



# SEANAD ÉIREANN

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*Dé Máirt, 13 Bealtaine 2008.*  
*Tuesday, 13 May 2008.*

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Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

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*Paidir.*  
*Prayer.*

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## **Business of Seanad.**

**An Cathaoirleach:** I have notice from Senator Pearse Doherty that, on the motion for the Adjournment of the House today, he proposes to raise the following matter:

The need for the Minister for Health and Children to clarify if her position remains the same that, to provide safe and efficient radiation oncology services for a given region, a critical mass of population of 500,000 must be in place as reiterated in the Health Service Executive cancer control strategy of last year.

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

The need for the Minister for Justice, Equality and Law Reform to provide a Garda station at Carndonagh, County Donegal, to service the needs of the north Inishowen population as promised in recent years.

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

The need for the Minister for Finance to allocate funding immediately to provide flood-lighting at Ballinacarriga Castle in Dunmanway, County Cork.

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

## **Order of Business.**

**Senator Donie Cassidy:** The Order of Business is No. 1, Dublin Transport Authority Bill 2008. It is proposed to resume Committee Stage of the Bill on the conclusion of the Order of Business.

**Senator Frances Fitzgerald:** I would like to mark the passing of Nuala O'Faolain, the broadcaster, journalist and author. Her stark ability to call things as they were was never more visible than in her approach to her recent illness, including an interview on the public airwaves. May she rest in peace.

Can the Leader give an update on when he proposes to have a debate on agriculture in the House? We will have statements on rural development this week but there are huge concerns in the farming community regarding the World Trade Organisation negotiations. This matter has become linked to the attitude of the farming community to the Lisbon treaty. It is critical

[Senator Frances Fitzgerald.]

that we have an opportunity to discuss the range of issues in this House and for the Government to outline the stand it will take on the negotiations. This is a matter of concern to a number of people on this side of the House.

This afternoon I want to focus on the issues highlighted in the “Prime Time Investigates” television programme last night. In this regard, I propose an amendment to the Order of Business to discuss the lack of front-line services available to children in crisis situations. In the programme last night, social workers were interviewed anonymously because they feared the impact speaking out publicly could have on their jobs. This raises many questions. They spoke of the lack of services and the lack of people available to respond to calls relating to children at risk. This is serious because children’s lives are at stake and there have been a number of reports in this regard over the years, including the Kelly Fitzgerald report and the report on Madonna House. There have been numerous reports on children in the care of the State and there is a commission sitting at present to investigate abuses that occurred in care in a previous generation. Now young people are at risk in communities and no social or care workers are available to investigate the most urgent cases.

The new Taoiseach, Deputy Brian Cowen, has spoken of republican values but what kind of republic does not give support to front-line staff to deal with emergency cases? What kind of values has the Government had for the past 11 years? It has received report after report. The Health Service Executive asked the Department of Finance for money to fund front-line services but it is not available. Some 2,800 front-line staff have been taken out of action since September due to the ban that has been imposed.

I propose an amendment to the Order of Business to allow us discuss these issues because many Members on this side of the House raised this matter when the Minister for Health and Children, Deputy Harney, was in the House but did not receive satisfactory answers.

**Senator Fidelma Healy Eames:** Hear, hear. Our questions were dismissed.

**Senator Frances Fitzgerald:** We did not learn how these cutbacks are being managed in the HSE. We did not get answers. The Minister came to the House, was very fluent and used many words but did not answer the questions raised regarding the HSE approach and the embargo on front-line staff.

What kind of republican values have been espoused by the Government over the past 11 years if front-line staff for children at risk have not been put in place? I seek this amendment to today’s Order of Business and ask the Leader to invite the appropriate Minister to attend the House to respond to our queries. If we are to be seen as relevant this is the topic we should discuss today.

**Senator Joe O’Toole:** Senator Fitzgerald’s point on the World Trade Organisation and farmers’ attitudes towards the Lisbon treaty is something to which we should return. As I understand it, that debate remains to be continued. As parliamentarians and elected public representatives, we should keep a close watch on this. I was in France when the referendum on the European constitution was held and on the evening it was rejected I met five people who had voted against it. All five were in favour of the treaty but they voted against it for different, spurious reasons. I agree with those who oppose the treaty and who dislike the manner in which the previous Taoiseach referred to them as “loo-lahs”. That is unacceptable and it was a mistake. I respect those who have genuine reservations and are opposed to the treaty for valid, intellectual, logical or other reasons. However, whether somebody is for or against the treaty, he or she must stand for republican values and those of the citizen. The idea of farmers

using their views on the WTO as a reason to oppose the treaty is unacceptable and we all should say so. People may vote against it for other reasons——

**Senator David Norris:** Hear, hear.

**Senator Eoghan Harris:** Hear, hear.

**Senator Joe O'Toole:** ——and we have to respect their positions and live with those.

Similarly with health and hospital lobby groups, whatever the cost politically we all should have the courage to say that it is unfair, unacceptable and unpatriotic of people to use local issues to use the State as a hostage to fortune in the future. Whatever their views, people should champion their issues for the good of the country. If they do not like the Government, they have the opportunity to vote it out sufficiently often. However, they keep returning the same Government.

This is an issue on which we all need to take a stand. It is not good enough to stand back and allow people to make the future of the country a hostage to fortune, or use it as a lever for spurious reasons, to hit the Government on the Lisbon treaty. The Lisbon treaty is concerned with every citizen and the country at large. If people are opposed to it, let them be against it for what it contains and what they fear. If people are in favour of it, their support should be on the basis that it is for the good of the country and its citizenry. It should not be used as a lever for other issues, extraneous and spurious.

**Senator Alex White:** I support and second Senator Fitzgerald's call for the amendment of Standing Orders to provide for a debate on the issues raised in the "Prime Time Investigates" television programme last night. It was a particularly good analytical programme, which set out in stark terms the reality of what is happening throughout the child protection services presided over by the Health Service Executive, and ultimately, the Government. It showed the alarming extent to which children, at risk of abuse and neglect, are being failed by the social services system, and it is an issue on which there should be a debate in this House.

It is not acceptable for a Minister to say, as I heard this morning, that this is a matter for the HSE. We have heard the old mantra of the HSE having to live within its budget, with the suggestion that ultimately, this was not a matter for political accountability at all. We have repeatedly debated issues concerning the health and social services in this House and were told they were matters for the HSE, which must live within its budget. There must be political accountability for these types of issues, with a debate and an account given to this House and the public on what is happening. It is not acceptable for the HSE spokesman to say, as he appeared to do last night, that what was being said and the evidence given, was not true. People were giving the evidence to their programme of their work on a daily basis and we, as viewers, were being told that this was not occurring at all.

If the HSE is saying, against the evidence given on the programme, that these children are being seen, who is seeing them? They are not being seen by the social workers who were interviewed in such numbers on the programme last night. Will the Leader arrange for the Minister for Health and Children or the new Minister of State with responsibility for children and youth affairs to come to the House and facilitate a debate on these very serious and grave issues, which need to be confronted by the Government immediately?

In light of yesterday's publication of a pastoral letter by the Catholic bishops regarding the patronage issue in primary schools, I ask the Leader to facilitate also a debate in the House on that question. We have dealt with it before, in a Labour group Private Members' motion some months ago, when I recall that the then Minister for Education and Science told the House there was no need for a public debate or the type of convention that we were calling

[Senator Alex White.]

for at the time. The Department has since varied its position and proposes hosting a conference next month. However, the bishops' pastoral is a very useful contribution to the debate.

**Senator Déirdre de Búrca:** Will the Leader invite the Minister for Communications, Energy and Natural Resources, Deputy Eamon Ryan, to the House to discuss the substantial hikes in energy costs the country is likely to face next year? From front-page newspaper reports, rising oil and gas prices will mean the ESB and Bord Gáis will attempt to increase their prices next year. Oil has risen to an unprecedented level of \$126 a barrel while natural gas in London costs 86.5p per unit. The British gas supplier, Centrica, indicated it will raise its prices by 20%. This will have implications for Irish consumers and householders. Both the ESB and Bord Gáis will make submissions in July to the Commission for Energy Regulation for their 2009 price plans.

It is also important for the Minister to discuss with the House the broader issue of energy security and the plans both the ESB and Bord Gáis have to diversify their fuel sources to ensure Irish consumers are protected from these unprecedented price rises in oil and gas.

**Senator Fidelma Healy Eames:** We have quite a job on our hands to get the Lisbon reform treaty through the forthcoming referendum. If the Lisbon treaty fails, it will be due to the Government's inaction. Last Friday, along with five others, I carried out a survey on the streets of Galway with a sample of 115 people. Of those surveyed, 91% believed the Government had not adequately explained the Lisbon treaty, 35% will vote "No" and 34% are yet undecided. Our only chance to get the Lisbon treaty through is to persuade the undecided voters. What is more worrying is that the majority of those surveyed felt the EU has been good for Ireland. Almost one fifth of those people are voting "No" and another 25% are undecided.

Today's *Irish Independent* stated the Taoiseach, Deputy Brian Cowen, plans to bring the Fianna Fáil parliamentary party into line on the referendum, which I welcome. He has, however, another problem on his hands because the Government has reneged on its promises on local issues such as Roscommon hospital. As a result, last night 600 people in Roscommon took a decision to vote "No" to the Lisbon treaty. The Government, not just Fine Gael, needs to deliver on the Lisbon treaty.

I welcome the bishops' pastoral letter, Vision '08, which states the Catholic church will stay in Catholic education if parents wish. This is a significant new departure for the Catholic church. Prior to this it ruled education with too tight a rein. I hope their pastoral letter is not too late.

I agree with Senator Alex White on the need for a debate on the patronage of schools. The Bishop of Killaloe, Willie Walsh, this morning said parents are turning away from town schools to country schools because town schools have more diverse populations. Parents need to know in the knowledge-based economy that their children will get results. There is quite a debate on our hands. I commend the bishops for having the courage to give leadership in this area when the Government has not done so.

**Senator Cecilia Keaveney:** Before I came to the House, I attended a Lisbon treaty debate in County Donegal with the Minister for Community, Rural and Gaeltacht Affairs, Deputy Éamon Ó Cuív. He has already had similar debates in counties Mayo and Sligo. I was shocked by some of the literature in circulation on the treaty. It is important, as Senator O'Toole said, to debate using facts. This is particularly the case with regard to claims the Lisbon treaty will bring abortion or, as Senator Norris will appreciate, single sex marriages and all sorts of things into Ireland

**Senator David Norris:** I am not sure they have the courage to do that. They have been told for long enough by every commission they ever appointed.

**Senator Cecilia Keaveney:** I knew I was bringing trouble upon myself when I said all this. It is important the Leader would get clarity, if possible, from the Catholic Church that it would come out and advise people that the information going around at churches on what this treaty is about is not what it is about.

Given the day that is in it, Senators on the Government side might be a little late in looking for an audition for some of the parts that are being offered in the other House. It would be out of character for them to be given here. None the less, I want to draw attention to the fact that three of the five Nancys on the BBC television programme “I’d Do Anything”, which started off with a significant number of entries, are Irish. I raise this on the Order of Business because I would ask the new Minister for Arts, Sport and Tourism, Deputy Martin Cullen, to come to the Seanad to outline his proposals for the arts as he takes up the reins of his new office. It is an issue that needs to be dealt with. I raise the fact that three of the five Nancys on “I’d Do Anything” are Irish because Irish artists and musicians are leading the world but this is more from their natural ability than the support they get. I advocate bringing the Minister to the House to discuss the further needs of the arts.

I ask that we would also bring to the House whoever, at the end of today, is the Minister or Minister of State with responsibility for education and business. As I said before in the House, while it is important we would highlight the fact we are making a significant investment in third level education, there needs to be a debate on whether what we are investing links to the needs of business people on the other side, which may or may not be the case. A policy document was being prepared by the Minister of State, Deputy Michael Ahern. If that policy is up and running, I would like to think we could have a Minister of Minister of State to the House to discuss it with us.

#### **Visit of Ghanaian Delegation.**

**An Cathaoirleach:** Before I call the next speaker, I am sure Members of the House would wish to join me in welcoming a parliamentary delegation from Ghana, led by the Right Honourable Mr. Ebenezer Hughes, Speaker of the House of Representatives. On my behalf and on behalf of my colleagues in Seanad Éireann, I extend a warm welcome to you and a sincere good wish for every success on your visit.

#### **Order of Business (Resumed).**

**Senator Nicky McFadden:** I support the comments of Senators Fitzgerald and Alex White on the way children are being treated and not looked after because of the staff embargo in the Health Service Executive. We hear the words “staff embargo” but we do not focus on what they mean and the neglect that results for the most vulnerable in our society, which was apparent in last night’s “Prime Time Investigates” television programme. A foster mother meets someone to report what is happening, for example, to a child who is bruised, or bitten in some cases, but no action is taken. Social workers are so overworked and understaffed they do not even have time to read files to prevent access by people who are abusing little children. This is a scandal, which is why I support the call for a strong debate on the issue. The Minister should come to the House, be responsible and take serious action. She should realise what a staff embargo actually means.

While the Leader was in America, a meeting with the Minister for Education and Science was sought by a deputation from Athlone community college. The college is in band 1 but what does this mean? Will the new Minister continue with the band system? What is the position regarding the summer works scheme, which the previous Minister, Deputy Hanafin, had agreed to bring back next year? These are two serious and important issues which need debate.

**Senator Camillus Glynn:** I recently requested the Leader to invite the Minister for the Environment, Heritage and Local Government to come to the House to debate the issue of unruly tenants. Within the last week events in Mullingar provided a very strong basis for my call. There was absolute mayhem on at least two estates on two occasions. I will not discuss the causes as it is not my role, but there are ways of resolving difficulties and disputes rather than by practically holding an entire estate to ransom and the residents as prisoners within their own homes. These events have been replicated throughout the country. In deference to the hard-pressed taxpayer — we all pay taxes — we have a very strong tradition of looking after those who are not capable of looking after themselves by way of providing housing and other services. I ask that the debate be held sooner rather than later.

I certainly will be voting “Yes” to the Lisbon treaty. We have had two very well attended meetings in County Westmeath, one in Athlone and the other in Mullingar.

**Senator Fidelma Healy Eames:** Hear, hear.

**Senator Camillus Glynn:** I was at one in Galway which was attended by Senator Healy Eames.

There is misinformation on the Lisbon treaty. I agree with Senator O’Toole that if people have issues, local or national, they should be regarded as stand-alone issues, just as the Lisbon treaty is a stand-alone issue. The level of misinformation on the treaty has really caught my attention. There is nothing but only pure lies being spread thereon. I commend the three main parties, Fianna Fáil, Fine Gael and the Labour Party, as well as other parties for coming out in support of the treaty. While one might disagree with how the other is promoting a “Yes” vote, there is nevertheless a common denominator which we should pursue.

**Senator Phil Prendergast:** Will the Leader again arrange for the Minister for Health and Children to come to the House, this time to discuss funding for the Health Service Executive, particularly for cancer care services? That €3 million has been allocated in the Vote but not spent on these vital services is a sad reflection on the commitment made in respect thereof. This needs to be addressed as a matter of urgency.

**Senator Martin Brady:** The issue of school security has been brought to my attention by teachers and boards of management, particularly in connection with one school wherein there is a major problem associated with pupil security. Pupils are bringing knives and imitation guns into school and it is unfair that teachers have to deal with this. The only action they can take is to expel the offending pupils. In primary and all other schools there is a lack of security in the sense that anybody can walk into or ramble around a school. If we do not take action in this regard in the very near future, injuries and perhaps worse will be inflicted on children. It is about time, therefore, that we examined this matter. I ask the Leader to bring this issue to the attention of the Minister concerned to determine what proposals we can make to stamp out this considerable and widespread problem.

**Senator Eugene Regan:** I join Senator Fitzgerald in raising the issue of the World Trade Organisation talks and the importance of the votes of those involved in the agriculture sector in the referendum on the Lisbon treaty. The Government must address this issue, on which we have been seeking a debate for some considerable time. I, therefore, ask the Leader to organise it. It is an important matter and one we can clarify. I hope the farming organisations can ultimately be assuaged such that they will revert to their former position, that is, of supporting the treaty.

I agree with Senator O'Toole that acceptance of the Lisbon treaty is in the national interest and entirely separate from any sectoral interests. The issues concerning the latter must be resolved by the Government. The treaty is important to the national interest. That is why Fine Gael supports it and is putting aside domestic political issues for another day.

The Government has launched its campaign and the Taoiseach, Deputy Brian Cowen, has come out on the offensive with regard to the treaty. The only problem is that he has not read the treaty and has admitted that he has not done so.

**Senator Joe O'Toole:** Cover to cover.

**Senator Cecilia Keaveney:** He has read——

**Senator Eugene Regan:** I make this point because it is important. If one has not read the treaty, how can one explain it to people and expect them to vote on it? It is akin to a Minister presenting a Bill in the House without having read it. It is not simply a question of not having read the Bill, as this suggests the treaty is unreadable. People run away from this issue. I have the treaty to hand and it has been criticised as being unreadable and unintelligible. If I may read one or two lines——

**Senator David Norris:** No. The Senator should give Members a break.

**An Cathaoirleach:** Senator Regan, without interruption, on the Order of Business please.

**Senator David Norris:** Euthanasia is more like it.

**Senator Eugene Regan:** While I do not wish to delay the House on this subject, it has been suggested the treaty is unintelligible. People from the private sector and one Opposition party have claimed it is unreadable and is for lawyers and eurocrats. However, the aims of the treaties are set out. The “aim is to promote peace, its values and the well-being of its peoples”. The treaty continues on in such language. Another article states, “[c]ompetences not conferred upon the Union in the Treaties remain with the Member States”. Although it is set out in plain language, journalists, including Vincent Browne, have made great play that it is unintelligible. It sets out in clear terms the competences of the institutions——

**An Cathaoirleach:** The Senator should not mention individuals who are outside the House.

**Senator David Norris:** It is available on prescription.

**Senator Eugene Regan:** —— and the new areas in which the Union is extending its competence with the agreement of member states, such as climate change and energy security. It is set out in the treaty in plain language.

In raising the point of the Taoiseach not having read the treaty I am trying to be helpful to the Government. Were the Ministers to read the treaties——

**Senator Donie Cassidy:** From cover to cover.

**Senator Eugene Regan:** —— they then could stand on a platform and explain it to people with conviction. Once it has been explained, I believe people will support it.

**Senator Geraldine Feeney:** I also support the calls for a debate on the fall-out from last night's “Prime Time Investigates” television programme. However, in so doing, I do not agree with the proposal to amend the Order of Business as that is a knee-jerk reaction. On view last night was a wider societal issue, which highlights the terrible problems that exist. From my

[Senator Geraldine Feeney.]

perspective, it highlighted the breakdown of the family unit as one knows it. I was glad to hear the Taoiseach, Deputy Brian Cowen, speaking repeatedly over the weekend on the need for support of the family unit, as well as the need to support the community unit and those who are on the margins and to bring them back in. Consequently, this is something of a knee-jerk reaction today. This issue does not pertain to throwing money at a problem. We have done that in the past and it has not worked.

**A Senator:** The Government has been throwing money at it all right.

**Senator Jerry Buttimer:** It is about leadership.

**An Cathaoirleach:** Order.

**Senator Geraldine Feeney:** This is about bringing professionals together, whether they are social workers or other care professionals who work with social workers——

**Senator Fidelma Healy Eames:** They are overstretched.

**Senator Frances Fitzgerald:** This is about cut-backs in the wrong places.

**Senator Geraldine Feeney:** ——and trying to work out the best response to the breakdown we are now experiencing. Society has moved on a great deal in the past 20 years and is now plagued with problems that never existed previously, which was visible in last night's programme.

When I visited Africa four years ago, people were talking of the terrible plague of HIV-AIDS, which led to grandparents being obliged to rear grandchildren. The same now applies in Ireland as a result of drug addiction, drink or any of the scourges that afflict us today. Grandparents are being obliged to rear younger grandchildren. However, I would welcome such a debate and the Leader should facilitate it in the House in the not too-distant future, when Members have had time to reflect and take the positive approach that will be needed for such a debate.

**Senator David Norris:** I welcome the fact that the House will be continuing statements on the Lisbon treaty because it is important that people like me, who have what I consider to be an honourable and reasoned position against the treaty, should have an opportunity to speak. I hope that on this occasion, unlike the last time I spoke on the Bill, some of it may actually be noticed. It is only fair that there should be balance, particularly because we are not going to get it from the Referendum Commission. The Government made damned sure it neutered that body and took away from it the power which it had previously to put both sides of the argument, for and against, before the people. That was removed by this Government since the last referendum.

I believe in being fair, and in being so to the Taoiseach, Deputy Cowen. He was honest. He said he had not read the treaty from cover to cover in detail. What Senator Regan said was a partial truth, a half-truth, that was used in a partisan way.

**Senator Dan Boyle:** Look who is talking.

**Senator David Norris:** That does not seem to me to be helpful but if Senator Regan persists in being helpful in this manner to the Taoiseach, I would advise him to sit on the “No” side and be helpful to the people because then they will all vote “No” in this matter.

Although I take this position, it does not mean that I wish to associate myself comfortably with everyone else who takes this position because there are, as there are on the other side, some troubling elements who do not always tell the truth. I was horrified to hear people speaking on this in the context of the Roscommon Hospital situation. To get people to vote against the Lisbon treaty simply on local parochial grounds of self-interest about a hospital is a flagrant and cynical abuse of that vote. I would not welcome such support. I wish to have people who have a reasoned, calm and rational viewpoint and who will raise questions such as the clear commitment of the European Union, enshrined in the Lisbon treaty, to continue and sharpen the process of liberalising the markets, to open up the markets of the poorest and least developed countries on the globe which were raped in the 19th century by the colonising powers and which we are now going to pillage economically at the behest of people such as Mr. Mandelson.

People on the other side of the argument are not telling the truth when they say, as has been said regularly, that in terms of human rights legislation we would not have had the decriminalisation of homosexual behaviour without the European Court of Justice. It had nothing to do with that court, nor to do with the European Union. I ought to know. I was, after all, the litigant. It was the European Court of Human Rights which is a function, not of the European Union, but of the Council of Europe.

I wish that the honourable judge who was on the radio at lunchtime would answer a couple of questions. He said he would do as much. I would like him to let the Irish people know about the European Defence Association, so coyly renamed from the former European Armaments Group. We know that we would be tying ourselves in with countries that are still committed to the manufacture and use of cluster munitions.

I ask the Leader to give Members a debate on Burma. I gather there is to be some kind of an agreed position on the issue. I welcome that and the opportunity for it to go through with some small degree of debate. When this matter was raised previously it was before the disaster of the cyclone. The country has now had that disaster and I wish to send my sympathy, and that of everyone else in the House, I am sure, not just to the Burmese people but also to the Chinese people who have had the catastrophe of the earthquake in central China. I believe we can reasonably draw comparison between the behaviour of the Chinese premier who immediately got involved in this, and the disgusting behaviour of the military junta.

With regard to No. 19, motion 4 on the Order Paper concerning the Abbey Theatre, could we invite the new Minister for Arts, Sports and Tourism, Deputy Cullen, to come to the House? It would be an opportunity to impose that issue as a planning matter and get the Abbey Theatre where it should be, on the Carlton site in the middle of O'Connell Street.

**Senator Paudie Coffey:** I wish to raise an issue that is timely and important for every individual in this country. The 2007 annual report of the Office of the Data Protection Commissioner has been published. Most public and private organisations retain a great deal of personal data. It is relevant to every family in this country. Over recent months, we have heard about a number of farcical cases in which sensitive personal information has been lost, mislaid or stolen. Prominent public and private institutions in Ireland and the UK have lost such information. We need to debate the issue of data protection. Important information is held at all levels.

As we approach the holiday season, I want to draw attention to one aspect of this matter. Many people do not know that hotels in every country use swipe keycards on which are held details of guests' names, addresses and credit card numbers. When tourists return their keycards to hotel staff, they do not know where they will be stored or what will be done with them in the subsequent hours. Attention needs to be given to this issue if the rights of citizens are to be protected. I ask the Leader to arrange a debate on data protection, which is important in

[Senator Paudie Coffey.]

the context of the roll-out of e-Government, e-commerce and e-local government. Databases are becoming more and more important in our day-to-day lives. Many people are not giving this important area the attention it deserves. I ask the Leader to give this subject some attention over the coming weeks.

**Senator Jerry Buttimer:** While it is tempting for people to vote against the Lisbon treaty to give the Government a well-deserved rap on the knuckles for its package of misinformation and broken promises, they should not do so. The Government has an obligation to look after the people of Ireland rather than misleading them.

Last night's "Prime Time Investigates" television programme illustrated the Government's failure to take action and the inability of the Government and the Health Service Executive to find solutions. We need to have a debate about the matter raised by Senator Fitzgerald in the interests of the vulnerable people in society.

I ask the Leader to raise the issue highlighted by Senator Keaveney with the hierarchy of the Catholic church. As I have been canvassing ahead of the referendum on the Lisbon treaty, I have noticed that the "No" campaign is starting to focus on the issue of abortion. The hierarchy of the Catholic church in this country needs to issue a statement making it clear that abortion will not be introduced here on foot of the Lisbon treaty. That important message needs to be transmitted. Those of us who are pro-life and intend to vote "Yes" are having to defend our position. Leadership needs to be shown by the Leader of the House and the hierarchy of the Catholic church.

There is an urgent need for a discussion on our prison services in light of this morning's report in the *Irish Examiner*. I will not debate the matter again now because I raised last week on the Order of Business. It has been reported that 20% of the prison population is under protection. It is not fair on our dedicated prison officers, who are working in very difficult conditions. A debate is needed as a matter of urgency.

**Senator John Paul Phelan:** I welcome Senator Keaveney's remarks about the Minister for Community, Rural and Gaeltacht Affairs. As the Minister, Deputy Ó Cuív, has been chairing meetings on the Lisbon treaty, he must intend to vote "Yes" on this occasion.

**Senator Cecilia Keaveney:** Very much so.

**Senator John Paul Phelan:** That is one more vote for the Lisbon treaty. I join Senator de Búrca in commenting on the issue of energy costs, which both of us raised last week. The Minister for Communications, Energy and Natural Resources, Deputy Ryan, should come to the House as soon as possible to discuss the ongoing increases in energy costs which individuals and businesses must face.

I also highlight the matter of food security. I have been asking for approximately three months for a discussion on the World Trade Organisation talks. The debate has been promised every second week. We were supposed to have it about a month ago, but it did not take place. Now that we have a new Minister for Agriculture, Fisheries and Food, Deputy Smith, it would be a good idea to invite him to the House to get an insight into his thinking as the WTO talks approach some sort of a finale. Farmers have legitimate concerns. While there is no link between the talks and the Lisbon treaty, a political connection between them has been established. The Minister for Agriculture, Fisheries and Food and his predecessor, who is now the Minister for Enterprise, Trade and Employment, need to reassure the farmers, on behalf of the Government, that they will not be sold down the Swanee as Commissioner Mandelson wishes to do. Senator Norris was correct in saying Commissioner Mandelson has gone beyond

his brief. Those who will suffer first as a result of his proposals are farmers in the world's 49 poorest countries. Their commercial enterprises will be completely wiped out if he gets his way because, as things stand, they have preferential access to the EU market.

I ask the Leader to arrange a debate as soon as possible with the Minister for the Environment, Heritage and Local Government on local authority funding for social housing. There has been a big cutback, according to figures released recently. I do not want to be too parochial but the figures for Kilkenny released last week show that we will be receiving the same amount of money in the next three years as we received last year. A couple of years ago, when the then Minister, Deputy Roche, encouraged local authorities to expand their building programmes greatly. However, as a result of the funding figures announced by the Minister, Deputy Gormley, local authorities in County Kilkenny will not start work on one single new house this year because they will not have sufficient funding and the situation will continue into next year.

**Senator Fidelma Healy Eames:** It is also the case in Galway.

**Senator John Paul Phelan:** It is the same throughout the country. We should have a debate as soon as possible.

**Senator Maurice Cummins:** I support Senator Fitzgerald's remarks concerning the "Prime Time Investigates" television programme, the makers of which should be complimented on bringing the matter to public attention. Any government in any state should be judged on how it treats the most vulnerable people in society. Who could be more vulnerable than young children at risk of abuse and neglect? We must move beyond blaming the Health Service Executive for everything. While we must have political accountability, there is no point in placing all the blame at the door of the Minister for Health and Children, Deputy Harney. Government policy places these children at risk. The Government is ultimately responsible for providing protection for our children, but it is not doing its job. No matter what kind of Pontius Pilate attitude is adopted on the other side of the House, the Government is responsible and should be accountable after 11 years in office.

**Senator Lisa McDonald:** I join Senator John Paul Phelan in calling for a debate on housing. It is true that we will not have as many housing starts this year as in previous years. The proposed review of Part V of the Planning and Development Act is timely, given that there has been a big downturn in terms of the number of planning permissions being sought from local authorities. Historically, land and housing became available under the provisions of Part V, but this is no longer the case. We are effectively in a situation where there are diminishing returns and 0% of zero is still zero. The Minister for the Environment, Heritage and Local Government should attend the House for a debate on social and affordable housing, as we must examine where we will go from here in respect of obtaining land banks and accommodation for those in need of such housing. It would be a boost to the economy if we could provide an informed policy on the matter. There is no better place to start that debate than in Seanad Éireann.

I note that the Minister for the Environment, Heritage and Local Government is examining hubs and gateways. In that context, we should examine also local authority applications for the development of sewerage schemes in towns and villages. If we do not start grouping such schemes in rural villages, we will not achieve anything. Fishery boards appear to be objecting to every one-off house being built in the country. Such actions will sound the deathknell for rural Ireland. If we do not have sufficient sewerage facilities to build houses in rural areas, it will lead to a depletion of the population, the so-called brain drain. There is still a demand for

[Senator Lisa McDonald.]

housing because people want to build houses on their own land. The housing debate is vital in the context of developing gateways to keep people in their own communities.

We need to see progress with these sewerage schemes and I would welcome if the Minister for the Environment, Heritage and Local Government attended the House to debate these matters.

The “Prime Time Investigates” television programme on television last night raised significant issues which we need to deal with sensitively and reasonably. It is not incumbent to put the blame on any particular Minister or politician’s door. We are all leaders in this society and we all need to take note and take action in a considered way.

**Senator Fidelma Healy Eames:** The Senator’s party is in Government.

**Senator Lisa McDonald:** The disciplinary and professional teams dealing with the care of victims of child abuse are working across multiple disciplines and that appears to be causing problems when looked at from the outside. Also, the cases are closed too quickly and once closed are very difficult to get re-opened. These are the issues we must examine.

With regard to the debate on child welfare generally, I am glad to note there is a committee dealing with this matter and perhaps it is the place where this issue should first be considered and debated, because if we do not deal with this correctly we will regret it. I agree with Senator Geraldine Feeney that there should be a considered rather than a knee-jerk response.

**An Cathaoirleach:** Time is almost up and there are still several Members who wish to contribute. I will take a final speaker now and the remaining speakers first tomorrow.

**Senator Paul Bradford:** The housing issue has been raised by Senators John Paul Phelan and Lisa McDonald. I would not shed any tears over the lack of direct investment in local authority housing programmes because I have been around in politics long enough to see Ministers open huge housing estates amid a fanfare of trumpets. Yet, if we examine the social problems generated by our response to the housing problem over the past 20 or 30 years, we would recognise that the new social and affordable housing scheme under Part V of the Planning and Development Act will work best. This needs to be adjusted but when there are empty private housing estates and hundreds of thousands of houses for sale the solution to the housing crisis — and for people who need a house — should not come from building endless, bland housing estates. They have caused rather than solved problems. I look forward to a debate in the House and on how best to make the new system work.

I support the call for a debate on agriculture in the context of the World Trade Organisation negotiations and in the broader context of the Lisbon treaty. As with Senator John Paul Phelan, I have sought a debate on this issue for months. We urgently need clarification as, sadly, in rural Ireland there are people whose existence as farmers would have ceased long ago were it not for the support of the European Union. These people are now becoming anti-Europe because of the WTO negotiations. I recognise that the WTO negotiations and the Lisbon treaty are separate issues but, unfortunately, members of the public and those involved in agriculture are linking the two issues.

There is a grave threat of people voting “No” for the wrong reasons. People are entitled to vote “Yes” or “No” on the referendum. However, one of the messages we should keep sending out from the House is that the bizarre view that people somehow do not understand the treaty does not stack up. We do not have to baby-sit the public and explain everything, the electorate is intelligent. It is our job to debate these matters but, ultimately, the electorate will decide and it has the capacity to read and decide for itself.

Our job is to provide a forum for debate. This is a time for the people to show maturity and generosity. We have done extraordinarily well from Europe. In every walk of life there is a little give and take and we must show a willingness to continue to be a part of the bigger European project. I ask the Leader to arrange a debate on agriculture so that we have the opportunity to clarify matters and address some of the falsehoods and lies that are being peddled which are unhelpful to the broader debate.

**Senator Donie Cassidy:** I join Senator Fitzgerald in marking the sad passing of Nuala O’Faolain. I have been admirer of hers for years. She was a wonderful ambassador for our country and was a very talented person. Her work will remain for many years after her sad passing.

Many Senators highlighted their concern over agriculture and requested a debate. I will contact the new Minister, Deputy Brendan Smith, to try to arrange it. I will inform the House, perhaps on Thursday morning’s Order of Business, as to when we might have it. There were many serious expressions of concern regarding the Lisbon treaty. In the national interest this is good for Ireland. The people have trusted the major political parties in this country for the past 35 years and have not been misled. We in the major parties all support the “Yes” call. Every opportunity will be given to Members of the House over the next four weeks to highlight their strong views one way or the other. We must respect the views of the “No” side, just as we do those of the “Yes” side. We will have the debate on agriculture at the earliest time.

Senator Fitzgerald called for an amendment to the Order of Business. I have had a very harmonious working relationship with the party leaders in the House. In an effort to help the Senator and her colleagues in this regard, I would suggest to her that if she feels strongly about the matter, she should change her party’s Private Members’ motion for tomorrow evening. Legislation must take preference in the House this week.

**Senator John Paul Phelan:** Rubbish. We do not have legislation.

**Senator Donie Cassidy:** I address my remarks to the leaders. Let the leaders hear what the Leader of the House is saying. I am suggesting that Senator Fitzgerald might change the wording for Fine Gael’s Private Members’ motion tomorrow evening.

**Senator Frances Fitzgerald:** Is the Leader afraid of debating the economy?

**Senator Donie Cassidy:** We are very proud of the economy.

**Senator Maurice Cummins:** We will listen to what the Government side has to say tomorrow night.

**Senator Donie Cassidy:** I hope the next ten years will be as fruitful for those supporting all political parties as the past ten years were under the leadership of Deputy Bertie Ahern.

**Senator Jerry Buttimer:** Is the Leader throwing the boys in the chasm now?

**Senator Donie Cassidy:** I am sure the new Minister of State, Deputy Barry Andrews, would be very anxious to come to the House to address the challenges which Senator Fitzgerald and others have highlighted to the House following last night’s “Prime Time Investigates” television programme. I also congratulate the team that prepared the programme on highlighting the matter to the people. I ask that Senator Fitzgerald might consider that proposal.

Senators Alex White, Healy Eames and Keaveney referred to the Catholic bishops’ statement, which must be welcomed. I have no difficulty in asking the new Minister for Education and Science, Deputy Batt O’Keeffe——

**Senator Fidelma Healy Eames:** With all his vision.

**Senator Donie Cassidy:** —to come to the House at the earliest opportunity. New Senators who have joined the Seanad for the first time—

*(Interruptions).*

**An Cathaoirleach:** The Leader must be allowed to speak without interruption. I will need to ask Senators to leave the House if they are going to continue to interrupt or else I will need to suspend the House for a period. That must stop.

**Senator Donie Cassidy:** The House has been very fortunate to have elected for the first time 25 new Members in the last Seanad general election less than 11 months ago. For the information of these Senators in particular and to be helpful, I wish to advise that when Ministers are appointed for the first time, as is the case with the Minister of State, Deputy Barry Andrews, they are always afforded two to three weeks to read into their briefs. I will be making the request with that timeframe in mind.

Senators de Búrca and John Paul Phelan called for a debate on energy costs, highlighting the challenges facing particularly the ESB and Bord Gáis and everything to do with the commission in charge of this area. This is a very worthwhile request and I have no difficulty in trying to arrange this debate also.

Senators Keaveney, Norris and John Paul Phelan called on the new Minister for Arts, Sport and Tourism, Deputy Cullen, to come to the House to outline his proposals for the arts. Irish people in the world of art and the world of music in particular are some of our greatest ambassadors. Their worldwide achievements, including the success of Lord of the Dance, Riverdance and other magnificent musicals, have been great for our tourism. That is a worthwhile request and I will endeavour to have the Minister come here at the earliest possible time.

**Senator David Norris:** What about the Abbey Theatre?

**Senator Donie Cassidy:** We all know of Senator Norris's artistic talents. I am talking about the wider domain of all of the other international stars, along with his good self.

**Senator David Norris:** I inquired about the Abbey Theatre.

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

**Senator Donie Cassidy:** I will make an inquiry of the new Minister for Education and Science regarding Athlone Community College, which Senator McFadden raised. Members will be aware that it was my strong intervention that made the announcement possible.

**Senator Fidelma Healy Eames:** Self-congratulation.

**Senator Jerry Buttimer:** The Mullingar accord.

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

**Senator Donie Cassidy:** I can assure the House and Senator McFadden that I have never started a project without concluding it.

**Senator Jerry Buttimer:** What about Deputy Mary O'Rourke?

**Senator Donie Cassidy:** Senator Glynn called for the Minister for the Environment, Heritage and Local Government to be invited to the House. He expressed strong views on unrest in

housing estates. That is a growing problem. I will pass on the Senator's strong views, which can perhaps be highlighted for a debate in the House at the earliest opportunity.

Senator Prendergast called on the Minister for Health and Children to come to the House to address issues of funding for the Health Service Executive. I have no difficulty in such a debate taking place.

Senator Brady called on me to contact the Minister for Education and Science regarding security in schools. That is a new challenge for schools. I will pass the Senator's strong views on to the Minister.

Senator Norris referred to the all-party motion on Burma. I can inform the House and Senator Norris that at the leaders' meeting today it was decided that the wording of the motion would be agreed later on this afternoon and placed on the Order Paper for Thursday morning's Order of Business. I thank Senator Norris for the strong views he expressed on the matter. If the Senator is agreeable, perhaps we can discuss the motion for a short time on Tuesday of next week because we are due to discuss legislation at length on Thursday.

Senator Coffey highlighted once again the serious concern that has come to our attention regarding personal data and the privacy of that information, especially the challenges that face many banks at present. It is a matter of great concern that much private and confidential information on customers of a particular bank has been released to persons unknown. Senator Coffey referred also to hotel keycards. He might be aware that I have much expertise in the area. I advise him that he should stay in good hotels as safes are installed in the bedrooms.

**Senator Paudie Coffey:** They are too expensive.

**Senator Donie Cassidy:** That information might not get to the area about which he is concerned. I do not wish to trivialise the matter and I consider it worthy of a serious debate in the House. I will endeavour to arrange such a debate at the earliest possible time.

I agree to Senator Buttimer's call for a debate on the Prison Service.

Senators John Paul Phelan, McDonald and Bradford sought a debate on housing, to include social housing, housing allocation and all other matters pertaining to housing. We are all aware that it is a good time to discuss the issue, as the Government and local authorities can purchase houses for approximately 20% less today than they could than 12 months ago. This could be the right time to do the right thing. We can certainly have a debate on that matter.

**Senator Jerry Buttimer:** They did not do it in the past ten years.

**Senator Donie Cassidy:** Senator McDonald called for a debate at the earliest possible opportunity on funding for environmental issues such as water and sewerage schemes, and especially gateway hubs. I have no difficulty with such a debate taking place.

**An Cathaoirleach:** Senator Fitzgerald has moved an amendment to the Order of Business: "That statements on the lack of front-line services available to children in crisis situations be taken today." Is the amendment being pressed?

**Senator Frances Fitzgerald:** Yes.

Amendment put.

**An Cathaoirleach:** As our system is not working, the vote will be taken manually.

The Seanad divided: Tá, 19; Níl, 24.

Tá

Bradford, Paul.  
Burke, Paddy.  
Buttimer, Jerry.  
Coffey, Paudie.  
Coghlan, Paul.  
Cummins, Maurice.  
Doherty, Pearse.  
Donohoe, Paschal.  
Fitzgerald, Frances.  
Hannigan, Dominic.

Healy Eames, Fidelma.  
McFadden, Nicky.  
Norris, David.  
O'Toole, Joe.  
Phelan, John Paul.  
Prendergast, Phil.  
Regan, Eugene.  
Ryan, Brendan.  
White, Alex.

Níl

Boyle, Dan.  
Brady, Martin.  
Callely, Ivor.  
Carty, John.  
Cassidy, Donie.  
Corrigan, Maria.  
Daly, Mark.  
de Búrca, Déirdre.  
Ellis, John.  
Feeney, Geraldine.  
Glynn, Camillus.  
Hanafin, John.

Keaveney, Cecilia.  
Leyden, Terry.  
MacSharry, Marc.  
McDonald, Lisa.  
O'Donovan, Denis.  
O'Malley, Fiona.  
O'Sullivan, Ned.  
Ó Domhnaill, Brian.  
Ó Murchú, Labhrás.  
Phelan, Kieran.  
Walsh, Jim.  
Wilson, Diarmuid.

Tellers: Tá, Senators Paudie Coffey and Maurice Cummins; Níl, Senators Déirdre de Búrca and Diarmuid Wilson.

Amendment declared lost.

Order of Business agreed to.

**Dublin Transport Authority Bill 2008: Committee Stage (Resumed).**

SECTION 40.

Debate resumed on amendment No. 37:

In page 34, subsection (1), line 17, to delete paragraph (a).

—(Senator David Norris).

**An Leas-Chathaoirleach:** I welcome the Minister for Transport. I congratulate him and wish him well on his reappointment.

**Minister for Transport (Deputy Noel Dempsey):** I thank the Leas-Chathaoirleach.

**An Leas-Chathaoirleach:** Amendments Nos. 37 to 41, inclusive, are being discussed together. Senator Norris was in possession.

**Senator David Norris:** I do not need to rehearse much of what I had to say on the previous day. This is a series of related amendments that deal with an issue a number of other colleagues have also raised, that is, the exclusion of elected Members of both Houses of the Oireachtas and also of local authorities from membership of the Dublin transport authority. A Member of European Parliament would, by definition, be unsuitable because he or she would be out of

the country for long periods. I am not so sure about an outright ban on Members of the Oireachtas because we have a good, active transport committee. I think that to bar a member of that committee from the Dublin transport authority would be regrettable. Barring a person because he or she is a member of a local authority will diminish the possibility for democratic pressure and for people to have their say. As other Members pointed out, if we have an elected Lord Mayor he or she would be disbarred from participating in the Dublin transport authority. I always assumed that the point of having an elected mayor would be for the position to be along the lines of the elected mayoralty in London. Transport has been a key element in the policy mandate of the Mayor of London.

That is all I need to say and I look forward to the Minister's response.

**Senator John Ellis:** The last time we debated this I raised the issue of the exclusion of local authority members because I feel it is wrong and we must do something to deal with it. It is very unfair that local authority members should be debarred; at least Oireachtas Members have the right to attend an Oireachtas committee and can raise questions when they do so. In this case even the Lord Mayor could be debarred and that is wrong. I appeal to the Minister to further examine this matter before Report Stage and, if possible, allow local authority members to be members of the board.

**Senator David Norris:** At least those in Dublin and surrounding counties.

**Deputy Noel Dempsey:** We have had this discussion already and I do not think we need delay further on it. I indicated last time, when this matter arose, that I am sympathetic to the view of Senators that local authority members should not be excluded from membership of the Dublin transport authority. As I said last week, nothing in section 14, which concerns membership of the authority, precludes the Minister for Transport from appointing a member of a local authority to the Dublin transport authority. I wish to emphasise this. In this section I do not wish to go down the route of naming individuals or classes of people who I think should or should not be a member of the authority. I wish only to use the generic description of people who have an interest, expertise or skill in this area.

In deference to the arguments made by Senators, including Senator Ellis and others, I am indicating my willingness to bring forward an amendment on Report Stage to remove the provisions in section 40 that have the effect of prohibiting a member of a local authority from serving as a member of the Dublin transport authority. As Senator Ellis said, I will retain the provisions relating to Members of the Oireachtas because we are elected to do a full-time job that is onerous enough. Senator Ellis pointed out that Oireachtas Members have the opportunity to appear before committees and I will not change the provisions relating to Oireachtas Members.

Senator Norris raised a point relating to the meaning of section 40(1)(a) and he is concerned that the distinction made may not be clear enough. I have asked the parliamentary draftsman to re-examine this and, if necessary, I will introduce an amendment on Report Stage. The initial view I was given is that this provision is just meant to distinguish between the Taoiseach's nominees and elected Members of Seanad Éireann. I will see if it is necessary to make the distinction or if this could give rise to confusion. On this basis I ask the Senators to withdraw their amendments as they can be discussed further on Report Stage, if necessary.

**Senator Brendan Ryan:** In our previous discussions on Committee Stage we agreed that further substantive debate could take place today, under this section, on the issue raised in amendment No. 21, which I tabled. It was felt that the areas were related, in terms of the membership of local authority members.

[Senator Brendan Ryan.]

Given the Minister's comments today on not excluding members of the board of the Dublin transport authority who subsequently become local authority members, could he agree to having a local authority member on the board by right? This was the thrust of amendment No. 21, which I agreed to withdraw last week on the basis that we would have further discussion on it. I intend to press this amendment on Report Stage.

**Senator David Norris:** I will not delay the House but I am glad the Minister referred to our previous discussion on Committee Stage on section 40(1)(a). We are invited to hand in our nominations. This may only directly affect the six university seats in the Seanad but we are invited by the provost to hand in our nominations. This means we are nominated and even a person who fails to gain a seat in the House would be automatically ruled out.

I welcome the fact that the Minister is again examining the question of local authorities. I have mixed views about barring Oireachtas Members, though I take the Minister's point that we have plenty to do in these Houses. If membership of the Dublin transport authority is really a full-time, professional commitment, Oireachtas Members should be ruled out of serving on it.

**Senator Paschal Donohoe:** I ask the Minister, when he is making the amendment he suggested regarding the participation of local authority members, to keep the remit for such members as wide as possible. I am aware that in other parts of the legislation the Minister is quite specific in suggesting that members of the regional authorities or assemblies should be involved in the Dublin transport authority. In any amendment the Minister makes in this regard, he should not be prescriptive about the role a member of a local authority may have. In many cases "ordinary" members of city and county councils may have much expertise in this area because they are members of strategic policy committees or because of their professional backgrounds. However, they may not be members of regional assemblies due to the demands of jobs they hold.

I ask the Minister to provide as broad a remit as possible, to allow all members of the local authority to participate, when he decides how to amend this legislation. This would be a welcome change.

**Senator John Ellis:** I feel that if we dropped section 40(1)(a) entirely and changed section 40(1)(b) to read "an elected Member or nominated Member of either House of the Oireachtas or the European Parliament", we could get out of the spot of trouble we are in.

**Deputy Noel Dempsey:** We can discuss how this will be done on Report Stage. It is possible that we could make this very simple, though sometimes people do not like simple language in legislation.

**Senator David Norris:** I do.

**Deputy Noel Dempsey:** If a person becomes a Member of either House of the Oireachtas or the European Parliament that solves the problem. We will look for an agreed way forward on this. I will give consideration to Senator Donohoe's point.

**Senator David Norris:** This opens the whole discussion on Members of the Oireachtas. Senator Donohoe mentioned people with major professional commitments who may still be members of local authorities. That would mean they could not give a full-time commitment. If that is to be opened up, there would be a need to also question membership of the Oireachtas because there is a contradiction there.

Amendment, by leave, withdrawn.

Amendments Nos. 38 to 41, inclusive, not moved.

Section 40 agreed to.

Sections 41 and 42 agreed to.

#### SECTION 43.

**An Leas-Chathaoirleach:** Amendment No. 41*a* is in the names of Senators Brendan Ryan, Alex White, Michael McCarthy, Phil Prendergast, Dominic Hannigan, Alex Kelly and David Norris.

**Senator Brendan Ryan:** I move amendment No. 41*a*:

In page 36, line 12, to delete paragraph (*a*).

**Senator David Norris:** Is this amendment in opposition to the section?

**An Leas-Chathaoirleach:** It is amendment No. 41*a*, on an additional list, already circulated on 8 May.

**Senator Brendan Ryan:** This amendment seeks to delete section 43, paragraph (*a*). An immunity for individuals in good faith on behalf of the authority, in accordance with section 80, would not be objectionable. However, a blanket immunity against any proceedings in respect of the authority itself for failure to act appears to be open to constitutional challenge, according to our advice. The Minister has an amendment which is to delete the section in full. I hope it is in recognition of our amendment and if so, I thank him for that.

**Deputy Noel Dempsey:** The bad news for Senator Ryan is that when we looked at this again, it was decided that I should withdraw my amendments. I take it we are taking these two together, amendment No. 41*a* and my amendment to delete section 43. The Government is withdrawing the proposal for the deletion of the section, therefore, Senator Ryan and I are not *ad idem*, but rather on opposite sides in this regard.

**Senator David Norris:** Could the Minister explain the rationale behind this dithering?

**Deputy Noel Dempsey:** It was originally proposed to delete section 43, but we received further legal advice in this regard to what is contained in the section. It is a common provision in legislation establishing State bodies. Its purpose is to ensure no one can seek to claim damages from, *inter alia*, the authority or a subsidiary of the authority in circumstances where the authority or its subsidiary fails to conform or comply with its statutory functions. In other words, we are ensuring that no one can take a legal action against the authority or its subsidiary body for something it did not do. Basically, there are many people who are willing to take legal action against authorities and their subsidiaries for things they do, or do not do properly. We are not going to offer people the opportunity to take legal action against authorities for things they did not do, as this would serve to further enhance the compensation culture that exists at the moment.

If we remove this provision we shall be opening a can of worms. Given the spirit or intent of Senator Ryan's proposal, however, it is important to state that there will be no bar on anybody taking an action regarding alleged damage arising from the exercise by the authority, or a subsidiary, of its statutory functions. If somebody does something incorrectly, as a result

[Deputy Noel Dempsey.]

of which loss or damage is caused, my amendment will ensure people may continue to take action against the authority or subsidiary concerned. We are simply not giving people the right to sue because an authority did not do something.

**Senator Paschal Donohoe:** Will the Minister clarify two points on this amendment? How common is a clause such as this in legislation setting up an organisation such as the Dublin transport authority? When I read the section, it appeared to that this was a blanket cover to the effect that anybody working for the Dublin transport authority would be immune from prosecution for services he or she was not providing. This seemed to be a very strong indemnity to be offering any employee of the Dublin transport authority.

Even if I take on board the point the Minister has just made, about the need for an employee of the authority to have such immunity, paragraph (d) also offers this immunity to a person who is providing services to the Authority, that is, somebody who is not an employee of the authority but who is just providing services to it. Is it common for a blanket immunity such as this to be offered to somebody who is not an employee of the organisation?

**Senator Brendan Ryan:** Although our legal advice is that this blanket approach might lead to a constitutional challenge later, I do not intend to press our amendment but I reserve the right to seek to have it reconsidered on Report Stage.

**Senator David Norris:** It is rather curious behaviour. It is somewhat like the “I stepped in again, you stepped out again” approach. It appears in the Bill, step 1. It is deleted, step 2, and then it is back in, step 3. That does not suggest a very clear and logical approach. I am not fully convinced about the Minister’s action. Is it the case that the Minister does not now propose to delete the section?

**Deputy Noel Dempsey:** I do not propose to delete it.

**Senator David Norris:** The Minister is right, particularly since we were talking earlier about safety. If somebody is injured because of a dereliction on the part of a transport authority, particularly if Senator Donohoe has his way and it is running railway trains, buses, boats, canal barges, etc., then the public should have the right to sue. The right to restore something that was proposed to be deleted suggest some degree of dithering but that is a very human quality. Since the Minister has got it right now, we shall absolve him.

**Senator John Ellis:** We need to be careful about paragraph (d), which refers to “a person providing services to the Authority”. That could very well be construed as a subcontractor to the authority who was negligent should not be exempt from being sued. In the event, it is the authority that will be sued, not the subcontractor if there is negligence, and there should be some way of getting around that, because a loophole exists. It means that if I am contracting to the DTA, I do not have to give tuppence about insurance or anything else, because the authority is the first port of call, and I am exempt. It is the DTA that gets sued.

**Senator David Norris:** I withdraw my remarks because I am now completely confused. I have been made dizzy by this sort of thing, and it now appears that the immunity is left intact. I am not sure this is a good idea for the reasons I gave when I thought matters were the other way around. I do not see why a citizen should not have a case for redress if he or she is damaged by the actions of the authority. It seems a wide-ranging immunity is to be provided without very clear reasons from the Minister.

**Senator Paschal Donohoe:** Senator Ellis and I have raised a question about section 43(d). I am not convinced about the need for such a strong immunity for the authority itself. I have, however, a wider concern about whether such immunity should be extended to a third party working for the authority. Will the Minister give an assurance that such a clause is commonplace in enabling legislation establishing new bodies and it cannot be used to excuse poor service or performance by a contracted party?

**Deputy Noel Dempsey:** Such a provision is contained in the Roads Acts. The Senators are having some difficulty with this clause. I was accused of dithering about it earlier by Senator Norris but he has changed his position four times since we started. There is a certain amount of confusion, largely because of the amendments. I will examine this again on Report Stage.

The provision states no action or other proceedings shall lie or be maintainable against the authority, or a subsidiary of the authority, if it fails to perform or to comply with its statutory duties. I understand the concerns expressed by Senators. If, for example, a subcontractor does bad work on a Luas line and it causes a crash, there are concerns the subcontractor could be immune from prosecution under this provision. I will clarify this on Report Stage.

Amendment, by leave, withdrawn.

Section 43 agreed to.

#### SECTION 44.

**Acting Chairman (Senator Michael McCarthy):** Amendment No. 42 is ruled out of order as it involves a potential charge on the Revenue.

Amendment No. 42 not moved.

**Senator Paschal Donohoe:** I move amendment No. 43:

In page 38, subsection (10), line 24, after “Authority” to insert the following:

“but must in the first instance be open to competitive tender to all public transport operators”.

We have had full discussions about amendments of this kind already. The Dublin transport authority should play a more active role in stimulating competition for new routes and modes of public transport. It is about ensuring taxpayers’ money is well spent and the routes and capacity are in place to deal with the growing population of the greater Dublin area.

**Deputy Noel Dempsey:** The Senator wants all public transport networks to be open to competitive tender. Section 44(9) allows the authority to exploit commercial opportunities arising from its functions under Part 3. This includes aspects such as public transport infrastructure, public passenger transport services, integration measures, traffic management, research and information. Section 44(10) enables the authority, or a third party on its behalf, to exercise that right.

I want to avoid becoming too prescriptive in this section. It would be impossible to list all commercial opportunities that may arise. Accordingly, the purpose of section 44 is not to be prescriptive but leave the authority the sufficient latitude and flexibility to enable it to act commercially where the opportunity arises. It is not possible to foresee every case in which there may be a need for a competitive tender process. In some commercial opportunities, no need may arise.

[Deputy Noel Dempsey.]

The Dublin transport authority will be subject to the necessary procurement legislation where it applies. The section, as it stands, gives greater flexibility and will not preclude competitive tendering. I will, therefore, not accept the amendment.

Amendment, by leave, withdrawn.

Section 44 agreed to.

Sections 45 to 48, inclusive, agreed to.

#### SECTION 49.

Government amendment No. 44:

In page 41, subsection (2), line 50, to delete “*section 48*” and substitute “*subsection (1)*”.

Amendment agreed to.

Section 49, as amended, agreed to.

Sections 50 and 51 agreed to.

#### NEW SECTION.

**Senator Paschal Donohoe:** I move amendment No. 45:

In page 42, before section 52, to insert the following new section:

“52.—(1) The Authority shall issue additional public service contracts where it can be shown by any person or body corporate that-

(a) there is a requirement for such service in the general economic interest; and

(b) a public service operator has the capacity to provide such a service.

(2) The Authority shall ensure there is a facility in the Authority to accept and consider any such proposal under *subsection (1)*.”.

The amendment arises from my concerns over the immense power vested in the authority over Dublin’s transport network. The Bill allows the authority to be both a regulator and provider of transport services. This creates a conflict of interest for the authority which could cause problems.

Under section 52 the authority will have exclusive power to determine what it believes are the needs of Dublin’s commuters and the organisations involved in providing public transport. The amendment seeks to allow another body, either Dublin Bus or a private operator, to express a belief that there is a requirement for the expansion of a service or the provision of an additional service, and to ask the Dublin transport authority to consider this request and publish a view whether it believes this additional service is needed and whether it will provide it. Also, if the authority will not provide it, it should explain why this is the case.

I have tried to make the amendment more reasonable by making clear that the organisation seeking to demonstrate that an additional transport capacity is needed must be able to demonstrate that is in the clear economic interest of the region, as laid out in the early sections of this Bill. We must also ensure the operator has the capacity to provide the service. We do not

want frivolous organisations wasting the time of the public and the Dublin transport authority by putting forward recommendations for services they are not able to provide.

The amendment asks the Dublin transport authority to consider the proposals and recommendations from other organisations in the greater Dublin region to dilute in some way the power this organisation will have and allow it to consider competing views. I hope in some cases that these competing views, if met, would be in the interests of commuters in the Dublin region.

**Deputy Noel Dempsey:** These sections are important, as the Senator has said. Before I address the specific amendment, it is important to put in place the background to this overall chapter. As Senators have said and as they will know from the Bill, the immediate results that will flow from the chapter we are discussing here are that the procurement of all public transport services in the greater Dublin area will be done by the Dublin transport authority, which is important. This will involve the authority entering into public transport service contracts with all prospective transport operators.

In the case of public bus and rail passenger services, contracts will only be entered into where a public service obligation, PSO, is identified by the authority. Contracts will have to comply with EU law and in particular with the new EU Regulation 1370/2007/EC which establishes a new framework for PSO contracts for bus and rail passenger services and comes into effect on 3 December 2009.

This chapter has been the focus of much attention. When I first introduced the Bill to Government, the Attorney General made his views known on this on the basis of what was happening in Europe at the time with the PSO regulation. Given this, we needed to alter the Bill to take the PSO regulation fully into account. Everything that is in this chapter and these sections is very carefully worded to ensure we comply with EU law and the PSO regulation, which, as I said, will come into effect on 3 December 2009.

The specific structure we have adopted with regard to the making of the direct award of contracts with the CIE companies has been prepared with particular reference to the need to migrate from where we are at present to full regulation in 2009. That is the general background. The Bill is very carefully worded in this regard.

With regard to the amendment, Chapter 2 of Part 3 of the Bill establishes a comprehensive framework which will give the authority the power to secure the provision of public passenger transport services through the making of public service transport contracts. Section 48 envisages that the authority may enter into such contracts following open tendering in respect of public bus passenger services, metro services and light rail services. It also provides that public bus and rail services can be secured by means of direct award contracts. However, section 52, which relates specifically to the making of direct award contracts, provides that in the case of public bus passenger services, such contracts will only apply to the continued provision of the services currently being provided by Dublin Bus and Bus Éireann. Accordingly, the future growth in the market for subvented public bus services can only be pursued by way of open tendering.

The intent of the Senator's proposed amendment is already addressed in the overall provisions of this chapter of the Bill. I specifically cite the provisions of sections 48 and 52, to which I referred. These have been carefully prepared and drafted to ensure they are fully in line with the provisions of the EU regulation, which, as the Senator appreciates, has direct application in this regard.

The Senator's amendment includes the words "shall issue additional public service contracts". This leaves the authority with no discretion as to how it might provide a public transport service. That is a not a route we want to go down because options must be available to the

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authority. The intent of the Senator's amendment is addressed already in these sections which fully comply with the EU PSO requirements in place.

**Senator Paschal Donohoe:** The Minister's response indicates clearly that this is one of the pivotal sections in the Bill, which I acknowledge. I also take on board his point regarding the language of my amendment. The concern we should all share with regard to the Bill is that we might get a phrase or clause wrong in such a way that creates vulnerability for an organisation in determining future transport policy in Ireland.

I have a particular concern. Let us say a private operator is operating in another European market and wants to become involved in the provision of transport in Ireland. By legally challenging part of this legislation, the operator would remove the ability of the Government to create policy and might try to force the policy direction of this country via legal action.

There are a number of points I would like the Minister to address. First, is he confirming in this clause that the Dublin transport authority will be what I believe is called the competent local authority for the provision of transport within the Dublin region? If so, will the authority which decides on local transport matters outside of the greater Dublin area still be the Department of Transport and the Minister? Is there a conflict between having the competent local authority, the Dublin transport authority, deciding transport policy within the greater Dublin area and the Department of Transport deciding transport policy for the region outside this area? Could this conflict in any way create an opening for legal challenge to this legislation at some point in the future?

Second, if we are confirming that the Dublin transport authority is the competent local authority for transport issues within the greater Dublin area, does this in any way affect the ability of the new organisation to offer direct award contracts to organisations such as Dublin Bus and Iarnród Éireann? As the Minister acknowledged, if we are wrong on any of these points, it will open this legislation to challenge by private companies who might want to influence the way we provide transport in Ireland.

**Deputy Noel Dempsey:** On the Senator's specific questions, which are valid, the DTA will be the competent authority for transport in the greater Dublin area. The Department of Transport will continue to be the competent authority outside the greater Dublin area. As stated in a newspaper article on the Bill, the Government is not handing over all policy-making power and will still be responsible for transport policy. The DTA will be acting on behalf of the Minister as a competent authority, not as a competent local authority *per se*. The Minister is also a competent authority.

Comments were made to the effect that the Minister for Transport is mentioned 183 times in the Bill. I make no apologies for that because I believe, in respect of any organisation we set up, that Ministers should be accountable to the Houses for policy and the implementation thereof. Every Member of the Oireachtas would agree with this. I am, therefore, not handing over all policy-making functions in respect of transport in the greater Dublin area. I will be asking the DTA to execute the policy and any of the decisions it will make will be subject to ministerial approval, as is right. This meets the Senator's concerns.

**Senator Paschal Donohoe:** I thank the Minister for his response. He has clarified that within the greater Dublin area, the DTA will be the competent local body while elsewhere it will be the Department of Transport. I am teasing out this point because it is of pivotal importance to this legislation and how the authority will work.

Will the Minister explain the position on routes that do not originate within the greater Dublin area but which are important to the smooth operation of the transport system run by the authority? What will be the deciding body regarding decisions on such routes? Consider, for example, decisions on fares or the frequency of buses on a bus route that begins outside the greater Dublin area. The Minister said the Department of Transport will be responsible for the region outside the greater Dublin area and that the DTA will be responsible for the area within. If the route begins outside the greater Dublin area, will the DTA or the Department be responsible for making decisions on how it will operate?

**Deputy Noel Dempsey:** To reiterate, we are concerned here with competent authorities. The Department of Transport is a competent authority and the DTA will be part of that authority. That is the position, particularly under EU legislation. On the specific point on publicly funded transport services — provided, for example, by Bus Éireann or Iarnród Éireann — that commence or terminate beyond the greater Dublin area and which would be regarded as being essentially part of public transport services in the greater Dublin area, section 54 provides that the Minister can, by order, designate services for the purpose of the section. He may also designate such services as the subject of exclusive rights subject to the granting of licences under the Road Transport Act 1932 or the subsequent legislative amendments thereto. Section 54(4) states: “The Authority shall enter into direct award contracts, which impose public service obligations, with Bus Éireann or Irish Rail in respect of the public passenger transport services to which this section relates.” The Minister will make the order and the DTA will execute it.

**Senator Paschal Donohoe:** I thank the Minister for his clarification. I will withdraw my amendment, particularly in light of his points. However, this area is ripe for confusion or exploitation in that the Department of Transport will be the national deciding body on transport policy while the Dublin transport authority will be operating in the greater Dublin area. The Oireachtas and those involved in the provision of transport in the Dublin area will need to monitor this.

Amendment, by leave, withdrawn.

## SECTION 52.

**Senator David Norris:** I move amendment No. 46:

In page 42, subsection (1), after line 47, to insert the following:

“(d) Any new such public service contract within the greater Dublin area shall be offered first to Dublin Bus and or Bus Eireann.”.

The Minister has more or less addressed this amendment already because he suggested a European directive required the existence of an open, public and competitive regime. While I favour the existing service providers, particularly where there is a social element, I take it he will reiterate that answer, in which case I will have to accept it.

Amendment, by leave, withdrawn.

Amendment No. 47 not moved.

**Senator David Norris:** I move amendment No. 48:

In page 43, subsection (4), line 15, to delete “5 years” and substitute “10 years”.

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At an earlier stage of our consideration of the Bill the Minister was lyrical on the need for what he described as a “level playing field” in these areas. If one is giving ten years to other providers, it seems that public service providers should be given exactly the same treatment. Perhaps the Minister will explain to me the distinction between them, which I do not understand.

**Deputy Noel Dempsey:** The new EU regulation on public service obligations creates the framework that dictates how member states can award exclusive rights and pay compensation for public bus and passenger services in respect of which the public service obligations have been imposed. A specific right is provided for in the regulation to allow one to do this. Under the regulation, which will apply from 3 December 2009, and which will come into full effect on 3 December 2019, member states are being encouraged to take gradual measures to comply with its provision. The chapter we are talking about in the Bill provides for the first time in Irish transport law a contracting regime to govern the subvention of public bus and rail passenger services in respect of which public service obligations apply.

Section 52 establishes that the three CIE companies will have exclusive rights to provide the services that are the subject of State financial support at present and for growth in respect of rail services, subject to future legislative change. In the case of bus services, the exclusive right also is subject to the grant of bus route licences to private bus operators under the Road Transport Act 1932. Direct award contracts will be entered into to support the provision of the services that are encapsulated in such exclusive rights.

Section 48 provides that future growth in the market for subvented public services in respect of which the authority has determined that a public service obligation applies will be addressed by way of contracts resulting from an open tendering process. However, section 52 proposes that the initial direct award contracts in respect of bus services provided by Dublin Bus and Bus Éireann will be for a period of five years. It also provides for the review of such contracts and for the making of subsequent contracts.

As for the Senator’s point that the initial direct award contracts are limited to a five-year period, this provision, allied to the review provisions and the power to enter into subsequent direct award contracts, ensures the provisions of EU Regulation No. 1370/2007 will be fully complied with within the timeframe envisaged in that regulation. This section and chapter were carefully crafted to ensure the exclusive rights being granted to the CIE companies, as well as the direct award contracts which relate to them, will be fully in line with Ireland’s obligations under the regulations. Accordingly, I ask the Senator to withdraw the proposed amendment.

Amendment, by leave, withdrawn.

**Senator David Norris:** I move amendment No. 49:

In page 43, subsection (5)(a), lines 19 and 20, to delete “unilaterally make amendments to such contract” and substitute the following:

“can amend such direct award in objectively justified cases and in a proportionate manner”.

This is a precautionary amendment because the powers granted to the Minister in this regard are quite serious and swingeing. The section pertains to carrying out a review and so on and there is another related amendment a little further on. My amendment includes a provision that this should be objectively justified and the action should be taken in a proportionate

manner. I am sure this is exactly what the Minister would wish. He would not wish to be disproportionate and he would desire such cases to be objectively justified and I propose to include this wording as a form of safety net.

**Deputy Noel Dempsey:** This chapter relates to the legislative basis for the procurement of bus, rail, metro and light rail public passenger transport services by the Dublin transport authority in the greater Dublin area. As for public bus and rail services, procurement will arise only where a public service obligation is determined and there is a consequent requirement to subvent the operation of such services. The approach adopted in this chapter in respect of the determination of public service obligations again is consistent with the EU public service obligation regulation which provides for the making of a determination that such an obligation is to be applied as a matter for the competent authority. In the case of public bus and rail passenger services in the greater Dublin area, such a role is being given to the authority.

For that reason, as well as the associated responsibility given to it to ensure funding for the delivery of the services in respect of which the public service obligation relates is in compliance with Regulation No. 1370/2007, the authority must be empowered to carry out reviews of the public service contracts at its exclusive discretion. This is encapsulated in section 52(5). Obviously, the authority cannot act unilaterally, inappropriately or disproportionately in cases such as this. It will be obliged to act in a fair manner and as its actions will be subject to judicial review, the companies are fully protected.

**Senator David Norris:** While the Minister's response again makes clear that this section is in compliance with the European directive, nothing in my amendment is in conflict with it. Although the Minister has more or less stated this would be the manner in which the authority would act in any case, enabling an authority to act unilaterally in such a way is a strong power. I propose the inclusion of a safeguard of precisely the kind the Minister considers will be the manner in which the authority will act in any case. It is not in conflict with any provisions contained in the European regulations.

I will read the Minister's further comments with great interest. However, I must apologise to the House as I have a long-standing engagement that I must fulfil and for which I am already late. Consequently, I have asked Senator Donohoe to move the subsequent amendments in my name. While I greatly regret that I will not have an opportunity to be eloquent on the subject of St. Stephen's Green, I understand the Bill's Report Stage debate will take place on another day and I may be able to wax eloquent on the subject of the green on that occasion. I again apologise to the Minister and the House. I do not intend any discourtesy and I am grateful to Senator Donohoe for agreeing to technically move my amendments. This does not mean he is ideologically committed to them but he simply is doing me a democratic service.

Amendment, by leave, withdrawn.

**Senator Paschal Donohoe:** I move amendment No. 50:

In page 43, subsection (5)(b), line 23, after "services" to insert the following:

"in objectively justified cases and in a proportionate manner".

**Deputy Noel Dempsey:** As was the case with amendment No. 45, the capacity to review direct award contracts must rest with the authority. However, in the case of a review under section 52(5)(b), the authority must engage in a public consultation process provided for in section 52(5)(d). As part of that process, the authority is required to consult the service provider as well as other potential interested parties, including the users of the services, before it makes

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the amendment. The authority also is required, under section 52(5)(e), to publish a report as to the reasons it promoted the amendments made as a result of a review under section 52(5)(b). This section provides the opportunity for all interested parties to make their views known to the authority and as I consider the approach set out is appropriate in the circumstances, I ask the Senator to withdraw the amendment.

Amendment, by leave, withdrawn.

**Senator Paschal Donohoe:** I move amendment No. 51:

In page 43, subsection (5), lines 30 to 39, to delete paragraph (c) and substitute the following:

“(c) (i) The Authority shall, six months prior to the expiration of any direct award contract, invite and consider tenders from any public transport operator in respect of the relevant public transport service contract or any portion thereof.

(ii) The Authority shall provide a written statement of the reasons to any public transport operator whose tenders is unsuccessful under *subsection (1)*.”.

Members already have discussed at length the role the Dublin transport authority will play in respect of direct award contracts and the power it will have in respect of the greater Dublin area. This amendment seeks in two ways to provide guidance and clarity to those who will provide such services. First, it will make clear, either to an organisation such as Dublin Bus or to a private organisation, that a particular contract is due to expire at a particular time and will ensure tenders will be invited. While in many cases such large companies probably will be aware of when a contract is due to expire anyway, it is important to have transparency for all involved as to when a tendering opportunity might arise.

Second, the amendment proposes that in respect of an organisation which is unsuccessful in gaining a contract, the Dublin transport authority would be obliged to communicate to that organisation the reasons it was unsuccessful. The Minister has put much work into making clear the Dublin transport authority's explicit functions. It is important that organisations that seek to provide services in the Dublin region but fail in their attempts to so do are made aware of the reasons they were unable to gain the relevant contracts. Moreover, the DTA should be obliged to explain to such organisations what they did wrong to afford them an opportunity to learn lessons for the future, as well as an opportunity to participate in other tendering processes in which, it would be hoped, they would be more successful.

**Deputy Noel Dempsey:** This section establishes, in a very clear manner, that the scope of the direct award contracts will extend to encompass the existing funded bus services in the greater Dublin area, but will also allow for future growth in respect of the provision of rail services. The funding of additional public bus passenger services can only be contemplated through the already mentioned contracts that are entered into following a public tendering process. I can assure the Senator that part of the public tendering process that now exists for such contracts ensures that people who submit tenders that are successful or unsuccessful can, if they request, as they generally do, be taken through the scoring and the points system to learn how the decision was reached.

The Senator is correct in that people go to considerable expense to put in a tender for a particular contract. If they do not succeed they should at least have an opportunity of seeing in which ways they may have failed. That is provided for in the tendering processes we currently have and is met without having to specifically state it.

We are discussing sections that are drafted on foot of the EU Regulation No. 1370/2007. In accordance with that regulation, and with regard to the Senator's point about notice, the authority must give one year's advance notice of the making of subsequent contracts. Subsection (5), paragraph (d) of this section requires that the authority seek the views of interested parties where it proposes to pursue the making of subsequent direct award contracts. The arrangements ensure that a continued supply of public bus services will be provided by Dublin Bus and Bus Éireann, subject to the fact that the authority is to be given broad powers to review the direct awards contracts relating to them. The section will, equally, ensure the continuation of the existing rail passenger service and will accommodate increases in such services.

I realise that it is probably not the Senator's intention but if the proposal presented in this amendment were accepted by me the direct award contracts envisaged under subsection (3) would cease to have effect after five years in the case of public bus passenger services and after ten years in respect of rail services. Subsequent direct award contracts could not be entered into by the authority. That would mean that in the absence of alternative operators, serious questions would arise regarding future provision of the services to which the direct award contracts relate. I am aware that such is not the intent of the amendment but the actual effect of it is that we could end up with a situation where we would not have anybody contracting. I do not believe the kind of uncertainty that would inevitably result from the acceptance of this proposal would be in the interest of the travelling public. I ask the Senator to withdraw the proposed amendment because what he is trying to achieve is covered very well in this section.

**Senator Paschal Donohue:** I thank the Minister for his clarification. I do not seek to remove the ability of the new authority to award direct contracts to organisations for the provision of transport services for the Dublin area. The Minister has clarified the process that takes place up until the awarding of the contract. What I have in mind is large developers and organisations for which I do not frequently have much sympathy. These can spend huge amounts of money submitting applications for planning permission and hold a great number of consultation meetings, etc., only to have the application turned down. They are frequently unsure as to why this is the case. The objective of this amendment is to ensure complete transparency about why operators are unsuccessful. The Minister assures me that this is already provided for in the legislation. In anticipation of Report Stage I ask him to be sure that is the case and I will withdraw this amendment.

**Deputy Noel Dempsey:** We can clarify that even further but there is a section in the Bill that allows for guidelines to be issued and perhaps we might cover the question in that way.

Amendment, by leave, withdrawn.

Section 52 agreed to.

Sections 53 to 55, inclusive, agreed to.

#### SECTION 56.

**Senator Paschal Donohue:** I move amendment No. 52:

In page 45, lines 33 and 34, to delete paragraph (a).

This section gets to the heart of one of the major concerns that I have about the proposal. What this clause will do in the legislation is to create an organisation that will be a regulator at the same time as it has the capacity to provide the service itself. I have real concerns about

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whether, in practice, this will create conflicts of interest that will not be in the interest of passengers and commuters for whom the service is intended.

The practical example that I would give is that of our waste markets, the systems for the pick up of domestic waste across many parts of our country. The situation with which I am most familiar is within Dublin City Council which is both the provider of the service and its regulator. It creates many instances where there is a perceived conflict of interest as that organisation tries to perform both parts of its remit well.

This legislation will confer upon the transport authority the ability to tender out for transport services or to give guidance to organisations about how that transport is going to be delivered. If it is not happy about how that is done it will be able to step in and provide the service itself. The example that made this most clear to me in respect of the conflict that might come about is an issue we have discussed many times, namely, the awarding of contracts for bus routes. The Dublin transport authority will be the organisation that will set the criteria for a successful tender. If it is not happy with a tender it can then step in and provide the service itself.

The Minister has clearly outlined on a number of occasions that the role of the Dublin transport authority is to deal with the vested interests that have at times got in the way of providing the right solutions for the people who need the services. Does this not create the potential for the DTA to be a vested interest itself at some point in the future?

*5 o'clock* The board and the management team charged with setting the criteria for tendering processes and overseeing whether a service is well provided or an intervention should be made, is the same organisation that has the ability to provide the service itself. Will we not find ourselves at some point in the future in a situation where is a perceived conflict of interest that could be challenged by an organisation unhappy with a decision that the Dublin transport authority has made?

We have many different regulatory bodies that deal with a range of issues such as the supply of electricity or the operation of particular services but none of these authorities has the ability to provide the service itself. I am unclear as to why the Minister finds it necessary to confer such power on this organisation. Does he not think there could be a perception of a conflict of interest at some point in the future that might get in the way of the smooth operation of this organisation?

**Deputy Noel Dempsey:** I am persuaded by the argument made by the Senator in this regard. The deletion of section 56(a) would benefit the legislation. While I take the Senator's point that the Bill, as it stands, could be construed as allowing the authority to act as an operator of last resort in advance of the service being provided—

**Senator Paschal Donohoe:** Yes.

**Deputy Noel Dempsey:** —that is obviously not the intent or focus of section 56(a). The section will provide that an intervention can be made if someone who is being paid to provide a service goes bankrupt, does not provide the service or provides a really bad service. I will accept Senator Donohoe's amendment No. 52.

Amendment agreed to.

Section 56, as amended, agreed to.

Section 57 agreed to.

## SECTION 58.

**Acting Chairman:** As amendments Nos. 53 and 56 are cognate, and amendment No. 69 is related to amendment No. 53, amendments Nos. 53, 56 and 69 may be discussed together, by agreement.

Government amendment No. 53:

In page 47, subsection (9)(b), line 24, to delete “data is” and substitute “data are”.

Amendment agreed to.

Government amendment No. 54:

In page 47, subsection (12), line 47, after “that” to insert “trip”.

Amendment agreed to.

Section 58, as amended, agreed to.

## SECTION 59.

**Senator Paschal Donohoe:** I move amendment No. 55:

In page 49, between lines 4 and 5, to insert the following subsection:

“(9) The Authority shall make available to other statutory agencies and local authorities information or data generated under this section for the purpose of the discharge of the functions of those bodies, provided that such use does not result in the disclosure of commercially sensitive information in relation to an identifiable person or public transport operator except with the consent of such person or operator.”.

I understand the Department of Transport has encountered some difficulties in respect of integrated ticketing. Issues have arisen in respect of the sharing of information by various organisations with each other and with the Department to facilitate the provision of integrated services to commuters in Dublin. I have tabled this amendment to give the Dublin transport authority greater powers to ensure information is shared between the various organisations in the Dublin region. Such powers are needed to ensure good integrated services are provided to commuters. The integration of public transport services, as opposed to the provision of new services, is necessary if we are to improve services and increase consumer satisfaction. This amendment seeks to make it easier for information to flow between the various bodies, thereby aiding the provision of more integrated services and strategies.

**Deputy Noel Dempsey:** The Senator is trying to replicate the terms of section 58(9)(c), which relates to integrated ticketing schemes, in section 59. He is attempting to provide for the sharing with other statutory authorities of data generated under such schemes. Section 58 provides that the information of most use to most bodies may be shared. Such information may relate to the numbers travelling, the frequency and distance of travel, the modes of travel and the places of boarding and alighting, etc.

**Senator Paschal Donohoe:** Yes.

**Deputy Noel Dempsey:** Such information can be used by a variety of organisations for statistical purposes under the terms of section 58. This section deals with fares. It provides that a fares scheme will be used as a kind of financial clearing house to facilitate the collection and

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distribution of revenues generated from smart cards and prepaid and onboard ticket sales across the various modes which will comprise Dublin's integrated transport network. The data generated under that system, which will be purely financial in nature, will be somewhat sensitive commercially. It will be of very little use to other statutory organisations with data collection responsibilities, such as the Central Statistics Office. For that reason, I do not consider this amendment necessary. It would not serve any useful purpose. As the statistics Senator Donohoe is looking for can be disclosed under section 58 of the Bill, I ask him to withdraw this amendment.

**Senator Paschal Donohoe:** I thank the Minister for his response. I understand the importance of this section of the Bill. The lack of a policy body has been one of the reasons the integration we are looking for has not taken place. I accept the Minister's comment that information will be available under another section of the Bill. I will examine the matter in advance of Report Stage.

Amendment, by leave, withdrawn.

Section 59 agreed to.

#### SECTION 60.

Government amendment No. 56:

In page 50, subsection (9)(b), line 10, to delete "data is" and substitute "data are".

Amendment agreed to.

Section 60, as amended, agreed to.

#### SECTION 61.

Government amendment No. 57:

In page 50, subsection (3), line 31, to delete "National Roads Authority" and substitute "NRA".

Amendment agreed to.

Section 61, as amended, agreed to.

#### SECTION 62.

**Senator Paschal Donohoe:** I move amendment No. 58:

In page 51, between lines 48 and 49, to insert the following subsection:

"(9) The Authority may require private bus operators to provide off street parking for their vehicles."

I am proposing this good amendment on behalf of my colleague, Senator Norris. Like the Senator, I live in a part of Dublin that is heavily used by private bus operators for the purposes of parking. Their services tend to start and end in some of Dublin's greatest districts. If Senator Norris were here, he would be able to describe such areas far more eloquently than I am capable of doing. The locations in question are being ruined by private bus operators who

leave their buses in place for long periods while they wait for their passengers to board. Such actions cause huge difficulties for people trying to get around such areas, damage the look of these places and make it much more difficult for residents to go about their daily business. Senator Norris has tabled this amendment to allow the authority to ensure private bus operators are compelled to provide safe and attractive starting and finishing points for the services they provide.

**Senator John Ellis:** I take it that the operators referred to in this amendment are primarily those that provide services to people from rural Ireland living in Dublin who wish to return home for the weekend. In the absence of proper parking facilities, it would be unfair of the authority to prevent private operators from parking in the locations they currently use to pick up passengers. I accept the point being made by Senators Norris and Donohoe. I assume they are referring to the Parnell Square area where most of these problems arise. It is the only place many non-urban operators can use. If proper parking facilities were provided, everyone would accept this amendment. It would be unfair to make this change in the absence of such facilities, however.

**Deputy Noel Dempsey:** Under the Road Transport Act 1999, bus operators must, as a condition of their operating licences, ensure adequate parking spaces and operating premises are provided in the State for the vehicles they operate or intend to operate under such licences. Bus operators are subject directly to the Road Traffic Acts, including the regulations relating to parking, during the course of their day-to-day operations on public roads. The Road Traffic (Traffic and Parking) Regulations 1997 enable the road authorities to provide short-term bus parking areas, such as the spaces provided on Nassau Street in Dublin, to facilitate tourist buses and other private transport operators. The regulations also enable the road authorities to prohibit the parking of large vehicles such as buses at specified locations, such as public roads and residential areas. The enforcement of those parking regulations is a matter for the Garda Síochána, local authority wardens or local authority-appointed vehicle clamping operators.

With regard to this specific amendment, Part 3, Chapter 4 concerns traffic management. The definition of traffic management, under section 2, includes “measures necessary for the purpose of facilitating managing, regulating and controlling . . . the parking of vehicles in a public or other non-residential place”. I am satisfied that there is ample scope for the authority, under Chapter 4, to develop an appropriate vehicle parking strategy for the greater Dublin area generally, which individual road authorities will be required to implement. The Road Traffic Acts will continue to provide the legal basis for the control of parking on public roads. In view of that, I do not consider there is any necessity to amend the Bill further.

Amendment, by leave, withdrawn.

Section 62 agreed to.

Section 63 agreed to.

#### SECTION 64.

Government amendment No. 59:

In page 52, subsection (2)(f), line 30, to delete “development” and substitute “developments”.

**Deputy Noel Dempsey:** This is a technical amendment correcting an inconsistency between the use of the word “developments” in section 12(5)(g) and “development” used in section 64(2)(f). The correct word is “developments”.

Amendment agreed to.

Government amendment No. 60:

In page 52, subsection (4), line 46, after “with” to insert “the NRA,”.

**Deputy Noel Dempsey:** This amendment inserts a reference to the NRA in section 64(4). It deals with the preparation by the authority of a strategic traffic management plan for the greater Dublin area. Subsection (4) puts an onus on the authority to consult with several interested parties when preparing such a plan. In listing the relevant parties, the inclusion of the NRA as a body to be consulted was inadvertently left out. This amendment corrects that omission.

Amendment agreed to.

Amendment No. 61 not moved.

Section 64, as amended, agreed to.

#### SECTION 65.

**Acting Chairman (Senator John Paul Phelan):** Amendments Nos. 62 and 64 to 66, inclusive, are cognate and may be discussed together by agreement.

Government amendment No. 62:

In page 53, subsection (3)(a)(i), line 20, to delete “road authorities” and substitute “the road authority”.

**Deputy Noel Dempsey:** These are technical amendments to replace the three references in section 65 to “a road authority” with reference to “the road authority”.

Amendment agreed to.

**Acting Chairman:** Amendment No. 63 may be discussed with amendments Nos. 67 and 68 by agreement.

Government amendment No. 63:

In page 53, subsection (3)(a)(i), line 22, after “management” to insert “or other transport-related”.

**Deputy Noel Dempsey:** Sections 65 to 67, inclusive, concern the preparation of local traffic plans by road authorities in the greater Dublin area, the issuing of traffic management guidelines by the authority to those road authorities, and the giving of directions by the authority to those road authorities. Section 65 includes a requirement that each road authority in the greater Dublin area must specify its use of the proceeds of parking or other traffic management revenues for traffic management purposes within its functional area. Sections 66 and 67 enable the authority to issue guidelines and directions, respectively, to a road authority in the greater Dublin area regarding the use of the proceeds of parking or other traffic management revenues for traffic management purposes within its functional area. The purpose of the amendments to

these sections is simply to ensure that the proceeds of parking and other traffic management revenues can be used both for traffic management and other transport-related purposes. I consider that the current wording is unnecessarily restrictive and the suggested amendments broaden the scope of the provision to encompass transport-related purposes.

Amendment agreed to.

Government amendment No. 64:

In page 53, subsection (3)(a)(ii), line 24, to delete “a road authority” and substitute “the road authority”.

Amendment agreed to.

Government amendment No. 65:

In page 53, subsection (3)(a)(ii), lines 25 and 26, to delete “a road authority” and substitute “the road authority”.

Amendment agreed to.

Government amendment No. 66:

In page 53, subsection (3)(b)(i), line 33, to delete “a road authority” and substitute “the road authority”.

Amendment agreed to.

Section 65, as amended, agreed to.

#### SECTION 66.

Government amendment No. 67:

In page 54, subsection (1)(g), line 9, before “purposes” to insert “or other transport-related”.

Amendment agreed to.

Section 66, as amended, agreed to.

#### SECTION 67.

Government amendment No. 68:

In page 54, subsection (1)(e), line 36, after “management” to insert “or other transport-related”.

Amendment agreed to.

Section 67, as amended, agreed to.

Sections 68 to 72, inclusive, agreed to.

#### SECTION 73.

Government amendment No. 69:

In page 57, subsection (1)(a), line 5, after “that” to insert “or those”.

Amendment agreed to.

Government amendment No. 70:

In page 57, subsection (3), line 22, to delete “making” and substitute “giving”.

**Deputy Noel Dempsey:** This is a technical amendment to section 73 to remove an inconsistency in the wording used. In subsection (3) the phrase “making a direction” is used when the correct phrase is, in fact, “giving a direction”.

Amendment agreed to.

**Acting Chairman:** Amendments Nos. 71 and 72 are related and may be discussed together by agreement.

Government amendment No. 71:

In page 57, subsection (4), line 25, to delete “and statistics” and substitute “or statistics”.

**Deputy Noel Dempsey:** This is a technical amendment. Subsection (4) contains two references to “data and statistics”. However, the correct term, and the one that is used elsewhere in section 73, is “data or statistics”. Accordingly, the purpose of the amendments is to make these two corrections.

Amendment agreed to.

Government amendment No. 72:

In page 57, subsection (4), line 26, to delete “and statistics” and substitute “or statistics”.

Amendment agreed to.

Section 73, as amended, agreed to.

#### SECTION 74.

Government amendment No. 73:

In page 57, subsection (1), line 36, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 74:

In page 58, subsection (1)(e), line 6, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 75:

In page 58, subsection (2), lines 7 and 8, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 76:

In page 58, subsection (2), line 11, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 77:

In page 58, subsection (3), line 15, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 78:

In page 58, subsection (4)(a), lines 16 and 17, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 79:

In page 58, subsection (5), line 26, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Government amendment No. 80:

In page 58, subsection (6), line 29, to delete “National Roads Authority” and substitute “NRA,”.

Amendment agreed to.

Section 74, as amended, agreed to.

#### SECTION 75.

Government amendment No. 81:

In page 58, line 43, to delete “National Roads Authority” and substitute “NRA”.

Amendment agreed to.

Section 75, as amended, agreed to.

#### SECTION 76.

Government amendment No. 82:

In page 59, lines 7 to 15, to delete subsection (2) and substitute the following:

“(2) Prior to any person undertaking the construction of any port facility or any other port related development, which, in the opinion of that person could impact in a significant man-

ner on the movement of persons or goods in the GDA, that person shall obtain and consider the written views of the Authority.”.

**Deputy Noel Dempsey:** This subsection puts an onus on port and harbour companies and authorities to consult with the authority prior to the construction of any major port developments, which in their view would have a major impact on the involvement of persons and goods in the greater Dublin area. The wording, as currently drafted in the Bill, could be construed as limiting the effect of this section to harbour and port developments in the greater Dublin area by State companies or authorities established within the greater Dublin area. The proposed amendment widens that to include a prior consultation on any major port development which would have a major impact on the movement of goods and persons in the greater Dublin area by any potential developer, whether State-owned, private or a mixture of both. That would include the potential development of port facilities at Braemore in Fingal by the Drogheda Port Company, which may be a joint venture with the private sector. It would also include any further major development of Drogheda Port itself, given its geographical proximity to the greater Dublin area.

**Senator Paschal Donohoe:** This is a good amendment. Some of the biggest changes that will affect the Dublin region concern the location of port facilities and what could happen if those port facilities were moved elsewhere. Many of the examples the Minister cited in support of this amendment concerned work that could take place at Drogheda Port. Can he confirm that the implementation of this clause would allow similar discussions to take place regarding changes in the operation of Dublin Port and that the Dublin transport authority would play a role and be briefed on the port’s plans? What power would be conferred upon the authority in the event of it receiving a briefing about proposals with which it was unhappy, for example, if a new port were to be built and the authority believed the necessary transport infrastructure was not in place? I am looking for an assurance from the Minister that this power will also apply to Dublin Port and any other ports located in or near Dublin. Will the Dublin transport authority have any additional power conferred on it to make decisions on proposals for which it believes the necessary infrastructure is not in place?

**Deputy Noel Dempsey:** I confirm to the Senator that the legislation would apply to any port, public or private, that might affect transport in the greater Dublin area. Potential developments at Dublin Port would be affected by this legislation. The port authorities would be able to obtain or consider the views of the Dublin transport authority before undertaking any major developments. This is the intention of the legislation. The Dublin transport authority must, in turn, have regard to general policy. In this case, the authority will have the power to make its views known and to pursue a course of action if it is not satisfied with a proposed development. It would use the normal statutory processes to make its views known. It is always preferable if State bodies talk to one another and agree proposals and plans. The ideal situation is that they discuss plans with each other and work out the necessary details. If this does not happen then a course of action would be open under the Planning and Development Acts for the Dublin transport authority to pursue such a matter with An Bord Pleanála or even through legal action.

Amendment agreed to.

Section 76, as amended, agreed to.

Section 77 agreed to.

## SECTION 78.

**Senator Brendan Ryan:** I move amendment No. 83:

In page 60, between lines 49 and 50, to insert the following subsection:

“(7) Documents subject to legal professional privilege shall not be liable to production under this section.”.

This amendment is part of the section that deals with authorised officers and the powers to call for production of documents and so on. Our advice is that the insertion of subsection (7) would ensure the authorised officers’ power is constitutional and this clause is designed to protect the Minister from any possible constitutional challenge. I ask for the Minister’s comments on this matter.

**Deputy Noel Dempsey:** While I accept the intent of this amendment and that it is important legal professional privilege is protected for every one, I am assured such privilege does not require specific mention in the legislation or in the Statute Book. It has been pointed out to me that legal professional privilege has existed as a common law right and has protected citizens in a generic fashion for many years. On that basis I am satisfied the intent of the Senator’s amendment is covered fully in existing practice and it is not necessary to state it explicitly in the Bill.

**Senator Brendan Ryan:** I note the Minister’s comments but I will revisit my legal advice. I withdraw the amendment but reserve the right to re-introduce it.

Amendment, by leave, withdrawn.

Section 78 agreed to.

Section 79 agreed to.

## SECTION 80.

Question proposed: “That section 80 be deleted.”

**Deputy Noel Dempsey:** The purpose of section 80 was to indemnify specified personnel against actions or claims made against them in the course of their duties, provided the authority was satisfied that such people were acting in good faith. However, I propose to delete this section because while such a provision has been a regular feature in establishing a State body, the current thinking is that an indemnification of personnel is not required where a body such as the authority is funded directly by the Exchequer.

**Senator Paschal Donohoe:** I want to ensure I heard the Minister correctly. Is he proposing to delete this section?

**Deputy Noel Dempsey:** Yes.

Question put and agreed to.

## SECTION 81.

Government amendment No. 84:

In page 62, lines 16 to 20, to delete subsection (3).

Amendment agreed to.

**Acting Chairman:** Amendments Nos. 85 and 86 are related and will be discussed together. Is that agreed? Agreed.

**Deputy Noel Dempsey:** I move amendment No. 85:

In page 62, subsection (6)(c), line 32, to delete “registered”.

These are technical amendments and I move them on the advice of the Office of the Parliamentary Counsel. The purpose of the amendments is to delete superfluous references to registered post which appear in sections 81(6)(c) and 81(6)(d).

Amendment agreed to.

Government amendment No. 86:

In page 62, subsection (6)(d), line 37, to delete “registered”.

Amendment agreed to.

Section 81, as amended, agreed to.

Sections 82 to 102, inclusive, agreed to.

#### SECTION 103.

Question proposed: “That section 103 stand part of the Bill.”

**Senator Paschal Donohoe:** I am looking for some guidance. I do not have a particular amendment for section 103, but do I still have the opportunity to question the Minister?

**Acting Chairman:** Yes.

**Senator Paschal Donohoe:** The Minister has acknowledged that one of the main pieces of advice that he was given by the expert committee which drafted this legislation was that two organisations should be dissolved and integrated into the new Dublin transport authority. These were the Dublin Transportation Office and the Railway Procurement Agency. In the Minister’s address to the House on Second Stage he explained that he agreed with the thinking behind the dissolution of the Dublin Transportation Office and its assumption into the proposed Dublin transport authority and accepted this recommendation. However, he also indicated he was not prepared to accept similar advice on the dissolution of the Railway Procurement Agency and its assumption into the proposed Dublin transport authority. The Minister outlined his reason for that. He considers that the Railway Procurement Agency was at a very sensitive point in its public private partnership procurement processes for metro north and the additional Luas lines it is charged with delivering and that in view of this he does not believe it is right to dissolve that organisation now given the vital work it is doing.

Even if now is not the right time to integrate the Railway Procurement Agency into the DTA, surely the legislation should allow the Minister to do so if he chooses at some point in the future. One of the reasons the DTA is so badly needed as a co-ordinating body is to address the problems arising from the involvement of so many organisations in providing parts of transport for the Dublin region. Given that the Railway Procurement Agency will be charged with operating some of the most vital new infrastructure we will have, surely we should now create the ability for the Minister for Transport at some point in the future to integrate the

RPA into the Dublin transport authority even if the Minister chooses not to execute that function now.

I am particularly minded to make this point to the Minister because so many of the experts involved in advising the Department in drafting the Bill recommended this course of action. The regulatory impact assessment the Department of Transport made available suggested the abolition of the Railway Procurement agency and its incorporation into the DTA. I am not criticising the Minister for not taking on board the advice of his officials because that is his prerogative. However, I am interested to know why he chose not to provide for the DTA to be able to do this work in the future if he or any of his successors is minded to make that decision.

**Deputy Noel Dempsey:** I acknowledge what the Senator has said and I confirm that as a Minister I do not feel I must willy-nilly slavishly follow advice or recommendations I am given. It is important that we seek advice, consult as widely as possible in various areas and ask people for their considered views. At the end of that in view of all the circumstances the Minister should make up his or her mind as to the best way forward. Often the theory may appear good but does not take into account a range of matters, not least of which are human factors that could make life difficult one way or the other. I am not saying that is the case here.

Regarding accepting part of this advice and rejecting other parts, I have enormous time for the DTO, which is very skilled, specialised and focused on the task it is doing. It has given good advice in the past, much of which has been accepted. Much of the work it did on Platform for Change formed the basis for Transport 21. In establishing a transport authority in Dublin, it would be ridiculous — as I am sure the Senator accepts — to have it outside of that structure. As it is it will become part of it. It will be a specialist group in a larger organisation, which will be very helpful to the DTA.

The Senator has acknowledged some of the points I made about the Railway Procurement Agency and I will not reiterate them for too long. We are concerned here with a service provider. From my work in a number of different ministries I have experience of keeping regulatory bodies separate from those involved in the provision of services. In this case it is a halfway house. I decided not to include the RPA, which I will explain in a moment, but I am giving the DTA the power to step in and provide a service if it is necessary in cases where the RPA, Bus Éireann or any other organisation might not be delivering, which is extremely important. That is the main reason.

The subsidiary reason is that I have been conscious that we should consider opportunities to bring small bodies, organisations and agencies together to make them somewhat larger and reduce the number of bodies in total. In the case of the RPA or any other body it can be enormously disruptive. While I have often said we have an excellent public service, it is very difficult to change it. I would envisage that moving even a relatively new agency like the RPA into a new body would lose a few years in the provision of vital infrastructure like the metro. The uncertainty would give rise to the possibility of losing good people from the organisation because they did not like where they were going or for some other reason.

At this crucial time it is better to let it get on with that job. I hope it will deliver within schedules. There is nothing to stop a Minister at a later stage making a policy decision that it, or indeed Bus Átha Cliath, Iarnród Éireann or another body should be absorbed into it. Now is not the time to do that. For the practical reason that the Bill covers enough ground as it is, we should not cover a matter on which we have no settled policy. That should be a matter for some Minister in the future. That is why the possibility of absorption is not specifically included. It would create uncertainty that we can do without at a particular time.

**Senator Paschal Donohoe:** I thank the Minister for his comprehensive response to my point. I support his rationale, which is the principle of a regulator and service provider being different organisations. That is why in the section dealing with the provider of last resort, I tabled an appropriate amendment, which the Minister surprisingly accepted. The principle of one organisation regulating and another organisation providing the service is vital. If it ever ends up that the Dublin transport authority needs to step in as a provider of last resort it is imperative that the Minister or any of his successors does so in very limited and exceptional circumstances. We could end up in all sorts of difficult waters with the possibility of conflicts of interests and so on.

Question put and agreed to.

Sections 104 to 111, inclusive, agreed to.

#### SECTION 112.

Government amendment No. 87:

In page 76, subsection (2), line 26, to delete “affected” and substitute “effected”.

**Deputy Noel Dempsey:** The purpose of the amendment is to correct a spelling error.

Amendment agreed to.

Section 112, as amended, agreed to.

#### SECTION 113.

Question proposed: “That section 113 stand part of the Bill.”

**Senator Paschal Donohoe:** Many small land plots in my constituency are owned by CIE and other organisations. I understand the intent behind the section; that if CIE wishes to dispose of a piece of land that it must get the consent of the Dublin transport authority. However, I suggest to the Minister that it might be worthwhile to assign a threshold or monetary value below which the clause would not kick in. Does CIE have to go to the DTA, and then to the Minister for Finance and the Minister for Transport, to get permission for every single land disposal it wishes to make? Would it be possible to amend the Bill to the effect that permission would only be required for disposals above or below a certain value?

Some advice I received suggested that if CIE is approached on the need to make use of its property in such a way, it might have to request the permission of the Department of Transport. The example given to me is that if somebody wishes to set up a newspaper stall in a CIE-owned train station that one of the consequences of the clause as it stands is that the permission of the Minister for Transport, the Dublin Transport Authority and the Minister for Finance would be required. I am sure that we would wish to remove an unforeseen consequence of that nature. I do not believe the permission of both Ministers and the DTA should be required for something of that nature. I would appreciate the Minister’s clarification on the second point, but the broader point is whether we can change the clause so that it would only kick in for major acquisitions, as opposed to CIE having to get the permission of the Department of Transport and the DTA for every single land disposal it wishes to make?

**Deputy Noel Dempsey:** If the Senator looks closely at section 113 he will see the reference to “an asset value specified in regulations”, which means that issue is covered. Senator Donohoe gave an example of the threshold. I am not nit-picking but even a small piece of

property in the middle of or in the vicinity of a railway station can become valuable if it becomes a ransom strip. One has to watch for those things. The concerns outlined by the Senator are covered in the section.

Question put and agreed to.

Section 114 agreed to.

#### NEW SECTION.

**An Cathaoirleach:** Amendment No. 88 is a Government amendment. Amendment No. 89 is consequential on it, therefore, amendments Nos 88 and 89 may be discussed together by agreement.

Government amendment No. 88:

In page 77, after line 4, to insert the following new section:

#### “PART 8

#### RAILWAY WORKS, ETC. ON SAINT STEPHEN’S GREEN.

115.—Section 15 of the Saint Stephen’s Green (Dublin) Act 1877 does not apply—

(a) to anything done for the purposes of surveys and inspections under section 36 of the Act of 2001,

(b) to any railway works (within the meaning of section 2 of the Act of 2001) carried out on or under Saint Stephen’s Green pursuant to a railway order under section 43 (inserted by section 49 of the Planning and Development (Strategic Infrastructure) Act 2006) of the Act of 2001, or

(c) to restrict the operation of a railway, light railway or metro (within the meaning of section 2 of the Act of 2001) on or under Saint Stephen’s Green.”.

**Deputy Noel Dempsey:** Amendment No. 88 concerns the development and operation of railways at St. Stephen’s Green. A number of Transport 21 projects will have an impact on St. Stephen’s Green. They include metro north, the DART interconnector, the cross-city Luas link and possibly the Lucan Luas — but that depends on the route chosen. The current definition of St. Stephen’s Green extends outside the perimeter railings to include the surrounding foot-path. The St. Stephen’s Green Dublin Act 1877 vests ownership of the park in the State and statutory responsibility for it lies with the Minister for the Environment, Heritage and Local Government.

Section 15 of the Act governs the management of the park and, in regard to the use of the green, it requires that the Office of Public Works maintain it as a park for the recreation and enjoyment of the public and not for any other purpose. There is no mechanism within the Act currently for permission to go outside the scope of the provision. Both the physical scale and the timescale for the completion of the Transport 21 projects, as well as their longer term physical impacts on the green, raise the question of whether the RPA and Iarnród Éireann would have the legal *vires* to carry out the required works in the green for the proposed metro north and DART interconnector stations. The advice of the Attorney General is that an amendment to the 1877 Act is required to overcome the restriction in section 15. The proposed amendment has been agreed with the Minister for the Environment, Heritage and Local Government.

[Deputy Noel Dempsey.]

Paragraph (a) allows the RPA and Iarnród Éireann to carry out surveys and inspections of the green for the purposes of preparing an application to An Bord Pleanála for a railway order. Paragraph (b) allows the RPA and Iarnród Éireann to carry out railway works pursuant to a railway order on or under the green. These works would include the excavations and construction necessary for the metro north and DART interconnector stations. Paragraph (c) allows the RPA and Iarnród Éireann to operate the metro and DART following construction. The timescale for commencing the construction works for metro north in the green is May 2009, subject to the granting by An Bord Pleanála of a railway order. The amendment needs to be in place to allow that to happen.

The design of the metro and interconnector stations was developed within constraints agreed with the Office of Public Works and in consultation with the Department of the Environment, Heritage and Local Government, Dublin City Council, and other key stakeholders. To facilitate the sensitive heritage and environmental aspects in the area, specialists — including conservation architects, archaeologists, and arboriculturists — are currently being taken on board to advise on these significant matters. A detailed landscaping plan to reinstate the park will also be agreed with the OPW. Prior to any work being carried out, detailed surveys, reports and photographic records will be commissioned and agreed with the OPW.

St. Stephen's Green is a national monument in the ownership of the Minister for the Environment, Heritage and Local Government. Under section 14 of the National Monuments Act 1930, as amended, any proposed works at or in proximity to a national monument in the Minister's ownership or guardianship require the Minister's written consent. The Minister is required by law to consult with the director of the National Museum of Ireland on any application for his consent under section 14.

In drafting the legislative amendment I have consulted fully with my colleague, the Minister for the Environment, Heritage and Local Government, and care has been taken to ensure that the Minister's powers of consent under the National Monuments Acts 1930 to 2004 remain unaffected. Hence, while the relevant provisions of the 1877 Act will no longer apply to the proposed metro north and interconnector projects, there remains a separate robust statutory process whereby the written consent of the Minister for the Environment, Heritage and Local Government is required for any works that will impact on the built heritage of the green proposed in regard to these projects. Moreover, that consent cannot be granted without the Minister having first consulted with the director of the National Museum of Ireland.

My Department and the Department of the Environment, Heritage and Local Government and the Office of Public Works are in ongoing consultation with the RPA and its consultants on the potential impacts to the green from these projects and have and continue to work to ensure that the impacts on this unique national monument are minimised to the fullest extent possible in terms of the continued protection of its archaeology, architecture and the natural environment. However, given the scale of these public transport infrastructural works, it is inevitable that there will be considerable disruption to the green for a number of years. Ministerial amendment number 89 provides for the amendment of the Long Title to the Bill to reflect the effect of amendment 88.

**Senator Paschal Donohoe:** The work that will take place on St. Stephen's Green is probably a symbol of the kind of change that Dublin will undergo in the future in order to get ready to meet the demands of a rising population and given the environmental demands placed upon us due to global warming. The debate that will begin regarding St. Stephen's Green will be long and emotional. The level of emotion raised on the work that took place in Eyre Square is a sign of what is to come when it becomes clear what will happen to St. Stephen's Green.

That is an indication of the need for the Dublin transport authority, which is the reason I have tried to be supportive of the direction the Minister is going on this issue. We must have a body that will ensure that we do not face a situation in the future where major disruption will take place that could have been addressed in the past.

In terms of what will happen in St. Stephen's Green, two priorities are important. The first is the need for transparency. The Department of Transport and the Railway Procurement Agency must outline to the concerned public the stringent consultation they are undergoing with bodies such as the National Museum to ensure legitimate concerns about what is due to take place can be met. Second, we must ensure that what will be built in St. Stephen's Green in the coming years is genuinely beautiful. People must be able to walk into the new metro stop, the interconnector and the surrounding environment and believe that the disruption they have undergone and the temporary devastation of the green was a price worth paying for what they are enjoying. Those two priorities will be vital for dealing with what will be heated public debate.

Following the Minister's explanation I understand the reason it is necessary to make the changes to this legislation. I urge him to do all in his power to ensure that the process regarding St. Stephen's Green is transparent and that the very highest standards of design and beauty are met in terms of what will take its place in the future.

**Deputy Noel Dempsey:** I thank the Senator for his approach to this enormously sensitive issue. There will be disruption to people and to the green itself. I agree with the Senator that the more open and transparent that is, the better it will be for everybody. Equally, we must be able to give an assurance, which we can, that when works are finished and the green is restored it will be to its former beauty. I give that commitment here.

**Senator Paschal Donohoe:** I am conscious of much of the debate that took place recently regarding a draft plan that arose from the Oireachtas transport committee of which I am a member. Many people responded to that plan in respect of cars being taken out of the city centre and the effect of that not only on residents but on businesses also. The Minister is already aware of this point but I must take the opportunity to emphasise it. It is important that we do all we can to ensure that people do not have the perception that the city centre is closed for business. Many businesses are having a difficult enough time due to the current economic environment but they have done an amazing job of making our city centre a more vital and enjoyable place in which to shop. They have responded very well to the challenges from some of the out of town shopping centres that have huge support.

Not only must we do all the work necessary to ensure the concerns of the public and residents are allayed, we must ensure also that people do not take the view that our city centre is closed for business, whether it be St. Stephen's Green, O'Connell Street or the surrounding streets. If they have that perception, people might decide it is too high a price to pay. If we reach that tipping point, not only will we regret it for years to come but our successors will regret it also. It is important the Minister does all he can to ensure we do not get to that point.

Amendment agreed to.

Section 114, as amended, agreed to.

TITLE.

Government amendment No. 89:

In page 9, line 19 after "OFFICE" to insert the following:

“, TO PROVIDE THAT SECTION 15 OF THE SAINT STEPHEN’S GREEN (DUBLIN) ACT 1877 DOES NOT APPLY TO INSPECTIONS, SURVEYS OR RAILWAY WORKS OR THE OPERATION OF A RAILWAY, LIGHT RAILWAY OR METRO UNDER THE TRANSPORT (RAILWAY INFRASTRUCTURE) ACT 2001 OR UNDER SAINT STEPHEN’S GREEN”.

Amendment agreed to.

Title, as amended, agreed to.

Bill reported with amendments.

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

**Senator John Ellis:** On Thursday, 15 May 2008.

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

**Senator John Ellis:** At 10.30 a.m. tomorrow.

### **Adjournment Matters.**

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### **Oncology Services..**

**An Cathaoirleach:** I welcome the Minister of State at the Department of Health and Children, Deputy Andrews, to the House. I congratulate him on his appointment and wish him well in the future.

**Senator Pearse Doherty:** Cuirim fáilte roimh an Aire Stáit, an Teachta Barry Andrews. Tá súil agam go n-éireoidh go maith leis sa phost úr atá aige. Ní bheidh mé i bhfad, siocair go bhfuil agóid á reachtáil ag cumann Gaelach Sinn Féin anocht mar gheall ar cheist an tumoideachais taobh amuigh de na Gaeltachtaí. Tá sé ag tosnú i gceann cúpla nóiméad.

Is é an fáth go bhfuil mé ag tabhairt an ábhar seo os comhair an Seanad inniu ná go bhfuil eolas le fáil againn ón Roinn Oideachais agus Eolaíochta, nó ón Roinn Sláinte agus Leanaí. An seasann an Aire, an Teachta Harney, leis an méid atá ráite aici cheana fhéin ó thaobh seirbhísí raidióteiripe de — go háirithe an méid atá sa straitéis ailse a foilsíodh anuraidh? There is a need for clarity regarding the position of the Minister for Health and Children as to whether it remains the same that, in order to provide a safe and efficient radiation oncology service to a given region, a critical mass of population of 500,000 must be in place. That was reiterated by the Health Service Executive’s cancer control strategy of last year.

I raise this issue because my party colleague, Deputy Caoimhghín Ó Caoláin, posed a parliamentary question but the Minister refused to answer it, which is becoming commonplace. The questions are always referred to the HSE. The Deputy’s question was a simple one. Is this still the Minister’s position? I raise this Adjournment matter because for many years the people of Donegal campaigned long and hard for radiation oncology services. We have been told time and again that it would be unsafe to provide those services in Letterkenny General Hospital for the population of Donegal, which is around 150,000, because international best practice says half a million people would be needed. It would take four linear accelerators to treat those patients in a safe environment. The key word is “safe”.

People will accept that we need to have services provided in a safe environment but in recent weeks the former Minister of State at the Department of Health and Children, Deputy Pat The Cope Gallagher, turned the sod on the private, for-profit Wyndale Clinic in Letterkenny, not far from the general hospital. Mr. Pat Harvey is leading that consortium and he was a senior member of the HSE. He was CEO of the North Western Health Board until recent years and was formerly general manager of Letterkenny General Hospital. He contends that international best practice will allow him develop and deliver radiation services for the people of Donegal, with no need for a catchment area of 500,000 people. He will do this in a safe environment with two linear accelerators. He and his private investors will seek to enter service level agreements and the former Minister of State at the Department of Health and Children indicated this when speaking on Highland radio.

Has the Department of Health and Children changed its tune? Will we amend the national cancer control strategy or has the Minister changed her tune? Is it now safe for private or public cancer radiation services to be delivered to a population under 500,000, using two linear accelerators rather than four? This is a question that is in the minds of those in communities I represent, as was evidenced when 15,000 people took to the streets of Letterkenny in 2006 demanding the provision of adequate public cancer services for the north west.

Has the attitude of the Minister changed? I do not support what is said in the cancer control strategy — there are major questions relating to cancer services for Sligo and other regions. However, I am focusing my argument on whether the Minister, the Department and the Government agree that their stated position remains the same. Or is it now safe to buy services that are under the level deemed acceptable by the Department and in the cancer control strategy from a private clinic ?

**Minister of State at the Department of Health and Children (Deputy Barry Andrews):** I thank Senator Doherty and the Cathaoirleach for their kind remarks. I will be taking this Adjournment matter on behalf of my colleague the Minister for Health and Children, Deputy Mary Harney. I welcome the opportunity to set out the current position to Senator Doherty regarding the provision of radiation oncology services.

The Health Service Executive established a national cancer control programme in 2007 to implement the recommendations in the national strategy for cancer control, which was agreed by Government in June 2006. The programme involves the designation of four managed cancer control networks and eight cancer centres as recommended in the national strategy. Each of the designated centres will serve a population of approximately 500,000.

The Department is working closely with the HSE in implementing the national plan for radiation oncology, which was agreed by the Government in July 2005. The plan, which forms part of the national cancer control programme, consists of four large centres in Cork, Galway and Dublin — at St. James's Hospital and Beaumont Hospital — and two integrated satellite centres at Limerick Regional Hospital and Waterford Regional Hospital.

The report on the development of radiation oncology services agrees, in principle, with the existing international recommendation that a population of greater than 650,000 should, where possible, be the minimum population necessary to support a radiation oncology unit. This population, of itself, is not sufficient without adherence to additional quality and safety guidelines. For example, the majority of radiation oncology treatment facilities should be located within the context of a designated cancer centre.

The overarching objective of the national plan for radiation oncology is to deliver high quality, fully integrated, multi-modal cancer care nationally. The Minister's intention is for radiation oncology services for public patients to be provided solely within the national model, once established. In the interim, however, the Minister has asked the HSE to give consideration to opportunities for availing of radiation oncology capacity which exist in the private sector, conditional on adherence to quality assurance standards.

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Developments to date in the radiation oncology plan include the procurement of additional capacity, two linear accelerators, for St. Luke's Hospital, Rathgar. The first linear accelerator was commissioned in February 2008 and the second was commissioned in March 2008. Two replacement linear accelerators will be commissioned later this year. It has been agreed that the phase 1 facilities at St. James's Hospital and Beaumont Hospital will be increased from four linear accelerators to eight, four at each site. The HSE has confirmed that it will have in place radiation oncology capacity to meet the needs of the population by 2010. After 2010 the HSE will continue to increase capacity to ensure that these needs continue to be met.

Cancer patients in the north west requiring radiation oncology treatment are referred to either St. Luke's Hospital, Dublin, or University College Hospital, Galway. In addition, since 2006 a service level agreement has been in place for the referral of radiation oncology patients from Donegal to Belfast City Hospital.

The Minister met Minister Michael McGimpsey, MLA, of the Department of Health, Social Services and Public Safety in Northern Ireland on 28 November 2007. The potential for further cross-Border collaboration on cancer care and, specifically, the provision of a satellite centre for radiation oncology in the north west, linked to Belfast City Hospital, was discussed. The Minister welcomed Minister McGimpsey's announcement last month of the provision of a satellite centre, linked to Belfast City Hospital, to be located in Altnagelvin. It will provide the additional radiotherapy capacity needed to meet an anticipated increase in cancer in Northern Ireland and recognises the potential for cross-Border co-operation in the development of this resource. Officials from the Department and the Department of Health Social Services and Public Safety will hold further discussions in this regard.

The Government is committed to making the full range of cancer services available and accessible to cancer patients throughout Ireland in accordance with best international standards. The developments that I outlined here today will ensure that a comprehensive service is available to all patients with cancer.

**Senator Pearse Doherty:** I thank the Minister of State for that clarification and I welcome the developments that have taken place regarding a North-South approach to radiation oncology in the north west. The timeframe of 2015 is not acceptable and we must accelerate it if possible.

The Minister of State said there is agreement "in principle, with the existing international recommendation that a population of greater than 650,000 should, where possible, be the minimum population necessary to support a radiation oncology unit". He went on to say that the HSE has been asked "to give consideration to opportunities for availing of radiation oncology capacity which exist in the private sector". If it is not safe to provide this within the public sector for a population of less than 650,000, how can it be safe to provide it in the private sector for a population of less than 650,000? I understand the Minister of State does not cover this brief but should the HSE and the Department buy services that may not be safe and that would not be built in the public sector? I ask the Minister of State to take these comments to the Minister for Health and Children, Deputy Mary Harney.

### **Garda Stations.**

**Senator Cecilia Keaveney:** I thank the Cathaoirleach for allowing me to raise the issue of a 24 hour physical Garda station for Carndonagh, which would service north Inishowen. I also thank the new Minister of State, Deputy Barry Andrews, for taking Adjournment matters in the House this evening. He may not be the Minister for Justice, Equality and Law Reform but he is nearly as good because he is now in charge of an area that is relevant to the issue I am raising.

The people of Inishowen are good and law-abiding almost all of the time. In Dublin there may be serious crimes including murder and major drug issues but in Inishowen we see a great deal of petty crime, including public order offences. Much of the time these crimes are commit-

ted by a small number of youths so this area is relevant to the Minister of State in his new role of responsibility for children and youths. He has a major part to play in helping us help those who wish to be valued as members of society and to bring those causing bother back into line, if possible.

I am here to talk about Carndonagh, one of the priority locations in the Garda Síochána's building programme. I was told in February that it is intended to build a new Garda station there. At that point a site had been identified and the Office of Public Works, OPW, which has responsibility for the construction and maintenance of Garda accommodation, was in the process of acquiring it. Where does this process stand at the moment? Once that was done the OPW and the Garda authorities were to bring forward detailed plans for the new station.

One of the last functions of the former Taoiseach, Deputy Bertie Ahern, was to turn the sod for the new Garda station at Buncrana, a €24 million investment. At one point I thought the Buncrana and Carndonagh stations would run in tandem in terms of acquisition of sites and building. Ultimately, there is a 24 hour service in Buncrana, but anyone who knows Inishowen will appreciate the sheer distance from one side to the other. Carndonagh Garda station is so small that it would fit in the Visitors Gallery of the Seanad. There is no debate as regards the need for the new station, but there is a certain urgency, as far as I am concerned. Local knowledge indicates that the site should be acquired by the Garda, because it has been looked at and talked about for a long time. I want to keep up the pressure to ensure that it becomes a reality.

I want to take the opportunity while the Minister of State, Deputy Barry Andrews is in the House, to say that the youth diversion programmes have been enormously important and successful, where implemented. I assume the Minister of State's role, within youth affairs, will cross over a number of Departments. A radio programme last night made light of the fact that some of the Ministers of States crossed over a number of Departments. However, it is only logical that Ministers of State in particular should not only have the right to cross over Departments, but should be supported in their interdepartmental roles. There is no point in talking about youth affairs unless the Minister of State can talk to the Minister for Justice, Equality and Law Reform about supporting youth diversion programmes, for example. The need to talk to young people about what they are interested in, should be explored. There is a good deal of investment in sport, which is a great diversion for the youth. However, some people are not into sport, and therefore other facilities must be found for them.

Some people say that a great deal of effort and resources are targeting the minority of people who cause bother rather than the vast majority who do not. However, if we focus on investing in youth services, which will of interest to the Minister of State, Deputy Barry Andrews, into the future, then a Garda station will be more of a social phenomenon, a place where people may go to get their forms signed. If people have to be detained, for whatever reason, they may be safely detained. At the moment, the geographical distance between one location of the peninsula and another needs to be considered, as I have said. There are some 30,000 people on Inishowen, which in demographic terms is equivalent to Counties Louth or Leitrim. People argue that it is only a small place, but distance there between one place and another is exacerbated by the fact that the Buncrana station is advancing well, while Carndonagh Garda personnel are forced to work in impossible conditions.

I welcome the advent of more female gardaí, but in the event there must be facilities for them, and many of the stations need to take this into account. To be mildly controversial in this regard, sometimes the numbers of operating gardaí will remain fixed regardless of whether a garda takes maternity leave — with the mother-to-be still on the books. The difficulty is that from the moment a garda becomes pregnant, she is put on desk duty, and then takes maternity leave. This means that the real as distinct from the actual numbers can sometimes be slightly different. However, the facilities need to be put in place for all eventualities.

**Deputy Barry Andrews:** I thank the Senator for raising this matter and affording the opportunity to set out the position with regard to the provision of a new Garda station in Carndonagh, to serve the north Inishowen area of County Donegal. Unfortunately, the Minister for Justice Equality and Law Reform, Deputy Dermot Ahern, is unavailable to take this debate although I am, of course, happy to stand in for him.

Carndonagh is one of the priority locations on the Garda Síochána's building programme and it is intended to build a new Garda station there. A suitable site has been identified and the Office of Public Works, which has responsibility for the construction and maintenance of Garda accommodation, is in the process of acquiring it. Once this is done the OPW and the Garda authorities will bring forward the necessary detailed planning for the new Station.

The Government and the Minister are strongly determined to ensure that An Garda Síochána is provided with the necessary personnel and equipment to undertake its role effectively and efficiently. This Government will continue the commitment, clearly demonstrated in recent years, to ensure that the Garda Commissioner has the necessary financial and other resources available to him for the force. This year the Garda budget stands at over €1.6 billion. This level of resources is an unprecedented investment in policing, representing an 11% increase on the Garda budget for 2007.

There is a significant ongoing programme for the replacement and refurbishment of Garda stations and other premises around the country. Under the national development plan a sum of €260 million is assigned for Garda stations and other accommodation. The programme is drawn up by the Commissioner, based on his analysis of needs around the country, and in consultation with the Garda representative bodies. The building programme is then put in place by the Office of Public Works, working in close co-operation with the Garda authorities. In addition to the building programme, a total of €9.5 million is available in the Garda budget this year for the ongoing maintenance of Garda premises.

The House should also note that the OPW is currently carrying out a review of a large number of stations in rural locations around the country in consultation with An Garda Síochána with a view to putting in place a targeted programme of renewal. The results of this review will feed into a broader Garda accommodation strategy which is being developed at present by An Garda Síochána.

North Inishowen forms part of the Donegal Garda division. The personnel strength of the Donegal division at 31 December 2002 was 416 and the personnel strength at 31 March 2008, the latest date for which figures are available, was 497. This represents an increase of 60, or 12.6%, in the number of personnel allocated to the Donegal division since 2002.

The north Inishowen area is covered by the Buncrana Garda district which is made up of the following Garda stations: Buncrana, Burnfoot, Carndonagh, Clonmany, Culdaff, Malin, Merville and Muff. Over the five year period from 31 December 2002 to 31 December 2007 the personnel strength of the Buncrana Garda district increased by almost 14.5% from 77 to 90. Policing in the area is supplemented of course by divisional resources when this is necessary, including from the division's detective, traffic and other units.

Buncrana Garda station is open to the public on a 24-hour basis. Members of the House should be aware that an extension of the opening hours of any of the other Garda stations in the Buncrana Garda district would require the deployment of additional personnel on indoor administrative duties when these personnel may be more effectively deployed on the beat on outdoor duties.

A specific rural policing initiative was launched in February in the north Inishowen area which involves two sergeants and 12 gardaí. It covers the sub-districts of Carndonagh, Clonmany, Malin and Culdaff. This initiative is currently being reviewed by the Garda authorities to identify how the policing service to the community in the area might be enhanced. The view expressed by the Garda inspectorate in its most recent report, that community policing is a fundamental policing philosophy and that it is based on strong foundations in Ireland, is one

which I know the Minister and the Commissioner share fully. Indeed, one of the six strategic goals set out by the Commissioner in the 2008 policing plan involves community engagement aimed at building a Garda service that reflects people's needs and priorities.

The assignment of Garda personnel throughout the country, together with other resources, overall policing arrangements and operational strategy are continually monitored and reviewed. This monitoring ensures that optimum use is made of Garda resources and the best possible Garda service is provided to the general public.

**Senator Cecilia Keaveney:** I want to add one point. With respect to the Minister of State, I read my copy of the Adjournment matter on Wednesday, 13 February, and it conveyed the same information, although in slightly different order. I ask the Minister of State to convey to the Minister for Justice, Equality and Law Reform the fact that I was looking for an update as regards the Garda station in Carndonagh — and all of those things were under review. The phrase I use there is precisely as it was in the document of 13 February. I was asking whether the site had been bought, if the OPW had brought forward the detailed planning for the new station and what the timeframe is. Perhaps the Minister of State will get the Minister to come back to me on the specific points.

### **National Monuments.**

**Senator Michael McCarthy:** I congratulate the Minister of State, Deputy Barry Andrews, on his appointment with responsibility for children. I wish him well in this important and difficult position which requires his attendance at Cabinet.

Much good work has been done to Ballinacarriga Castle and improving the general look and services of the surrounding area by the local residents' association. The medieval castle, which as the fellow said was built when planning permission was not required, is situated between Dunmanway and Ballineen on a rocky eminence overlooking Ballinacarriga Lake. It is a beautiful tourist attraction of which people in the area are proud.

In recent times a committee was formed to improve the general area, working in conjunction with Cork County Council and others. The Office of Public Works has been requested by various parties in the past to install floodlights for the castle. It is important that it occurs because it will benefit tourism in the area which in turn benefits the local economy. It showcases what is best about the country. There is much appetite in the locality to improve the overall facilities in the area. The vibrant local GAA club is fund-raising to expand its facilities. All is indicative of the community spirit that exists in the area. I must state an interest as I have been residing in Ballinacarriga since I got married last year. I hope the Minister of State, Deputy Barry Andrews, will impress upon his colleagues the importance of floodlighting this castle.

**Deputy Barry Andrews:** I thank the Senator for his best wishes and congratulate him on his recent big news. Ballinacarriga Castle, a national monument in State care, is a fine four-storey castle built by Randal Hurley around 1585. The castle is in reasonably good condition with routine maintenance and minor works carried out on a regular basis. There are no plans to install floodlighting at the castle.

A review of the impact of floodlighting on national monuments in State care is being undertaken which will inform future policy on this matter. Over the past several years, the number of requests received for permission to floodlight heritage buildings and national monuments has risen sharply. It has been a concern to those involved with site conservation and safety that different criteria and standards have been used in the evaluation of these proposals due to the lack of a clear and defined policy. The review, therefore, will look at the various issues to be considered and evaluated before reaching decisions on floodlighting schemes at heritage properties in State care.

Various matters in the policy review will be considered. For instance, if the building or structure involved is not only worthy of floodlighting, but floodlighting would enhance the

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structure. Most State heritage properties are maintained or presented in a ruinous state and situated in rural settings. The desired effect resulting from professional quality floodlighting is to enhance in a dramatic way the night-time presentation of the building.

This desired result also makes them attractive to certain individuals for various night-time purposes which could possibly result in either harm to the individual or to the property. Great care has to be afforded to ensuring heritage properties are safe places for people to see and enjoy. The primary goal in any floodlighting policy is that this safety factor is emphasised.

The preservation of the archaeological integrity and amenity of heritage sites is a primary consideration. The installation of any floodlighting system requires ground disturbance and the impact, if any, on the archaeology of a site must be of primary consideration in determining whether a scheme can proceed. All proposals will have to be assessed on their possible impact on the archaeology of the particular site.

Any proposal for floodlighting should not damage a building structure. In general, no fixtures or fittings should be attached to a building or structure. Light encourages the growth of vegetation which, if it becomes excessive, could impact on the masonry of the structure. The number, size and location of light fittings must be carefully evaluated to ensure the extended light period will not unduly encourage the growth of vegetation. Floodlights can have a disorientating effect on certain animals. All floodlighting proposals must have regard to impacts on wildlife present in an area. An ecological impact assessment must also be undertaken.

The type of floodlighting can have a positive visual impact on a landmark building or structure. It would not be acceptable, however, if the night-time benefits were achieved as a result of any negative impact on the daytime amenity of the site. Any scheme that would require the addition of extra overhead cabling, poles or large unsightly lights might not be acceptable.

In keeping with the requirement to maintain the amenity of the site, the type of fixture and fitting used in the scheme is very important. Not only have the fixtures and fittings to be as unobtrusive as possible, they must also be of a kind that will not be a cause of light trespass to other property owners in the immediate area. They must also be fitted and maintained in a manner that will not cause glare to motorists or pedestrians.

The issue of light pollution is also a concern. Every effort must be made to ensure any activity is not adding to environmental pollution. Careless use of outdoor lighting damages the night-time environment in many ways. The loss of the dark star-filled sky as a result of inappropriate lighting could be a negative consequence for the wider environment. Careful and considered use of lighting at night, used only when and where it is needed, would allow a community to truly appreciate the visual attractiveness of a floodlit structure.

These factors are the subject of this review. When the review's results are available, further consideration to the floodlighting of Ballinacarriga Castle will be given.

**Senator Michael McCarthy:** May I remind the Minister of State that the McCarthys, the last high kings of Munster, occupied the castle before the Hurleys.

Ballinacarriga Castle is a large attraction in the locality. Much praise must be given to the castle's caretaker who has maintained the site and allows access to visitors. It is important a balanced consideration is given to floodlighting this structure. Is there any timeframe for when the review process will be completed?

**Deputy Barry Andrews:** I will bring the matter to the attention of the Minister in due course.

The Seanad adjourned at 6.25 p.m. until 10.30 a.m. on Wednesday, 14 May 2008.