, except in rare circumstances if that person gives evidence that is against one's case. Under this section, if somebody swears an affidavit, they can be cross-examined.

There is another aspect, going back to the Driberg instance. The idea that somebody could, fully conscious of the fact that what was said about them was true, go into a court, have their counsel open the case to the jury, not even walk up to the witness box but simply say to the other side that they must prove that whatever was said is true, knowing that it is true, offends justice. We have introduced balance in that regard. We decided not to follow the suggestion of the Law Reform Commission, which was that the onus of proof should always be on the plaintiff. We have said the onus of proof is not on the plaintiff but if the plaintiff claims he has been defamed, he must swear an affidavit saying that he truly believes he has been defamed and outlining the reasons.

He does two things in that regard. First, he renders himself liable to prosecution for perjury if he lies at that point and, second, he exposes himself to cross-examination in the witness box. The idea that somebody could sue for a large sum of money without ever exposing themselves to cross-examination is unjust. That is the reason for that balance. The Government took the middle course. It ignored the Law Reform Commission's proposals.

Mr. J. Walsh: I thank the Minister for clarifying the matter, which is helpful. First, in circumstances where the plaintiff is called by the defendant and is then regarded as their witness, presumably the testimony they would give would not be the testimony that suited the defence. Would they not then have the right to cross-examine?

Second, the defendant and plaintiff are referred to in subsection (9). It is clear who the plaintiff is but the defendant might not be so clear. If I were defamed in, say, *The Messenger*, and I take an action, I might not want to take an action against the author, the editor and the publication itself because I would be exposed to three different costs if the case were unsuccessful. The Minister will agree that even if one has a cast iron case going to court, it tends to be a lottery to some extent. One might confine the action to the person whom one regards as the defendant. That would allow an unfair situation to develop where the defendant need not put forward the author or the reporter if their evidence might not best suit their case. They could put forward the editor or *vice versa*. The plaintiff is defined to some extent in the definitions section but the defendant is not so defined and I am concerned about that. People will be reluctant to do that because of the cost.

In general, unless people have significant financial means, they are very reluctant to go to court on any issue because of the prohibitive costs involved. For them to access justice, therefore, is difficult. I am concerned about that. It will be clear who the plaintiff is and, therefore, there is no concern for the defendant. When it comes to calling witnesses, however, what powers has the plaintiff to define who the defendant is other than the initial action they take by naming the parties whom they are claiming defamation against? If that is a multiplicity of defendants, there is another obstacle from the point of view of the plaintiff because of the significant costs involved.

Mr. M. McDowell: All that is required is that the plaintiff or the defendant swears a verifying affidavit, which does not mean that they prove these matters are true from their own knowledge but that they are true to the best of their knowledge and belief. If somebody knew it was false and it was later proven that he or she knew it was false, the affidavit would amount to perjury.

Subsection (3) refers to infants or persons of unsound mind who can do it. Subsection (4) deals with bodies corporate but if, for instance, a newspaper was pleading qualified privilege or whatever, the editor of the newspaper or whoever will swear the affidavit on behalf of the body corporate stating that to the best of their knowledge and belief, what they say in the affidavit is true. They do not have to produce the man who saw the murder and make him swear an affidavit stating the plaintiff did the murder or whatever. Otherwise, it would require the whole case to be deposed in writing. If the editor says he believes that Senator Walsh killed his granny or whatever and if he is pleading justification based on that, he believes that it happened. He will not then outline all the reasons he believes it happened. It is simply that it happened that way.

Regarding cross-examination, if someone calls a witness in cross-examination, he or she is their witness and they are normally not permitted by the court to query the truth of what that witness said to them. That is the difference between examination in chief and cross-examination. They are not entitled to query or challenge that witness's evidence. To take a case like the Driberg case, if the newspaper decided to call Mr. Driberg, since he was not giving evidence in this case, and put him in the witness box, and if they asked him if he did A, B and C and he said "No", that would be the end of it. That barrister would have to sit down. He could not say that the witness did X and Y and suggest to the jury that he was lying. The judge would tell him to sit down because he had got his answer from his own witness. That is the difference.

Mr. J. Walsh: My concern is that under this provision a defendant will have to make himself or herself available for cross-examination. Who will be the defendant? For example, a reporter may have taken a chance on a story that may not be well-founded. The reporter could have informed the editor that he or she was satisfied with it. If the case went to court, the reporter may not be cross-examined but the editor, who may not be in possession of all the facts that the plaintiff's lawyers may wish to flush out to prove their client's case. I accept this concern may be more relevant to the honest mistake aspect of the legislation.

Mr. M. McDowell: This is not an effort to find out who is lying or who is telling the truth. This provides that if something is going to be put in writing at the beginning of the case, then the defendant better believe it. It is not stating this is the way in which the truth of allegations will be ascertained.

Question put and agreed to.

SECTION 8.

Question proposed: "That section 8 stand part of the Bill."

Mr. J. Walsh: Section 8 states, "A person has one cause of action only in respect of the publication of a defamatory statement concerning the person even if more than one defamatory imputation in respect of that person is borne by that statement". Will the Minister clarify that all defamatory imputations can be included in that one action?

Mr. M. McDowell: If someone is described as a "thieving murderer", theoretically that individual could sue claiming the statement meant he or she was a thief. On another day, the individual could sue again claiming the statement meant he or she had murdered somebody and it is a separate cause of action. This section provides for one cause of action for a statement but all imputations must be sued on at the one time.

Question put and agreed to.

SECTION 9.

Ms Tuffy: I move amendment No. 2:

> In page 10, line 10, to delete ", in particular,".

As the provision stands, the use of the term "in particular" makes it unduly restrictive. For example, if it was claimed that all the Ministers for Justice in recent years were guilty of crime X, the term "in particular" restricts the grounds where one could say that one was defamed.

Mr. M. McDowell: To take the Senator's example, if one said that all the recent Ministers for Justice have been corrupt, it would refer to me because I am a recent Minister for Justice. If one said that Ministers for Justice are notorious for their corruption, it could be argued that it does not necessarily refer to me. The section provides that the statement is defamatory if it could reasonably be understood to refer, in particular, to the person in question. In those circumstances, a court must decide does the statement "Ministers for Justice are corrupt" reasonably refer to one particular Minister for Justice. If it does, that is sufficient to the defamation of that person. If one claimed "all Ministers for Justice in recent years have been corrupt", it can only mean that each and every one of them was defamed. There would be no doubt that it was intended to refer to the individual.

The term "in particular" means there is particularity in the provision. If an individual stated "Ministers for Justice are corrupt and lazy politicians", it would be up to me to argue to a jury that such a statement could be reasonably understood as referring to me. For example, if it were stated gardaí are well-known for x, y and z and if

[Mr. M. McDowell.]

one garda were to claim it referred to him, the court would say it was outside the pale and too general. By contrast, the reference to Ministers for Justice is to a narrow group. Using the Senator's example of "all Ministers for Justice are corrupt", it is simple that it refers to me in particular and I qualify. It is a reasonableness test and would not apply to all, say, teachers or gardaí as a category. If it is qualified by the term "all" and referred to a small group of people such as recent Ministers for Justice, it would reasonably be capable of referring to me.

I also advise the Senator not to make such a statement.

Dr. M. Hayes: I must make a series of declarations of interest. I am a director of Independent News and Media, a writer and have acted as a facilitator to a steering group which was developing proposals for a press council and ombudsman. I support the Minister's arguments for retaining the words "in particular". I was visited with the threat of libel over a book I wrote. In it, I contrasted the attitude of parliamentary clerks to departmental civil servants. To my horror, I received solicitor's letters from one particular person who claimed there were only ten people in this class in Northern Ireland, two of whom are dead and, therefore, the person in question was libelled. He made much money on it. If I had been able to plead particularity it would have covered that situation. It is a sensible word to keep in the section.

Ms Tuffy: The formula "could be reasonably understood to refer to the member concerned" covers the Minister's argument. Does the wording pitch it in such a way that it refers to the person more than anyone else? All the time people claim all politicians are corrupt. I believe the reasonableness test is already contained in the wording without the need for the words "in particular".

Mr. Norris: I support the Minister on this point. It may not cover a case in which I was involved but it comes close to the point. Over the airwaves I stated that the situation pertaining to the selling of alcohol in Dublin is outrageous. Every huckster's shop is stuffed to the gills with gin, beer and wine and no licence application is turned down. On RTE I said I did not know who gave out the licences or where they lived. I said it was probably Killiney or Howth because they do not live around me and I asked what kind of lunatics they are. RTE was sued because it turned out there was only person awarding the licences. The guff that came from the solicitors was to the effect that I had called their client — a most distinguished citizen — a lunatic and a madman. It was simply a turn of speech. I said on the programme that I did not know who "they" were, suggesting I did not know how many were involved or where they lived. I used a commonly employed turn of speech but RTE was grilled and filleted by his lordship not once but twice. It should be clear that a claim is particular and that there is malice and intention. It was disgraceful that this action was taken.

Mr. M. McDowell: I am amused that Senator Norris seems to leave a trail of wreckage behind him every time he goes into a studio.

Mr. Norris: They still love me, however, as they do the Minister. There is a fair amount of wreckage in his case as well.

Mr. M. McDowell: The provisions of section 9 are based on what was in the Whelan report and probably also the Law Reform Commission report. The particularity idea is not a random thought of my own. The purpose of this provision is to bring reason to the definition of a class of persons. We must be reasonable in this. I would prefer to cut down these types of inferential libels to the minimum. If a person is to be found to be defamed, it should be clear to everybody who reads the newspaper in which the defamatory statement is made, for example, that an act of defamation has taken place. The notion that even the maker of the statement could have no idea who he or she is defaming and that more than one person could claim to be the person defamed strikes me as contrived.

Amendment, by leave, withdrawn.

Section 9 agreed to.

SECTION 10.

Question proposed: "That section 10 stand part of the Bill."

Mr. J. Walsh: I seek clarification in regard to this section's provision that a person has only one cause of action in respect of a multiple publication. Subsection (2) provides that a court may grant leave to a person to bring more than one defamation action in respect of a multiple publication. Does this section apply where, for instance, an article that defames a person is taken up by other publications, thus repeating the defamation? Is that what is referred to here?

Mr. Norris: No.

Mr. J. Walsh: That would be unfair.

Mr. M. McDowell: I assure the Senator that this is not the purpose of the section. It is designed to prevent a situation where, in theory, a person who takes a defamation action in respect of an article published in *The Irish Times*, which is read by a certain number of people on the day it is published, decides to take further action four years later when another person who reads the article, which has been left in a hotel room for

that length of time, telephones the defamed person to say he or she is angry about the article's contents. Multiple publication is defined as "publication by a person of the same defamatory statement to 2 or more persons ... whether contemporaneously or not". It must be the same statement and the same person doing the publishing. Its purpose is to prevent a person who has taken action in respect of a defamatory statement coming back in the future, having discovered that others have subsequently read it, seeking more compensation because he or she did not foresee such lasting damage to his or her reputation.

Question put and agreed to.

SECTION 11.

Question proposed: "That section 11 stand part of the Bill."

Mr. Norris: I oppose this section because it seems extraordinary to claim that a body corporate is the same as a natural person. I do not believe that for a minute. This defect is compounded by the provision that a body corporate may bring a defamation action under this Bill in respect of a statement concerning it that it claims is defamatory "whether or not it has incurred or is likely to incur financial loss as a result of the publication of that statement". If there is no financial hurt, one is left only with feelings. I contend, however, that corporate entities are not entitled to feelings. The ability to feel is a human attribute that does not attach to the collective in the same way.

I again plead the interest of the ordinary person in this. If I were to say that Guinness or Mars bars are bad for us, should the corporate entities that manufacture those products be allowed to land on me? There may well be reason for a corporate body to be allowed, as is the current situation, to take an action where it can demonstrate financial loss. We should not be expected, however, to compensate a corporate identity for an injury to its supposed corporate feelings.

The language is clear in specifying that the provisions of this Bill apply to a body corporate as they apply to a natural person. This revolts common sense. It is perfectly reasonable that a business enterprise that can demonstrate a financial injury should have recourse. It seems, however, that what is left when one removes financial damage is bruised feeling. Perhaps I am missing something here that the Minister may be able to clarify. I do not give a damn about the bruised feelings of Mars, Guinness, Tesco or, in particular, Dunnes Stores. Nor do I care about the feelings of Independent Newspapers, a company in which Senator Maurice Hayes has declared an interest.

Dr. M. Hayes: It is pleasing to discover that any type of feelings are imputed to such bodies. I strongly support Senator Norris in this. It is a supreme example of what is called a pathetic fallacy: the idea that inanimate bodies have feelings. This provision carries the notion of legal personality further than logic would bear it. Like Senator Norris, I do not believe bodies corporate have feelings to be hurt. They are entitled to damages if they suffer financial losses as a result of defamation, but this section goes beyond that.

I am concerned about the damage this provision might do to honest investigative journalism, especially to the work of journalists who examine the activities of pharmaceutical companies, for example, or companies that produce genetically modified foods. These are the corporate entities that will move in quickly with writs to close down that type of investigation.

Mr. Norris: Absolutely.

Dr. M. Hayes: This provision is against the public interest and I ask the Minister to withdraw it.

Mr. J. Walsh: I am not in full agreement with the previous two speakers. I take their point, however, about the supposed feelings of corporate bodies. Where a statement is made, either through sloppy journalism or some other reason, that defames a corporate body and causes it to incur significant financial loss, that body must be in a position to take action. In extreme circumstances, job losses might arise in a company as a consequence of irresponsible reporting. Where there is no financial loss, however, I cannot offer any reasons a defamatory statement might be actionable, although there may be circumstances where such is appropriate.

Mr. Cummins: Where there is a financial loss, nobody would disagree that a corporate body is entitled to claim. I take on board what Senators Norris and Maurice Hayes said. This section seems to go a bit overboard. I look forward to discovering whether the Minister agrees that its provisions may go too far.

Ms Tuffy: The issue of financial loss is not key to this. If one allows that a body corporate can be defamed, one must also allow all the provisions of this Bill to apply to it, including apologies and so on. This section merely sets out that a body corporate can be defamed and that the body corporate does not have to prove financial loss to take advantage of the other provisions of the Bill. That is my understanding of the section.

Mr. M. McDowell: I am grateful to Senator Tuffy for coming to the aid of the section. I am beginning, however, to experience a slight sinking feeling about it.

Mr. Norris: The Minister should get rid of it.

Mr. McDowell: A body corporate could be a county council or, even worse, the fellows and scholars of Trinity College Dublin.

Mr. Norris: Absolutely.

Mr. M. McDowell: It could be many things. I agree with Senator Norris that the idea of a body corporate having feelings is far-fetched. The good name of every citizen requires to be upheld by the Constitution——

Mr. Norris: Except public figures.

Mr. M. McDowell: ——but companies are not citizens. I will reconsider the matter between now and Report Stage. It may be better to recast the section to state that a body corporate can only bring a defamation action in respect of a statement made where it has incurred, or is likely to incur, financial loss or where the statement was made with malice. A person could say something about a company or group which was pure malice. The fact that a company trebles its profits in a following year should not be a licence to say anything one likes. People should not, for example, be allowed to say that a very successful and expanding company was poisoning its customers but escape punishment by showing a jury the company's next three years' accounts and saying that, although they may have tried to damage the company, they were not successful in doing so.

Mr. Norris: I thank the Minister. He points to an interesting case in which a company may make a profit after being the subject of adverse comments, which can happen, as it does in political life. Serious allegations were made against the Taoiseach, following which his popularity boomed. Negative comments sometimes have an unpredictable effect and I am grateful to the Minister for agreeing to take another look at this section.

Mr. J. Walsh: One issue struck me which eluded me when I spoke earlier. It is much easier for the corporate veil to be lifted than it was under previous legislation. Directors and managers of companies may find themselves, as a result of their company being defamed, in the eye of the storm. It might be suggested that individual managers who feel defamed by unfair and unfounded criticism take a case themselves but, given the prohibitive, exorbitant legal costs that apply in the Four Courts, the corporate body might be in a better position to do so. I ask the Minister to give consideration to that as it might justify the proposed legislation.

Mr. M. McDowell: I am concerned that leaving the Bill untouched in this regard would allow a large company to take an individual to court to prove slander or to use the legal process to punish or humiliate a person. I will, accordingly, take another look at it.

Question put and agreed to.

SECTION 12.

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

Mr. J. Walsh: This proposes a significant change to what pertains at the moment. The Minister might clarify the situation but my understanding is that if a case is appealed to the Supreme Court, the latter can refer the decision to the lower court. There have been famous examples of increases in awards but I am concerned about the Supreme Court being able to override a case which has been prosecuted through a lower court, such as the High Court. Evidence has been given and people have been cross-examined, which does not happen in the Supreme Court, yet the latter can override the decision of the jury. I know the media sought this provision but I question whether it achieves balance in favour of the citizen. I take the point made by the Minister on the previous section about the smaller person damaging a large corporation but in these cases the large corporation is on the other side, rather than the ordinary citizen with limited resources.

I am disappointed that discussions on a press council do not consider an independent system, similar to what the Minister for Enterprise, Trade and Employment brought about in the insurance industry by establishing the Personal Injuries Assessment Board. The PIAB formula for deciding upon personal injury claims can act as a yardstick for agreeing compensation levels without incurring legal costs. The recent report of that body was very significant. It stated that cases were being addressed much more expeditiously and that justice was being dispensed for a fraction of the legal costs. I do not see why we cannot develop a similar system for this area. It would mean an independent press council or a separate assessment board but we should put such an organisation in place. If a person is defamed, they are entitled to a lawful adjudication but they should not have to risk whatever bit of wealth they have to restore their reputation, as happens at the moment and will happen under this legislation.

Mr. Norris: I am struck by the common sense in the approach of Senator Jim Walsh. His instinct is correct. I am astonished by the inclusion of this provision, which seems to be perverse and illogical. However, there is no doubt it is what the media wanted and the Minister has given it to them.

I believe Deputy Michael McDowell was the Minister for Justice, Equality and Law Reform in June 2005. Bloomsday is 16 June and is a date

dear to my heart. On Bloomsday 2005, counsel in Europe defended a position on his behalf which he now proposes to undermine. I will put on the record of the House what the Minister thought in June 2005, which is in direct opposition to this section. It is surprising that such a distinguished lawyer would impugn the sanctity of the jury, a subject on which Ms Justice Finlay Geoghegan in the Supreme Court has waxed eloquent on more than one occasion.

The case, which was unreported but is available, was Independent News and Media plc and Independent Newspapers (Ireland) Ltd. *v.* Ireland and was related to the case of De Rossa *v.* Independent Newspapers. The newspaper group lost in Ireland so sued in Europe, where it was again put in its box. Arguments made by the Minister on Second Stage in defence of this section were dismissed out of hand by the European Court of Justice so why are we considering it now? We all know why. It is because a general election is imminent and every time there is an election every party gets involved in an auction to see how best it can kowtow to the press.

The Government's response to the prospect of allowing the Supreme Court to second-guess a jury was to say that it underlined the cherished nature of the principle that lay persons were considered the most effective arbiters when deciding not only what was defamatory but what was the appropriate level of compensation. That was the argument made by the Minister's representatives in 2005. It continues:

> The applicants were effectively asking the Court to assume that jurors were unable to value reputation in accordance with certain factors outlined to them in order to arrive at a rational and proportionate decision without further guidance. Not only was that an inappropriate assumption, but the calculation made by a jury attracted an even wider margin of appreciation than that completed by, for example, a judge. In this latter respect, they explained why framing and applying defamation laws in a modern democracy was a complex exercise requiring a delicate calibration of a variety of interests. The domestic authorities were therefore clearly better placed to judge how the most appropriate balance could be struck in a given situation and, further, an authority comprising a group of informed, reasonable and conscientious citizens (a jury) would be best placed to reach that balance given their direct and continuous contact with the realities of life within their countries.

That was the Government's argument two years ago. What has happened since? Why this extraordinary *volte-face*?

The court also addressed the question of guidance at first instance and recalled a series of cases, stating the case was whether the domestic protections against disproportionate awards sufficed. It subsequently stated, and this is the situation before the enactment of this Bill, and I hope this section of it will not be enacted, that in Irish jurisprudence:

> The jury assess damages following its finding of defamation. The Supreme Court can review and quash the award of a jury of the High Court. It does not substitute its own award but rather refers the matter back to the High Court for a further trial on damages before a different jury. The second jury will not be informed that an earlier award was quashed nor, consequently, of the decision or reasoning of the Supreme Court.

In its finding, the European Court found the domestic remedies were perfectly sufficient and found against Independent Newspapers Limited and for the position then adopted by this Government, this Minister and his representatives. It is interesting and astonishing that there should be such a remarkable about turn on this issue by the Minister.

I would have instinctively made these arguments myself, and they have also been made by Senator Walsh to an extent, but I did not have to rely on my own inadequate fumblings. I was able to rely on the expression on behalf of the Minister by Irish lawyers at Strasbourg which was successful in defeating what the Minister is trying to introduce here at the behest of the press barons.

I tabled an amendment to this section but I want to oppose it in its entirety. The entire section should be removed.

Mr. Cummins: I also have concerns about this section. I compliment Senator Norris on his research, especially on the case two years ago. It appears to be a complete U-turn on what happened under the same Minister and Government.

We were brought up to believe a jury's decision was sacrosanct but in this section we are saying the Supreme Court can overrule the decision of any jury on damages. It is a dangerous road to travel because if we do it about damages the Supreme Court might be called upon to overrule court decisions on other matters.

I would like to hear the Minister's comments because the Government has done a complete U-turn within two years on this. If it were another Government that had taken this stance, it would be understandable but the same Government is adopting a different stance. We see it regularly but on this occasion an explanation is needed.

Mr. M. McDowell: Senator Norris's tone and volume are in direct proportion to the lack of substance in the point he makes. On this occasion he was quite excitable talking about something which he fundamentally misunderstands.

When Ireland is brought before the European Court of Human Rights in Strasbourg, as the Senator knows, the purpose is to say an Irish law is inconsistent with the European Convention on Human Rights. The Irish legal team argues that

[Mr. M. McDowell.]

we are entitled to make a particular law, our membership of the Council of Europe and adherence to the convention notwithstanding. It does not mean that an argument made in Strasbourg that something is lawful for Ireland to do means it is therefore the best law and an Irish Parliament cannot change it. That is an absurd logical leap and if the Senator reflects on it, he will save himself an increase in blood pressure.

Mr. Norris: I will and I will not.

Mr. M. McDowell: If someone argues before the Supreme Court tomorrow that something is unconstitutional, and the Attorney General states it is constitutional and that we uphold the right of the Oireachtas to legislate in this fashion, he does not mean that he is binding the Government never to change the law. He is simply upholding the sovereignty of the Irish State and its institutions to have the law the way they want it, notwithstanding their adherence to the convention or, in the Supreme Court case, the provisions of the Constitution.

There is a profound difference between saying the Irish people are entitled to do something in their own good judgment because, under the Council of Europe convention, there is a margin of appreciation that individual countries can decide where they want to strike the balance, and coming out with Senator Norris's legal and logical *non sequiter* that if we have the right to do something, we must be bound at all times thereafter to do it. That is a nonsense.

Mr. Norris: It is not.

Mr. M. McDowell: He said it was a U-turn.

Mr. Norris: It is and I will prove it.

Mr. M. McDowell: There is no U-turn in saying it is not inconsistent with the European Convention on Human Rights to have the law one way and then saying we are perfectly free to have it another way. There is a difference between something which is in contravention of the convention and something that is open to a decision, one way or another, by the Irish people having regard to the margin of appreciation. That is where the Senator has been completely derailed.

Ireland defends its laws in Strasbourg and states it is for the Irish people through their sovereign Parliament to decide an issue. This is not an issue for a group of judges appointed by the Council of Europe; that is the difference. There is no hypocrisy in saying we are entitled to have the law this way but we are also perfectly entitled to change it if we want to. It is sad, however, that someone would not make that distinction. At the moment the law states that if a person appeals a decision to the Supreme Court on the grounds that the damages were excessive, it can agree and send the case back to the High Court where another jury would be empanelled. As happened in a celebrated recent case, the jury could award even more money.

Mr. Norris: Yes.

Mr. M. McDowell: It then goes back to the Supreme Court and because it is a court of law, it must in logic say it must be reversed. If it was wrong the first time it must be twice as wrong the second time. The case then goes for another jury to consider it. That brings the law into disrepute. This is not fanciful; we have seen it happen in recent months when a person appealed to the Supreme Court and was told his damages were excessive on day one and went back there sometime later with damages of twice or three times having been awarded. The Supreme Court could not state that because a second jury did this, the Supreme Court must be wrong——

Mr. Norris: Why not? It is because it is infallible, I suppose.

Mr. M. McDowell: ——because that would be effectively conceding it was wrong to send it back on the first day.

Mr. Norris: And it was.

Mr. M. McDowell: The point is that if it was excessive on day one it cannot become reasonable on day two simply because a second jury has had another canter at it and has handed out damages, assuming the evidence is the same or roughly the same in both cases. There needs to be some sense in all this. It is extraordinary that if, for instance, Senator Norris writes a food critique of some restaurant and a jury awards €500,000 against him, if he appealed to the Supreme Court, which stated the award was absurd and could not stand and sends the case back to the High Court and the next thing is that €750,000 is awarded against him. At some stage the Senator would ask when would the circus end and when would somebody intervene to suggest the award should be of the order of €100,000 or €150,000.

Mr. Norris: No review of mine was ever worth €150,000.

Mr. Cummins: We could do away with juries altogether.

Mr. M. McDowell: The point is that if the Supreme Court is entitled to find that the award is excessive it must at some stage make sense. By the way it is not directory in this case; it is not obliged to do it. However, it can in some cases. It has a choice to suggest the critique of that restaurant in that magazine could not have been worth €150,000 and to substitute that amount for the €500,000 verdict given against Senator Norris.

That is a reasonable course of action. We do not need to raise our blood pressure arguing the contrary.

At one stage in my career I was peripherally involved when the initial award was made in the De Rossa case — I happened to be counsel in the case. I believe the European Court of Human Rights decided the award of £1.5 million in the Tolstoy Miloslavsky case was excessive. It also decided that the fact the jury could not be talked to was in breach of the convention. In the De Rossa case, on different evidence, it found that Irish law and procedure were not wrong by reference to the conventions.

However, all we are dealing with are two propositions. While I was not involved in the Strasbourg case, I understand it was contended there should be some direction to the jury as to the appropriate amount of damages and-or the right for the newspaper to make some submission to the jury on the amount of the damages. That proposition was advanced. The learned team of Irish counsel stated this was for Ireland to decide, that we have a complex system here with checks and balances and this was not a breach of the European convention on the facts of this case. It is stretching and distorting matters to suggest that meant the Irish Government bound itself to keeping that in existence. It would be grotesque to suggest the implication of defending a case in Strasbourg was that we could never then change the law at home having stood it up at Strasbourg.

May I say this? No, I will not go any further.

Mr. Norris: Do. Go on, go on, go on.

Mr. M. McDowell: I will simply say there is absolutely no connection between on the one hand preserving the right of these Houses to make a decision on this issue and saying it is a matter for these Houses and not for Strasbourg to decide and on the other hand later deciding to amend the law within our own margin of appreciation under the Strasbourg convention.

Mr. Norris: I am in very poor condition indeed. I have been derailed. I have misled myself. My blood pressure is rocketing. However, I console myself in the thought that the Minister is not in too good a condition either because he has tied himself in such knots of disingenuousness that his blood pressure is about to go out through the roof. Minister, I will send you a copy of the judgment. How could you know what it did when you did not even read it?

Mr. M. McDowell: The Senator should address the Chair.

Acting Chairman (Mr. Leyden): The Senator should make his comments through the Chair.

Mr. Norris: I am through the Chair. He is through his tumbler.

The representatives of the Minister, representing his point of view at that time in Strasbourg on behalf of the people of Ireland, ranged far wider than the narrow confines he suggested and mounted a very comprehensive address covering the principles underlying the whole situation pretty comprehensively. They certainly did not say we were just exploiting the margins of appreciation. They did not make the case that we only wanted to legislate in our own way in whatever way we like. That was not the case that was made. They addressed the Tolstoy Miloslavsky *v* UK case and on the Minister's behalf the following was what was said by our representatives in Strasbourg:

> The Government objected to the applicants' overall approach. A balance had to be struck between protecting expression and reputations so that, once there was a finding of defamation, the weight of Convention support shifted to the protection of reputation. This latter right, guaranteed by Article 8, had been infringed to a devastating extent in the present case. The only remaining Article 10 issue was to ensure that the damages' award was proportionate to the harm done to that reputation, bearing in mind any chilling effect on further similar publications. The applicants' approach, on the other hand, reduced the Convention issues and the Tolstoy Miloslavsky judgment to simplistic mathematical formulae as if the only right at issue was freedom of expression without regard for the underlying values and contextual complexities of the matter including the power of the media, the devastating effects of defamatory allegations on reputations, the consequent destruction of the "human potential" which Article 10 supports and the respective roles of the domestic and European courts.
>
> The Government considered "indirect and remote" any possibility of a chilling effect on political commentary by the press by the present or other damages awards.

This is what the press barons are saying. They are saying that if we do not have this change, against which the Minister defended us in Strasbourg, it will have a chilling effect and will kill off investigative journalism. The Government representatives did not restrict themselves to saying we reserve the right to legislate any way we want. They actively denied the possibility that retaining the situation as we have it would have the chilling effect about which we have heard editors bleating in every newspaper. It is pathetic to see Irish politicians so craven in their attitude towards the press barons. They continued, "No such causal link had been demonstrated in the present case and, in any event, awards in libel cases were inherently and unavoidably uncertain."

[Mr. Norris.]

Finally there was a general argument. The Government was not arguing that it had the right to do whatever the blazes it wanted in its own back yard. It argued in defence of law and against the kind of change the Minister is introducing. They said, "The Government argued that the domestic safeguards against disproportionate awards were adequate." I do not fool myself on that. That is what the Government's representatives said. Less than two years ago the safeguards were adequate and now suddenly they are grotesquely inadequate. I agree the Supreme Court can be wrong. Does the Minister not appreciate that? It is not infallible. It would be blasphemous to suggest it was. Of course it can make a mistake. It is a poor day for democracy when the Supreme Court, which I greatly value and respect, sets out not only to second-guess a jury but also to third-guess it.

The Minister has put something very interesting on the record. A jury of 12 people found that this was a libel and they awarded considerable damages, quite deliberately and quite specifically, having heard all the evidence. They decided to teach the newspapers a lesson, and about bloody time in my opinion. The Supreme Court in its wisdom considered this was excessive and referred it to a new jury which was then empanelled. The new jury not only agreed with the first but decided the offence was so grave, it would double the damages. Then the Supreme Court second-guessed why and the Minister said it was because it could not possibly admit it was wrong.

5 o'clock

Has the Minister any recollection of the late Lord Denning? The late lord would have sympathised with this view. It is the appalling vista. The Supreme Court cannot accept that it could ever be wrong because that is too appalling a vista even though two juries made this clear decision. What happens if the third does the same? Let us suppose it trebles it and it goes on like *Alice in Wonderland* where every time she takes a bite of the mushroom, she swells? What will we do? Will we undermine democracy totally?

Acting Chairman: I remind Senator Norris that we are on Committee Stage.

Mr. Norris: That is correct. I thank the Acting Chairman for congratulating me on my clarity. I really appreciate his positive comment. I am absolutely on the section and I am addressing it directly.

Acting Chairman: The section has had a considerable innings already.

Mr. Norris: No, it has not. I have not repeated myself. I shall put on the record something from this case that I have put on it yet and I will end, at least temporarily, with that.

Acting Chairman: I thank the Senator.

Mr. Norris: The Irish Government argued:

> Most importantly, they underlined that the Irish Constitution expressly protected freedom of expression and one's reputation. Central to striking a balance between these two rights was a fundamental notion of constitutional law, namely that of proportionality. It was a notion which was equivalent to the Convention concept: the applicants disagreement with this amounted to saying that the Supreme Court was mistaken or that it did not mean what it said. It was a notion which was an important aspect of Irish libel law and a significant safeguard at first (jury) and second instance in libel cases. It was consequently a key factor distinguishing the present case from the *Tolstoy Miloslavsky* case. The Government also emphasised that its choice of how to provide adequate safeguards fell within the State's margin of appreciation.

Mr. M. McDowell: That is what I said at the beginning and the Senator said it had nothing to do with it.

Mr. Norris: Exactly, but I am saying that in what they said, they agree with what apparently was the position of the Department of Justice, Equality and Law Reform less than two years ago. Something very remarkable has happened in the interval to change the Minister's mind so completely, and I am not being disingenuous in saying that. The Irish barristers did not merely represent the case that we should retain the right in these Houses of the Oireachtas to frame whatever laws we please. Of course we retain the right but we have to test them for constitutionality.

When we discuss a later section I will suggest to the Minister that part of the core of the Bill is unconstitutional because, again at the behest of the press barons, the Ministers appears to be creating two classes of persons, those in public life who have a lesser right to the protection of their name, and the public. The Minister quoted in one of his replies the right to the vindication of the good name under Article 40. That is one of only four enumerated rights in the Constitution. When has the State acted legislatively to guarantee the good name of all citizens? If the Minister tries to make a distinction between ordinary members of the public and public figures under this qualifying interest provision, he will violate the Constitution and I and other people in this court house will call for this entire Bill to be referred to the President for signature to vindicate the good name of every person. As a person in public life and a public representative, I believe

the Minister should vindicate my good name and that the law should vindicate my good name just as it does any other ordinary citizen.

Mr. J. Walsh: I concede the Minister made a logical point in respect of the case he mentioned where the Supreme Court referred it back and there was a subsequent significantly higher award of damages. I can see the dilemma. On the other hand, I have serious misgivings about the Supreme Court making its decision against the High Court where the full ambit of evidence, cross-examination and so on has been played out and the effect it may have on the defendant.

I note in section 29(2) that a clause has been stitched in which obliges the High Court judge to give directions to the jury on the matter of damages. I may be jumping ahead but it has some relevance to the section we are dealing with. What is expected there? I do not think it would be proper for the High Court judge to be prescriptive about the actual damages. I would have no difficulty in his setting parameters but some discretion must be allowed to the jury. In all of this, could there be an instance where a High Court judge spells out the parameters within which the award of the jury must be? In that case the defendant should not be in a position to go to the Supreme Court which would independently decide. Perhaps Supreme Court involvement should be restricted to apply only in cases where the award of damages is contrary to the advice of the High Court judge. If he or she spelt out parameters rather than being prescriptive on the actual amount of damages, it might introduce an element of fairness and it would free up the courts. Part of the purpose of this should be to prevent all these cases going up the line through the various courts and clogging up the system. I suggest the Minister look at this between now and Report Stage to see if there could be a refinement of that section.

Mr. M. McDowell: Section 12 allows a person who has gone to the High Court to sue a newspaper to say that the damages he or she was awarded were inadequate, and then to go to the Supreme Court and say he or she was accused of being corrupt, that the jury heard the evidence over ten days and awarded him or her €10,000, that he or she was a politician, that this was a serious allegation and that he or she was clearly entitled to more. One is entitled to say to the Supreme Court, and it does happen on occasion, that the damages awarded were inadequate. In those circumstances the Supreme Court is entitled either to say that one should go back to the High Court and empanel another jury with a view to being awarded higher damages or, in this case, if this was the law, to say that in its view those allegations certainly merited much more money.

I do not see that it has to have the construction Senator Norris has suggested. The Supreme Court, if it has the right to say that a particular award of damages is excessive, at some stage surely is entitled to ask by how much it is excessive. That is the point being discussed here. It is not a great point of high principle. As I understand the De Rossa case, and I was not involved in it in Strasbourg, what was at issue was that the court was saying that effectively the jury was left without direction, counsel could make no submission and, in consequence, the Irish law was deficient having regard to the European Convention of Human Rights. The Irish Government's lawyers said no, that this was the law as it stood and that it did not necessarily contravene the European Convention of Human Rights and that it was within our margin of appreciation to determine how we would have our law in this matter.

Mr. Norris: That is if we tinkered with it in the way the Minister is doing. That is what they said.

Mr. M. McDowell: It said it did not need to be tinkered with to make it convention compliant, which is a different proposition. It is great when there is a case with which one cannot see any problems. The case the Senator is addressing here is that because the Irish Government successfully upheld the status quo in Strasbourg, it was somehow bound never to amend it. That is simply not a runner.

Mr. Norris: I am not saying that.

Mr. M. McDowell: It is not a runner.

Mr. Norris: Of course, it is not. I did not say that.

Mr. M. McDowell: I am making the simple and straightforward case that this is not mandatory. It does not say that the Supreme Court shall impose its own will. It simply says it may do it. It may well be that, in most cases, the Supreme Court will decide not to do it and send it back. At some point, as in the recent case, the Supreme Court should surely be in a position to say that this is ridiculous; that a case cannot keep going up and down like a yo-yo between the courts; that it believes the case is not worth more than €350,000, €250,000 or whatever the amount is; and that it is awarding that amount. I do not see anything wrong with that proposition.

The other proposition, which is that the Supreme Court can keep saying an amount is excessive but can never say what would be reasonable, is a very difficult one to defend. That is not a tenable point of view. If not for recent events, I would be in a weak position to make this point, but I can point to a very concrete and important case where the second jury was kept in the dark as to what the Supreme Court had

[Mr. M. McDowell.]

decided. That is part of the existing regime. The second jury then sat down in good faith, listened to a trial for a long period of time and made what the Supreme Court had already ruled to be another error. This is not a good way to do business.

Section 12 does not direct the Supreme Court to substitute its own views. It empowers it to do so. I have no doubt that if the Supreme Court thought it was dealing with a case in which the damages were clearly inadequate, it could make a choice and ask the plaintiff whether he or she wanted to go back down to the other court or wanted the Supreme Court to decide what adequate damages were. It could inform the defendant that it believed he or she was right and that the award was excessive and ask him or her whether he or she wanted the court to decide on it or go down to the other court. In those circumstances, one is empowering the Supreme Court to break the log jam and reducing costs, which are fairly significant.

Members should remember that the ordinary person whom the Senator claims to defend cannot really afford two outings in court. His or her lawyers, who would normally do these cases on a no foal, no fee basis, cannot really afford incessant hearings on the same issue. One is dealing with the use of court time and High Court time is valuable as well.

I would fully accept the proposition from the Senator if the law at the moment stipulated that no matter what a High Court jury decided, the Supreme Court always said that it respected the jury's decision and that there was no question of the court ruling it excessive. If a Supreme Court does have a corrective function to say that an award is excessive, at some point, it seems illogical to say it cannot correct it in a more practical way and say an award is excessive because it is €300,000 too much and that it is awarding a plaintiff €200,000 instead of €500,000. I do not understand what is the huge objection to this.

I once represented a person who was assaulted by two members of the Garda Síochána. He got very heavy punitive damages and the matter went to the Supreme Court. It ruled that the punitive element of the damages was so disproportionate, having regard to the assault on the plaintiff, that it exceeded some kind of ratio of reasonableness. The court sent the case back to the High Court to be determined again. We then had another hearing which I believe took place in the High Court. I cannot recall whether a second jury decided the case or whether the case was eventually settled. In that particular case, whose name I remember but in which I will not now get involved, the Supreme Court said there had to be some relationship between punitive and general damages in the case and that the jury had got it badly wrong, a proposition with which I did not agree because I represented the plaintiff.

All I am saying to the Senator is that this is not a case of kowtowing to the media magnates. It is a case of trying to bring some rationality to the law. One could not possibly put Denis O'Brien in any category other than that of somebody with a growing interest in the media. I do not think it is kowtowing to the media magnates to say that at some stage, the Supreme Court in this kind of situation can break the log-jam and decide the amount of money that is reasonable in those circumstances. I do not think it is a terrible infringement of people's constitutional rights.

Mr. Cummins: I take the Minister's point. However, it appears the section is there to curb and restrict the powers of juries. It appears that juries are not being given the credit for making a rational decision, based on all the evidence that has been put before them. We appear to be saying that the Supreme Court has the power of overruling those juries.

It is a sad indictment that the Minister has admitted that it would cost an individual a fortune to go to the High Court and the Supreme Court. This is a problem we have in respect of costs. We will not go into that because the Minister has already had problems with them this week.

I am concerned about curbing and restricting the powers of juries. Perhaps the Minister could reconsider it and see if he can come up with a better wording on Report Stage.

Mr. Norris: I will not delay the House on this matter, but I will say one or two things. The first is that this is an attempt to second guess juries. The machinery we already have is adequate for addressing the situation so effectively outlined by the Minister. This was the Government's position. The explanatory memorandum to the Bill states at the outset: "The purpose of the Bill is to revise in part the law of defamation and to replace the Defamation Act 1961 with modern updated provisions taking into account the jurisprudence of our courts and the European Court of Human Rights". It is not just a question of a margin of appreciation. We are taking into account the opinion of the European Court of Human Rights.

Does the Minister accept the will of the people or does he wish to elevate the Supreme Court above their clearly expressed will? Is it not a possibility that can be contemplated without bringing about the ruin of the institutions of the State that the Supreme Court could make an error? It could misread the public mind. If there is one thing that is clear, it is that the public has a mind on this and is very clear on it. I not sure but I believe it was unanimous in those cases. It would be worthwhile looking at that.

What this means is that there is a dangerous opposition, that should not be politically fostered or encouraged, between the Supreme Court on the one hand and the will of the sovereign people on the other. This is unhealthy and wrong. If the people wish to deliver salutary judgement and punitive damages and if having been told that this is not appropriate, they go and double the amount, the message could not be clearer. The Supreme Court and the establishment of Ireland may not wish to hear that message and newspapers certainly do not wish to hear it, but it is a very clear message delivered by the Irish people to unresponsive institutions. By enacting this section of the Bill, we will be making those institutions even less responsive.

Mr. J. Walsh: I fully accept the logic of what the Minister said. If a case is appealed to the Supreme Court, it cannot be referred back to the High Court interminably until a decision is reached with which the parties are satisfied. That would be a bad use of court time and is neither in the interests of the defendant nor the plaintiff.

I still have great difficulty in accepting the outcome of some cases. In the context of a plaintiff who is awarded €500,000 in damages in the High Court, even if it has been established he or she has been defamed, if the case is referred to the Supreme Court on the grounds of the award being excessive and it, in its wisdom decides the plaintiff should get only €100,000, he or she may well have to pay the cost of taking the case in the Supreme Court, which could amount to €400,000 or €500,000. We should guard against circumstances where even when it has been proven a person has been defamed, he or she may emerge in a negative financial position. I do not know if we can intervene by preventing people appealing, but is it possible to prevent this occurring if a High Court judge gives a direction as to what the parameters should be and the award falls within them?

Mr. M. McDowell: One solution would be if the power to make a decision was circumscribed so that the Supreme Court might, where it is of the view it would be unjust to remit the matter to the High Court, or where the parties consent, then it would deal with the question of damages. It has to deal with its own award of damages. Clearly, at some stage the cycle has to stop.

I take Senator Norris's point that a jury's verdict has to be given some weight but it also has to be reasonable. If, at some stage, the Supreme Court arrives at the view that two juries in succession have acted totally unreasonably, that in a trivial restaurant column by Senator Norris——

Mr. Norris: Mine were never trivial. I said they were not worth €150,000 but they were not trivial.

Mr. McDowell: Let us imagine it from the point of view of somebody getting an award of €500,000 against Senator Norris and he or she is coming up North Great George's Street with the order for possession. Not having done so spectacularly the first time around, instead of going back down to the High Court for a second outing, Senator Norris might be pleased——

Mr. Norris: I would hope to secure the services of the Minister as a barrister.

Mr. McDowell: He might be much happier to have the Supreme Court state this was never worth more than €20,000 and that one should forget about the €500,000. I imagine if an individual were concerned rather than an institutional defendant, it could be very punitive to send the case back to the High Court for a second trial. It could be very onerous. For example, if a politician were being sued for a remark he made and he was told the award was too high but he could have another trial in the High Court, many people would go into the library and take out the pistol at that stage and shoot themselves in the head.

There are two sides to this story. I will examine the matter again to see whether a precondition must be either the parties consenting to it or the party appealing the award. Sometimes both sides appeal. One says it is too much and the other says it is too little. Putting aside the issue of liability, if only one party appeals the quantum, if that party says he or she is happy for the verdict to be substituted, that should be a position with which I presume nobody could argue.

Second, the Supreme Court may independently come to the view that it would be unjust to send a case back to the High Court, either because this was the second time it had been before the Supreme Court or because it was a grotesque award for a trivial matter and the view is that more money should not be wasted bringing it back to the High Court again. If the award was totally out of line with a piffling libel, in those circumstances I can see an argument for making it another precondition that the Supreme Court could decide it would be unjust to remit such a case. I will take a look at those two propositions but I cannot accept the general proposition that at some stage the Supreme Court is totally capable of saying an award is excessive but utterly incapable of saying what would be an appropriate award and doing something about it.

Mr. Norris: I very much welcome the Minister's open-mindedness and that he has taken on board some of the ideas I have been expressing. I will consider tabling an amendment but I look forward with great interest to what the Minister may propose on Report Stage. I thank him for his open-mindedness on this matter.

Question put and agreed to.

Sections 13 and 14 agreed to.

SECTION 15.

Mr. Norris: I move amendment No. 3:

In page 12, subsection (2), lines 3 and 4, to delete paragraph (*f*).

I wish to delete the phrase referred to in the amendment. The next section is more important so I do not wish to waste much time on this matter but I am very interested in hearing the Minister's response.

Mr. M. McDowell: The effect of this amendment would be to deprive judges of absolute privilege when they administer justice. This would be a very far-reaching change. It would be extraordinary if a judge were liable to be sued because he said he thought somebody was the lowest piece of work that ever came into his court or he believed somebody murdered his wife or whatever else. I do not think we should vary the law and make judges liable for remarks they make on the Bench. Let us remember these remarks are made by a judge or another person performing a judicial function. If a judge were to suddenly shout out a few random thoughts in a court which had nothing to do with his or her judicial function, that might be a totally different situation, but if he or she is performing a judicial function, then it would be a huge intrusion on his or her independence for him or her to be sued for remarks made. Many people would spend their lives suing judges for their conclusions, remarks, etc., and we would have a very quiet and cowed Judiciary if we allowed that to happen.

Mr. Norris: That is exactly what I was thinking. There were some notorious judges who used to make the most outrageous, hurtful and sometimes slanderous remarks about people. I saw it in the Dublin District Court. I do not see why they should be immune. We should move on, but I reserve the right to table an amendment about remarks made by a judge or other person in the proper performance of his or her judicial duties. As the Minister indicated, there are moments when judges do step outside this in a manner that is not in the performance of their judicial duties.

Amendment, by leave, withdrawn.

Government amendment No. 4:

In page 12, subsection (2), between lines 15 and 16, to insert the following:

"(*j*) a fair and accurate report of proceedings to which a relevant enactment referred to in section 40 of the Civil Liability and Courts Act 2004 applies;".

The House will be aware that yesterday for the first time, relying on the provisions of section 40 of the Civil Liability and Courts Act 2004, which relaxed the *in camera* rule, a series of reports were prepared and published by Ms Carol Coulter on the operation of the family law system. It is intended to confer a privilege in regard to a fair and accurate report of family law proceedings. This was a lacuna we discovered in the law.

Section 40(3) provides that nothing in a relevant enactment shall operate to prohibit the preparation of a report on court proceedings in family cases or the publication of the decision of a court in those proceedings. It goes on to state that the identity of the parties to the case, or any child to which they relate, must not be disclosed. That is of particular importance. However, it has become clear that reports under section 40(3) of the Act would not attract absolute privilege, and for the purpose of reporting proceedings or publishing the decision of a court it is unclear whether a reporter may have access to documentation in the proceedings such as pleadings and settlements. I am addressing the issue of absolute privilege with this amendment to the Defamation Bill. I propose to make further provision in the Civil Law (Miscellaneous Provisions) Bill to clarify the issue with regard to access to documentation.

Acting Chairman: By order of the House we must move on to other business.

Progress reported; Committee to sit again.

Communications Regulation (Amendment) Bill 2007: Committee Stage.

Sections 1 to 3, inclusive, agreed to.

SECTION 4.

Mr. McCarthy: I move amendment No. 1:

In page 9, subsection (3), line 37, to delete "rule-making" and substitute "instrument-making".

This is designed to improve the drafting of the Bill.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I accept the amendment.

Amendment agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7, inclusive, agreed to.

SECTION 8.

Mr. McCarthy: I move amendment No. 2:

In page 14, line 39, to delete "repealing" and substitute "deleting".

It is not good drafting procedure to state the section is amended by repealing a subsection. Either section 26(8) should be repealed or our amendment should be accepted.

Mr. N. Dempsey: I do not accept the amendment at this stage. The Senator may have a point and I propose to consult the Attorney General on the matter. I may table an amendment in the Dáil.

Mr. McCarthy: Given the Minister's reply, his commitment to examine it and the opportunity to revisit this matter in the Dáil, I withdraw my amendment.

Amendment, by leave, withdrawn.

Section 8 agreed to.

Sections 9 to 13, inclusive, agreed to.

SECTION 14.

Mr. McCarthy: I move amendment No. 3:

In page 20, line 35, to delete "repeatedly".

There is no good reason to limit the protection for the consumer by requiring that only repeated breaches can be the subject of a complaint to the High Court.

Mr. N. Dempsey: I accept the amendment. The intention was that an offender would have to commit an offence on two or more occasions before an application could be made to the court for an order of compliance. This gives the benefit of the doubt to an undertaking that had committed an offence due to an error and is deemed unlikely to re-offend. In such situations proceedings would not be initiated but I am satisfied the amendment allows ComReg the same discretion.

Amendment agreed to.

Section 14, as amended, agreed to.

SECTION 15.

An Cathaoirleach: Amendments Nos. 4 to 6, inclusive, are related and may be discussed together by agreement.

Government amendment No. 4:

In page 22, line 4, to delete "Schedule 1" and substitute the following:

"Schedule 1 (inserted by *section 19* of the *Communications Regulation (Amendment) Act 2007)*".

Mr. N. Dempsey: This provides clarification as to the schedule referred to. Amendment No. 5 is deemed necessary because only part of the European Communities Act may come under the responsibility of a Minister. The other parts may be the responsibility of other statutory bodies. This is a standard provision in legislation.

Regarding amendment No. 6, it is the norm to use the expression "amend by regulation". The Chief Parliamentary Counsel has proposed this amendment.

Amendment agreed to.

Government amendment No. 5:

In page 22, line 6, to delete "act" and substitute "act, or provision of an act,".

Amendment agreed to.

Government amendment No. 6:

In page 22, line 10, to delete "may" and substitute "may, by regulations,".

Amendment agreed to.

An Cathaoirleach: Amendments Nos. 7, 9, 15 and 16 are related and may be discussed together by agreement.

Mr. McCarthy: I move amendment No. 7:

In page 22, to delete lines 11 and 12.

My party has concerns about this section. The basis by which the Minister can designate serious offences by regulation is not correct. As the fundamental unit of democracy it is the Houses of the Oireachtas that decide the powers of the Minister. It is fair if the Minister assumes these powers by resolution of both Houses. As the Bill stands, the Minister can create serious offences by regulation. The Labour Party has a fundamental problem with this and opposes it in this House and the Dáil. We also opposed the European Communities Bill on this basis.

Mr. N. Dempsey: I understand why some people have a difficulty with this section. It provides an enabling mechanism to allow the Minister to make new regulations to provide for indictable offences for breaches of obligations under this Bill and to give effect to an Act adopted by the European Community relating to the provision of electronic communication services, radio spectrum, the national numbering resource or the postal services.

This provision is included because the communications sector is dynamic and fast moving. It is important to be able to legislate in a timely manner. Despite the best efforts of politicians and officials it has taken us 15 months to discuss this Bill in the House. This is a good

[Mr. N. Dempsey.]

example of why we need legislation that moves fast. As we debated the Bill, most Members agreed the rate of progress on local loop unbundling and broadband was not as fast as we would like. That is partly because ComReg did not have the power as it was not foreseen it would need that power. It is important, therefore, to have this kind of legislation and a power to change legislation quickly. The new powers proposed will enable me as Minister to implement any new changes to the framework in a timely manner and provide for effective penalties for non-compliance by undertakings for serious breaches. The current regulatory regime provides for summary proceedings with a maximum fine of €3,000 and the option of civil proceedings for non-compliance with obligations under that regime. There are no indictable offences under the European electronic communications regulatory package as transposition was carried out under the European Communities Act 1972, section 3 of which prohibits indictable offences. The intention is to facilitate the timely transposition of the EU directives in this sector together with the creation of indictable offences for certain obligations under the Bill. The Bill as drafted, however, provides for the creation of indictable offences only where summary offences exist under the regulatory pack of 2003. Non-compliance with some of the obligations was not explicitly deemed to be an offence.

Amendment No. 9 is required to provide for the creation of an offence for breach of these obligations and to provide for it to be tried summarily or on indictment. Section 46A, which deals with this, will allow for substantial penalties to be imposed on undertakings for serious offences with fines of up to €4 million or 10% of turnover.

Amendment No.16 is required to provide that where 10% of turnover is greater than €4 million the court can decide to impose a fine up to this amount as originally intended. Compliant operators have nothing to fear from any of these proposals.

The case for our amendment and the inclusion of indictable offences is compelling, particularly in light of our experience in the past four or five years in trying to regulate the market.

Mr. McCarthy: I do not wish to labour this point, no pun intended, but we tabled this amendment because we do not believe regulation is a suitable way to deal with the types of serious offences mentioned. In other sections of the Bill the Minister wants to give himself the power to create offences incurring fines of up to €4 million. The rejection of the Nice treaty in the first referendum was an example of a lack of confidence in democratic systems. There was a major debate at the time about the hold of the EU on member states and the resulting obligations on us. There is a perception now that most of these issues are European and that people in Brussels and Strasbourg tell us what to do.

Both Houses of the Oireachtas are democratically elected and represent a fundamental aspect of democracy and any Minister who wishes to afford himself this kind of power should do so through these Houses. This Bill would bring about a major transfer of power from the Oireachtas to Ministers by allowing them to create indictable offences by regulation rather than through the introduction of legislation. At least there is wide-ranging debate on legislation through various stages, amendments and so on. If a power is effected as a result of legislation debated in both Houses then so be it. We fundamentally oppose what the Minister proposes in this Bill. I appeal to him to accept this amendment.

Mr. Kenneally: I agree with the Minister's comments on this amendment, especially his point that those who are compliant need not fear these regulations. We never should be afraid to introduce harsher penalties in any sphere of legislation. The people who will always obey the rules have nothing to worry about.

In the course of my research on Second Stage of this Bill I was struck by the weakness of the legislation to make compliant the players in this field. I was aware of this from having seen representatives of ComReg before the Oireachtas Joint Committee on Communications, Marine and Natural Resources. Many of these players lead ComReg a merry dance through the courts and received only a slap on the wrist at the end of the process. I might have some sympathy for a similar amendment in other areas of legislation but communications technology changes so fast that if we must come back here with new legislation every time there is a problem we will be forever tying ourselves in knots. None of us knows where new technology will be in three, six or nine months' time. We must be ready to react quickly in such a situation. That is why I support the Minister's stance on this amendment.

Mr. N. Dempsey: I thank the Senators for their contributions. I wish to reassure Senator McCarthy that the 2002 Act provides for a 21 day scrutiny for any regulation the Minister introduces. The question and point about democratic accountability is answered by the fact that we are discussing it here and will do so in the other House too. In addition, there is provision for Oireachtas scrutiny and the possibility, if the Oireachtas so decides, to negate any future regulation made by the Minister in connection with this Act. Members of both Houses are democratically elected and Ministers are elected by Members of the House which imposes accountability. The insertion into the principal Act of

new sections 46A to 46E, inclusive, is particularly important because it gives teeth to the Bill and that is why I wish to ensure it is inserted in the legislation.

Mr. McCarthy: The Minister is insisting on his position. We may consider tabling this amendment again on Report Stage. The present law under the European Communities Act 1972 requires approval by the Oireachtas in the form of primary legislation of all proposals to create indictable offences in terms of implementing European law. My point on democratic accountability and scrutiny was about perception. I fully accept the Minister's response.

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendments Nos. 8 and 10 to 17, inclusive are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 8:

In page 22, line 13, to delete "subsection (5)" and substitute "subsection (6)".

Mr. N. Dempsey: These are all technical amendments, caused by other amendments. The reference in section 46A (1)(*b*) changes from subsection (5) to subsection (6) as a result of amendment No. 8. Amendment No. 10 changes the paragraph numbering to replace the number of the old subsection (2) with subsection (3) to ensure the numbering remains sequential. Amendment No. 11, as proposed by the Parliamentary Counsel's office, is deemed necessary because only part of the European Communities Act may be the responsibility of a Minister while other parts are the responsibility of other statutory bodies. Amendment No. 12 is made by the Parliamentary Counsel's office, deleting the existing subsection (3) of the Bill as originally drafted. This is now considered to be superfluous. Amendments Nos. 13 and 14 modify the reference from the old subsection (2) to the now numbered subsection (3). Amendments Nos. 16(a) and 16(b) are necessary to include regulations made under the renumbered subsection (3) of the Bill. These amendments are consequential on amendment No. 9, which inserts the new subsection (2) into the Bill.

Amendment No. 17 replaces the existing subsection (9) and adds a definition of the term "turnover", which is used in subsection (6). The definitions of "European Communities" and "treaties governing the European Communities" are retained.

Amendment agreed to.

Government amendment No. 9:

In page 22, between lines 20 and 21, to insert the following:

"(2) If regulations specified in Part 2 of Schedule 1 that give effect to a provision of the treaties governing the European Communities, or an act, or provision of an act, adopted by an institution of those Communities, prohibit or require the doing of an act, the Minister may, where he or she considers it necessary for the purpose of giving effect to the provision or act, make regulations amending the first-mentioned regulations—

(*a*) to provide that a contravention of the prohibited act, or a failure or refusal to perform the required act, is an offence,

(*b*) to provide for the offence to be triable—

(i) summarily, or

(ii) on indictment, if the Minister considers it necessary for the purpose of giving effect to the provision or act concerned, and

(*c*) subject to subsection (6), to make such provision as the Minister considers necessary for the purpose of ensuring that penalties in respect of the offence are effective and proportionate, and have a deterrent effect, having regard to the acts or omissions to which the offence relates.".

Amendment agreed to.

Government amendment No. 10:

In page 22, to delete line 21 and substitute the following:

"(3) The Minister may make regulations for the".

Amendment agreed to.

Government amendment No. 11:

In page 22, line 24, to delete "act" and substitute "act, or provision of an act,".

Amendment agreed to.

Government amendment No. 12:

In page 22, to delete lines 33 to 41.

Amendment agreed to.

Government amendment No. 13:

In page 22, line 42, to delete "subsection (2)" and substitute "subsection (3)"

Amendment agreed to.

Government amendment No. 14:

In page 22, lines 49, to delete "subsection (2)" and substitute "subsection (3)".

Amendment agreed to.

Government amendment No. 15:

In page 23, to delete lines 1 to 6 and substitute the following:

"(a) provide for an offence under those regulations to be triable—

(i) summarily, or

(ii) on indictment, if the Minister considers it necessary for the purpose of giving effect to the provision or act referred to in subsection (3), and".

Amendment agreed to.

Government amendment No. 16:

In page 23, to delete lines 15 to 28 and substitute the following:

"(6) The maximum fine that may be provided for in regulations under this section shall—

(*a*) in respect of the conviction on indictment of a body corporate of an offence under the regulations, not be greater than—

(i) €4,000,000, or

(ii) if 10 per cent of the turnover of the body is greater than that amount, an amount equal to the said 10 per cent, or

(*b*) in respect of the conviction on indictment of any other person of such an offence, not be greater than €500,000.".

Amendment agreed to.

Government amendment No. 16*a*:

In page 23, to delete lines 34 and 35 and substitute the following:

"regulations under subsection (1), (2) or (3) provide—"

Amendment agreed to.

Government amendment No. 16*b*:

In page 24, line 9, to delete "subsection (1) or (2)" and substitute "subsection (1), (2) or (3)".

Amendment agreed to.

Government amendment No. 17:

In page 24, to delete lines 10 to 13 and substitute the following:

"(9) In this section—

'European Communities' and 'treaties governing the European Communities' have the same meanings as they have in the European Communities Act 1972; and

'turnover' means, in relation to a body corporate, the turnover of the body in the financial year of the body ending immediately before the financial year in which the offence of which the body has been convicted was committed.".

Amendment agreed to.

Mr. McCarthy: I move amendment No. 18:

In page 24, line 39, to delete "or any part".

We are somewhat concerned that the power to give a jury only part of the evidence is dangerous. We are of the view that there is a danger of tipping the scales of justice by selective choice of evidence. My expert parliamentary back-up team and I — he holds a BL, I do not — spent nights perusing this section. I ask the Minister to consider the point we make, namely, that selective transcription represents a difficulty and may present a slanted and one-sided view in respect of what might be the bigger picture. The decision-making process may be distorted as a result.

Mr. N. Dempsey: I do not propose to accept this amendment because the new section 46C is a statutory provision such that in a trial on indictment, a judge may order the provision of certain information to a jury. He or she is not obliged to do so but he may order it done. This is a practical provision to try to facilitate the understanding of complex evidence by a jury because it could be argued that certain regulatory cases may be difficult to follow as a result of the large amount of factual, commercial and technical evidence involved. I appreciate the Senator's concern but the provision is not designed to facilitate — we would never accuse members of the Judiciary in this regard — the slanting of evidence or to allow people to be selective about such evidence. Rather, it is designed to try to give judges, if they so wish, the opportunity to clarify matters for juries or make such matters more comprehensible. A judge will, therefore, be able to extract ten pages of a document that are relevant to the particular subject under discussion in order to make matters easier for a jury to understand. He or she may do so or he or she may decide to provide the full technical data. I am sure it would be within the rights of a juror, should he or she so wish, to seek an entire document or report.

I spoke to people who were involved in cases of this nature and cases that come before the electronic communications appeals panel and they informed me that the amount of data presented is mind boggling. To require that jurors to be provided with all of this information would be to go too far.

The provision is designed to counter any risk of juries experiencing difficulty with the economic and regulatory rationale behind certain obligations or offences. The decision of a judge to decide whether all or part of the evidence he or she considers appropriate is considered to be reasonable in light of the possible complexity of the proceedings. This type of provision is quite common in Acts relating to company law, competition law, etc. For that reason, I wish to leave the Bill as it stands and I will, therefore, not be accepting the amendment.

Mr. McCarthy: I thank the Minister for his reply. I appreciate his point and I will withdraw the amendment.

Amendment, by leave, withdrawn.

Section 15, as amended, agreed to.

Sections 16 to 20, inclusive, agreed to.

SECTION 21.

Mr. McCarthy: I move amendment No. 19:

In page 37, line 46, to delete "under" and substitute "in accordance with".

The term "in accordance with the regulations" is used in the new section 32(2) being inserted into the principal Act. The amendment would ensure the language used in the new section 32(5) will tie in with this.

Mr. N. Dempsey: I accept the amendment. The Senator is correct.

Amendment agreed to.

Section 21, as amended, agreed to.

Sections 22 to 28, inclusive, agreed to.

SECTION 29.

An Cathaoirleach: Amendments Nos. 20 to 23, inclusive, are related and may be discussed together.

Government amendment No. 20:

In page 40, to delete lines 34 and 35 and substitute the following:

"(13) To the extend that a cooperation agreement entered into under this section is inconsistent with a cooperation agreement to which section 47G (inserted by *section 31* of the *Communications Regulation (Amendment) Act 2007*) applies, the second-mentioned cooperation agreement shall prevail.".

Part 4 of the Bill amends the Competition Act 2002 to confer on ComReg competition powers, similar to those relating to the Competition Authority, to enable it to investigate and prosecute anti-competitive agreements and practices and the abuse of dominance in the telecommunications sector. The Competition Authority may also investigate these behaviours. Accordingly, it has been necessary to include provisions to cover issues of jurisdiction and co-operation between the two bodies. There is an existing co-operation agreement under section 34 of the Competition Act 2002 which facilitates co-operation between the bodies in the performance of their functions relating to issues of competition between undertakings. However, that agreement does not relate to the new functions of ComReg to investigate and prosecute issues such as dominance in the electronic communications sector. The Bill as drafted provides for a new co-operation agreement specifically for that purpose. The new agreement does not, however, cover all other areas of co-operation between the bodies. I refer, for example, to those relating to postal issues.

The Bill also provides that the existing co-operation agreement between the two bodies already provided for in the Competition Act no longer applies. Accordingly, amendments are now necessary to reinstate the existing agreement. Government amendments Nos. 20 and 23 provide for this. Government amendment No. 20 substitutes new text for that contained in section 29 of the Bill to provide that where a co-operation agreement under section 34 of the Competition Act — the existing agreement — is not compatible with a co-operation agreement under section 47G of the Act, as amended, namely, the new agreement relating to competition law powers, the new agreement shall apply. Amendment No. 23 substitutes new text for that contained in section 32 of the Bill, which deleted the reference to ComReg or the ODTR in the Schedule of the Competition Act 2002. The latter lists the statutory bodies with which the Competition Authority has co-operation agreements under section 34. The text amends the Schedule to update the reference to the Director of Telecommunications Regulation and the Minister for Public Enterprise, which were current when the Competition Act was enacted in 2002, to the Commission for Communications Regulation and the Minister for Communications, Marine and Natural Resources.

6 o'clock

With regard to amendments Nos. 21 and 22, section 31 inserts new sections 47A to 47G into the Competition Act relating to the performance by ComReg of its functions under that Act. It provides that both ComReg and the Competition Authority will enter into negotiations to draw up a co-operation agreement to facilitate the per-

[An Cathaoirleach.]

formance of their respective functions under the Act. The agreement is designed to ensure consistency between decisions, to avoid duplication of activities and to enable the exchange of information and consultation between both bodies.

The new section 47G provided in subsection (2) that the co-operation agreement between the bodies should facilitate in so far as possible the sharing of information between the bodies if it is required by the other to carry out its functions under the Act. Subsection (8) provides that any restrictions or prohibitions on disclosure of information that applied either to ComReg or the Competition Authority as the provider of the information would apply to the other as the receiver. A typographical error that had subsection (8) refer back to information shared under subsection (2)(a) when it should have referred to the information shared under subsection (2)(b) is now being corrected. The Parliamentary Counsel's preferred way to correct this anomaly is to apply subsection (8) protections regarding disclosure of information to the whole of section 47G. It is a rather long way of indicating that this is designed to ensure, on foot of the co-competition powers, that both bodies operate and co-operate with each other.

Mr. Finucane: Could the lack of definition of the regulator's powers in this regard result in a blurring of who is responsible subsequently?

Mr. N. Dempsey: I am satisfied the Bill is clear enough when one takes account of this Bill, the Competition Authority legislation and other existing legislation. These amendments are designed to ensure there will be maximum co-operation. I would expect that but it is better to be safe than sorry. There is a propensity at times for turf wars to break out so we decided to be very sure and insert these amendments. There will not be any blurring. Both bodies have similar powers.

Amendment agreed to.

Section 29, as amended, agreed to.

Section 30 agreed to.

SECTION 31.

Government amendment No. 21:

In page 44, line 40, to delete "information provided" and substitute "information is provided".

Amendment agreed to.

Government amendment No. 22:

In page 44, line 42, to delete "is of the kind referred to in subsection (2)(*a*)" and substitute "to which this section applies".

Amendment agreed to.

Section 31, as amended, agreed to.

NEW SECTIONS.

Government amendment No. 23:

In page 44, before section 32, to insert the following new section:

"32.—Schedule 1 to the Competition Act 2002 is amended by—

(*a*) the deletion of the item of the Schedule relating to the Director of Telecommunications Regulation, and

(*b*) the substitution—

(i) in column (1), of 'Commission for Communications Regulation' for 'Director of Telecommunications Regulation', and

(ii) in column (2), of 'Minister for Communications, Marine and Natural Resources' for 'Minister for Public Enterprise' wherever it occurs.".

Amendment agreed to.

Section 32 deleted.

An Cathaoirleach: Amendment No. 24 is out of order as it is not relevant to the subject matter of the Bill.

Mr. Norris: Could I raise the matter with the Minister when discussing the section?

An Cathaoirleach: It is a new section. How can the Senator discuss a matter in a new section when the amendment is out of order?

Mr. Norris: It is one of these things that might fall between the interstices but I am sure the Minister will be interested because he raised the analogy with ground rents this morning on the radio. I am appealing to the Minister——

An Cathaoirleach: I am sorry but I ruled that it cannot be discussed because it is not relevant to the subject matter of the Bill.

Mr. Norris: I am sure we will find a way to discuss it. Perhaps at the end of the debate the Chair will be more lenient. I am damned if I am not going to introduce this and say something.

An Cathaoirleach: The Senator always accepts that I am lenient.

Mr. Norris: You are always very kind.

Amendment No. 24 not moved.

Mr. Norris: I move amendment No. 25:

In page 44, before Schedule 1, to insert the following new section:

33.—That the Government shall make provision analogous to that under which house owners were facilitated in buying out ground rents to allow telephone subscribers to buy out the telephone line to their address.".

I made a mistake. The amendment ruled out of order related to people recording one's telephone calls without one's permission, which is a disgrace. I will communicate with the Minister about it. It is outrageous that when one telephones a State agency, the gas company or the like, one is told one's telephone call may be recorded for training purposes. They are not paying me for training anybody. I am not prepared to train them. It is a private telephone call. I will ask the Minister to examine this practice. The Cathaoirleach is quite correct that it is not directly relevant to the Bill.

Amendment No. 25 is. I thought the Cathaoirleach had ruled it out of order and I am glad he has not. As the Minister knows, Eircom is a disaster. It has behaved extremely badly. The flotation was a mess, then Mr. O'Reilly got in, took what he wanted and flogged it to an Australian pension fund. The Irish taxpayer installed those lines but they will pay for them forever. That is absurd. This Government, as a republican government, quite correctly abolished ground rents and gave Irish citizens the right to buy themselves out of the abusive position whereby landlords, in perpetuity, claimed the right to bleed people for ground rent every year and provided no service whatever.

The Irish taxpayer has provided the telephone lines. Most of the time the lines are defective. In my home I can usually tell what the weather outside is by picking up the telephone. If it is not working, it is probably raining. The lines have out of date connections that were put in by the Irish Government. There should be a once-off payment or people should be empowered to buy their own lines and accept responsibility for them.

This mad notion of dismantling all the State services and utilities, privatising them and making a god out of competition is to the disadvantage of the ordinary citizen. The craze about competition does not achieve what was intended. As a result, one cannot get the telephone company to repair a telephone line. It accepts no responsibility. It will recommend a franchised service, and one gets different people all the time. Each of them will give different excuses, such as, "I would not have done it that way" or "That is not the correct way to do it" or "We are waiting for a part". It is the usual absolute rubbish. One does not get proper service, the lines are often faulty, it takes ages to get repair people to call and there are no proper telephone line repair people. The service is franchised and one does not know with whom one is dealing and those people do not accept ultimate responsibility. They bounce back the problem to the customer.

If one tries to get something done with the wiring that was originally installed by the then Department of Posts and Telegraphs, the company will not even send a person to deal with the problem. One must find somebody in the Golden Pages to do it. If the Government believes in privatisation, let it privatise the lines. Allow ordinary people to buy their own telephone lines in order that they will not be required to pay for them in perpetuity. Let us say the rent for the line is €20 per month. That amounts to €240 per year, in perpetuity, for people doing nothing to lines they did not install in the first place. They simply bought them as an investment.

I urge the Minister to act on his good republican instincts and allow Irish people to end this absurdity. Let us pay for the services we get and not be subservient to the multinational corporations as we were once subservient to the imperial ruling class.

Mr. N. Dempsey: I must disappoint the Senator and not accept the amendment.

Mr. Norris: Will the Minister examine the issue?

Mr. N. Dempsey: I will certainly examine it. The selling of telephone connections to home owners is entirely a commercial matter for the telephone company, in this case Eircom. It is a privately owned company in a fully liberalised market. A Minister has no function in that area. The only question that arises is, given what the Senator said about the existing poor service, what if people buy the lines from Eircom and own them? What does he believe that would do to the service in terms of repair?

Mr. Norris: One would get exactly the same service and maybe even better because one would not be interrupted by them suggesting their own people. I wonder if what the Minister says is right. He said this is now a private concern. It is. The Government made a big error in flogging off Eircom. I do not approve of all this privatisation because it does not work in the interests of the subscriber but did that not also apply to ground rents? It is directly analogous because the ground rents were held by private people as a money making business yet the Government was able to operate against private investors, and that was not impugned constitutionally or in any other way. A number of people came in and bought up parcels of ground as a business investment. They

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treated them as a business investment and milked them but the Government had no hesitation in going against those people. Why can we not go against Eircom? Is it because it is owned by Australians? Do we not want to upset the Australians? I know we do not want to upset the Americans but let us upset the Australians and their pension fund.

Mr. N. Dempsey: There is a slight difference between ground rents and what we are talking about now. We got paid approximately €8 billion for the piece of infrastructure we had in the ground. The people who have it bought it from us. If I recall rightly, in the early 1970s, when the then Minister for Posts and Telegraphs, Deputy Albert Reynolds, announced that the system would be digitised and the network put in, it cost approximately €2 billion. We got a reasonably good return on it in the meantime. There is a difference. It is private property now. It has been owned, bought and paid for——

Mr. Norris: So were the ground rents.

Mr. N. Dempsey: ——by the company. We should not get too hung up on this because a number of new technologies now allow for telephone service to be delivered without wires, and that is the route it will go in the future. On the other hand, and the Senator might be here giving out to me ten years from now, I am sure——

Mr. Norris: The Minister is very optimistic. I sincerely hope I will be here.

Mr. N. Dempsey: It is my nature to be optimistic. I am sure Eircom will be delighted to begin taking the purchase price off people for wires again. It would suit Babcock & Brown, and the pension funds it fronts, to get a big lump of money back into its coffers. I do not think I will oblige it.

Mr. Norris: I do not accept everything the Minister said but I will put up with it. The privatisation stunt went against the interests, in some cases, of the subscribers. When the Minister said they paid €8 billion for the lines, I do not think that was for lines. Was it not for the whole company?

Mr. N. Dempsey: It was——

Mr. Norris: There was not any particular discretionary payment of X amount for the lines, and I do not believe it was €8 billion. I would like to leave the matter open and ask the Minister to examine it because as a recurring charge one is never finished with it. The Government may have done well in getting €8 billion but the taxpayer, the individual telephone subscriber, did not. I will leave it at that.

An Cathaoirleach: Is the Senator withdrawing the amendment?

Mr. Norris: I will withdraw it but I will be pestiferous on Report Stage.

Amendment, by leave, withdrawn.

SCHEDULE 1.

Mr. McCarthy: I move amendment No. 26:

In page 48, in the third column, between lines 19 and 20, to insert the following:

"(2) In this section a message sent by electronic mail or text message is deemed to be sent by telephone.".

This is an important section as it concerns the offence of making abusive telephone calls. It will be essential to provide clear language to ensure e-mails and texts are covered. As we are aware, cyber bullying is a major problem and the law must clearly cover such activities. The reports on cyber bullying are disturbing, to say the least, and it is difficult to define its effect on people. It is a new form of bullying. It is a way of abusing the communications system to bully someone. I hope the Minister agrees. Bullying is bullying whether it be an abusive telephone call, text or e-mail.

Mr. N. Dempsey: I have sympathy for the intent of the Senator's amendment but I cannot accept it because the purpose of amending the Post Office (Amendment) Act 1951, as outlined in the Bill before the House, was to increase fines to deter nuisance calls specifically to ECAS, the emergency call answering service. The proposed amendment would widen that considerably and would not fit in with the remit of the Bill as originally introduced. It is being communicated to the Department that the amendment could be utilised to tackle cyber bullying and once-off threatening communications but that type of regulation falls outside the remit of this Bill because the sole intent of the Bill is to address nuisance calls to the emergency services only. We get ourselves into trouble when we change the basic function of Bills before the House.

To be helpful to the Senator, in addition to the provisions of section 13 of the Post Office (Amendment) Act, which we are strengthening in this Bill, there are a number of other relevant pieces of legislation. The sending of child pornographic images via telephone is covered by the Child Trafficking and Pornography Act 1998. That provides for an offence carrying a maximum penalty of 14 years for anyone who knowingly produces, distributes, prints, publishes, imports, exports, sells or shows child pornography. Mere possession of child pornography can attract a

penalty of five years imprisonment. It is also an offence under section 10 of the Non-Fatal Offences Against the Persons Act to harass a person by use of any means, including the use of a telephone. Those matters would be a matter for investigation by the gardaí and anyone who has information relating to those matters should bring them to the attention of the gardaí. While I have general sympathy with the intent of the amendment, it is not suitable for this Bill.

Mr. Finucane: I presume the Minister's reference to telephone embraces mobile telephones.

Mr. N. Dempsey: Yes.

Mr. McCarthy: I understand the Minister's point but the issue of cyber bulling is of major concern to all of us. I reserve the right to revisit this issue on Report Stage with a view to finding agreement.

Amendment, by leave, withdrawn.

Schedule 1 agreed to.

SCHEDULE 2.

An Cathaoirleach: Amendment No. 27, which is a Government amendment, is on the additional and substitute list of amendments circulated on 20 February 2007.

Government amendment No. 27:

In page 68, column 3, line 6, to delete "together with any accrued intgraph (7),".

Mr. N. Dempsey: This is an amendment to remove a typographical error.

Amendment agreed to.

Schedule 2, as amended, agreed to.

Schedule 3 agreed to.

Title agreed to.

Bill reported with amendments.

An Cathaoirleach: When is it proposed to take Report Stage?

Mr. Kenneally: On Thursday.

Report Stage ordered for Thursday, 22 February 2007.

An Cathaoirleach: When is it proposed to sit again?

Ms O'Rourke: Tomorrow morning at 10.30 a.m.

Adjournment Matters.

Schools Building Projects.

Ms O'Rourke: Some six months ago I raised the matter of a new second level school in Kilbeggan, County Westmeath when a religious order had offered a greenfield site for school accommodation. I was informed work was in hand to establish the projected enrolment figures for the school. I am hoping that task has been completed. The land for the proposed new school building has been signed and sealed. I have been approached again by parents to see if the ground has shifted on the project. If not, why not? What is the up-to-date news about the school's plans?

The parents believe that the project is ready to go to tender. I explained to them there are six stages involved. They want to get beyond the enrolment phase as they know the number of pupils the catchment area will yield. It is a popular school offering a range of subjects both technical and academic. Many years ago it was scheduled for closure but I knew it had a future. As the then Minister for Education I put my faith and money into necessary building work which allowed it to continue. Times have moved on, the range of subjects has changed and so too the expectations of parents and students.

Minister for Communications, Marine and Natural Resources (Mr. N. Dempsey): I am taking the matter on behalf of the Minister for Education and Science, Deputy Hanafin.

The recently published area development plan for the N4-M4 corridor equips the Department with a blueprint for education services development in an area that will continue to experience rapid change. Senator O'Rourke will be aware I began that process when I was Minister for Education and Science. The plan highlighted the need to reserve a site for a new post-primary school in Kinnegad, which will be needed after 2011. Officials in the Department will meet with Westmeath County Council in the coming weeks to discuss this issue.

With regard to the proposed secondary school for Kilbeggan, the N4-M4 area development plan recommended that Meánscoil an Chlochair, Kilbeggan, "should be relocated to a greenfield site" and "should cater for circa 500 to 550 students" and that "a strict enrolment policy should be in place to ensure that priority is given to students within the catchment area".

An examination of the school's long-term projected enrolments is being carried out by the school planning section. When the long-term projected enrolment is established and agreed with the school, the Department will draw up a schedule of overall accommodation for the proposed new school building. In addition, the school plan-

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ning section has carried out a technical inspection of the existing school building to determine its suitability. Following this assessment, a new site not far from the existing school is being actively considered by the Department for this project.

While the N4-M4 report did not cover Mullingar, the school planning section, aware that it is an area of rapid development, is examining the future educational requirements there. Factors being considered include population growth, demographic trends, current and projected enrolments, recent and planned housing developments and the capacity of existing schools to meet the demand for places. The examination will be completed shortly.

Ms O'Rourke: It is the same story.

Post Office Network.

Mr. Bannon: I welcome the Minister for Communications, Marine and Natural Resources to the House. However, if this matter were to be given the consideration it deserves, it would be necessary to have not only one but several Ministers present. I realise, however, this would not exactly be in keeping with practical and procedural constraints**.**

For a serious review of the post office network to be carried out by An Post and the Government, it is necessary to bring a cross-departmental perspective and input to any deliberations, to facilitate the maintenance of current provisions and the putting in place of add-on services. To date, the Government's attitude to the future of the post office network shows a complete disregard for this bedrock of the rural community. I strongly condemn its callous lack of care for postmasters and postmistresses, many of whom have seen generations of their families run a local post-office, and for their customers who rely on the practical and social services which they provide. The postmasters carry out their duties in what now have become dangerous conditions.

On the Government's watch, more than one quarter of post offices have closed. The entire network faces collapse due to declining business and the possible loss of social welfare payments. Hundreds of Irish Postmasters Union, IPU, members earn less than the minimum wage, with 135 members earning salaries below the poverty line. Some 400 members are paid less than the legal minimum wage and 35 members have an income of €8,200 per annum. Forty-four postmasters have closed their post offices since the start of 2006 and over 300 have closed in the past six years. IPU members work 41.5 hours, five and a half days a week. In my own area approximately 25 postmasters earn less that €17,000 per annum. What other group is expected to accept such poorly paid employment, yet risk their safety on a daily basis?

Despite the threat to the livelihood of postmasters and the loss of a service to rural areas, the Department of Agriculture and Food has advised people to draw their agriculture payments through banks and building societies, ignoring the post office network. Maintaining a viable postal service is vital, but it is essential that add-on services be considered as part of the overall strategy. Where closure is necessary, it must be on a structured approach eliminating the current haphazard closures. While post offices are socially essential they must also have a public service obligation. The provision of an adequate network, both rural and urban, must take place against the backdrop of deregulation and increased competition, in line with the public service obligation which other European countries are providing.

A cost-effective, efficient, reliable next-day delivery service with the necessary electronic upgrading is the least the public can expect. However, the closure of too many post offices will weaken the system, making add-on services less viable. Closures have already seriously damaged the network. Now is the time for proper planning to protect our rural post offices both for the postmasters and postmistresses who are the backbone of the service and the people who rely on the availability of such services.

The perceived exploitation of postmasters and postmistresses is a matter of grave concern. They cannot be expected to continue to subsidise the post office network to the detriment of their own livelihood. The Irish Postmasters Union has deferred its Dublin march, planned for today, until after 28 February to facilitate ongoing negotiations. I sincerely hope these negotiations will bring about a better deal for these hard-working people who have been ignored by the Government for too long.

The attitude of the Government to the ongoing problems of the postal network may best be summed up by the Taoiseach who, in reply to a question by my colleague, Deputy Durkan, on the status of the Postal (Miscellaneous Provisions) Bill 2001, said he believed it had fallen off a truck. I certainly would not treat these hard-working people with such flippancy. Neither would my colleagues who called for an extensive debate on this issue this afternoon.

The Minister ended his speech to the Irish Postmasters Union conference in 2005 by observing that a strong, viable An Post is the best guarantee postmasters and postmistress can have for the future. He repeated these words at the 2006 conference. Is it not time that he and his Government gave up on words and concentrated on delivery? I would welcome a positive response from him.

Mr. N. Dempsey: I repeat that a strong, viable post office network is the best guarantee of a

future for postmasters and postmistresses. That is the commitment we gave in our programme for Government and it is precisely what we have delivered in the last ten years. Although the organisation of the post office network is a matter for the board and management of An Post, the programme for Government clearly sets out our commitment to the objective of securing the largest and most economically sustainable nationwide post office network possible. We have backed up that rhetoric with our actions in government.

The An Post post office network comprises the single largest number of retail outlets in the country, consisting of 986 automated post offices, 371 non-automated post offices and 171 postal agencies. In addition, An Post has also established 2,991 postPoint outlets in retail premises throughout the country, of which 609 can be used for bill payment. In the European context, Ireland still has one of the highest number of post offices per head of population, with 4.2 outlets per 10,000 inhabitants compared with a European Union average of 2.7. This is a testament to Government support for the service in the last decade and in the longer term, since the foundation of the State. Research commissioned by the Irish Postmasters Union in 2006 confirmed these figures.

Some network restructuring has been undertaken in recent years, and this activity is in line with similar trends across Europe. On a national basis, 80% of the post office network is situated in rural areas, that is, in settlements of fewer than 1,500, and serves 40% of the population. To ensure the continued viability and size of the network, it is essential that all efforts are made to build on its intrinsic strengths in terms of nationwide reach, high customer footfall and strong relationship between postmasters and their customers.

A key step in this regard is the automation of the network, with just under 1,000 outlets conducting more than 95% of post office business. On foot of this large-scale investment in the computerisation of the network, involving an investment of €13 million by the Government, the company has also had success in securing business growth in its contractual arrangements with AIB and Western Union, for which it sells gift vouchers, and in respect of the payment of Garda fines and various bill payment facilities. However, automation alone will not bring in the business required to support the network. The challenge for the company is to develop a strategy that satisfies the needs of existing customers, while attracting the new customers who will allow it to maintain as large a network as is viable.

It was to this end that the Government gave its approval last September for An Post to enter into a joint venture agreement with a Belgian bank, Fortis, to set up a retail banking business. One of the first points I made to An Post management when I became Minister for Communications, Marine and Natural Resources was that it should seek new opportunities, including those in banking and financial services. I offered it every encouragement to do so and, in fairness, it responded strongly. The joint venture with Fortis will entail the provision of a range of financial services operated through the post office branch network, using the An Post brand and other An Post assets. Key to the Government approval of this joint venture was that it not only offers a genuine opportunity for the growth and development of An Post and the post office network but that it will, in time, greatly benefit the income streams of postmasters.

The venture is being developed at a crucial time that sees the An Post network facing several key challenges in coming years, including the possible migration of the bulk of its business to other payment channels. Another challenge for An Post is its reliance in terms of revenue for the network on certain Government contracts, including social welfare payments, and the National Treasury Management Agency's retail savings products. Some 65% of An Post's business is Government business. I understand agricultural payments are paid directly by the Department of Agriculture and Food to recipients. Any decision to alter this arrangement would be subject to the proper tendering procedures.

Social welfare payments continue to be paid via the post office network. The reality, however, is that increasing numbers of people are choosing alternatives to the post office because of the convenience of electronic fund transfers. Moreover, the European Court of Justice is examining the contract of the Department of Social and Family Affairs with An Post. The Advocate General to the court recently issued her opinion that the contract that An Post holds with the Department should have been advertised. The court is expected to rule on the case shortly.

The introduction of full electronic fund transfer functionality is envisaged as part of the new financial services joint venture between An Post and Fortis. The Government remains committed to the long-term viability of the post office network and sees the successful implementation of the An Post joint venture as a tangible opportunity to develop the business necessary to maintain the viability and current size of the network. Like all businesses, however, if An Post and its network are to prosper and grow, it must adapt to the demands of its customers and place delivery of quality services as its primary focus and objective.

I join Senator Bannon in acknowledging the role played by postmasters and postmistresses in the provision of services through the years. It was for this reason that I asked Mr. Eamon Ryan to facilitate talks between An Post management and unions to find a way forward. I am pleased both parties are talking. I said at the beginning of this

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particular campaign that the postmasters and postmistresses would be better inside talking rather than outside shouting at the other party. I am glad they took that advice, as did An Post management. I hope the ongoing talks will come to a successful conclusion quickly.

Mr. Bannon: I thank the Cathaoirleach for allowing me again to highlight the crisis facing the post office network. We are all aware that 300 post offices have closed in the past two years. What action will the Government take to prevent the closure of more rural post offices? This was not addressed in the Minister's reply.

An Cathaoirleach: I rule that it was addressed.

The Seanad adjourned at 6.40 p.m. until 10.30 a.m. on Wednesday, 21 February 2007.