



# SEANAD ÉIREANN

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*Dé Máirt, 30 Meitheamh 2009.*  
*Tuesday, 30 June 2009.*

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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 received notice from Senator Frances Fitzgerald that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

The need for the Minister for Education and Science to outline the progress regarding a future site for Scoil na Camoige, Clondalkin, Dublin 22; and where third and fourth class children will be accommodated next September.

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

The need for the Minister for Health and Children to outline the manner the youth activities of both the National Youth Council of Ireland and Dáil na nÓg are highlighted at national level and the role, if any, he sees for Seanad Éireann in discussing their reports and other reports such as the Council of Europe sub-committee relating to youth affairs.

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

## **Order of Business.**

**Senator Donie Cassidy:** The Order of Business is No. 1, Criminal Justice (Surveillance) Bill 2009 — Second Stage; and No. 2, Broadcasting Bill 2008 [*Seanad Bill amended by the Dáil*] — Report and Final Stages. It is proposed that No. 1, shall be taken at the conclusion of the Order of Business. Spokespersons may speak for 12 minutes and all other Senators for eight minutes. Senators may share time, by agreement of the House. The business of the House shall be interrupted for ten minutes at the conclusion of No. 1.

**Senator Frances Fitzgerald:** A number of significant reports have been made recently. There is the IMF report and the report of the National Competitiveness Council and I believe the Minister for Finance will tonight receive the report of an bord snip nua, identifying where there has been waste and where savings of, it is reported, as much as €5 billion could be made.

Leaving aside the question of why the Government needs an outside body like an bord snip nua to examine these issues, is it intended that this report will be published? When we are talking about taxing or means-testing child benefit, a decision which would have a serious impact on many families, if not all, and when many children are in the front line of cutbacks, as we saw last week when we discussed the situation in Crumlin hospital, it is imperative that

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the Government should publish this report in the interests of accountability and transparency. When we are talking about reaching across the political divide and taking the best possible decisions for the economy, there is a moral imperative on the Government to publish it.

If the report shows there are €5 billion worth of savings to be made it is an indictment of policies and raises questions as to why these decisions have not already been taken by the Government in this crisis. In the proliferation of reports we see at present, it appears we are always one report away from a solution, whether it is in regard to making savings, competitiveness or saving small business.

The Government has set up yet another new body, an economic policy group. However, there are very few, if any, representatives of small business on that body. Senators in this House have said time and again that if the country is to survive, we must support indigenous medium and small businesses. Senator Mary White has spoken about this a great deal, and she is very experienced in this area. It is extraordinary that although there are people on this body who know about small business, there are no direct representatives of that sector on the body. Will the Leader take up these points and, perhaps, report to the House in the course of the week on the Government's intentions regarding this report? There is a need to discuss these reports in the House before the end of the session.

**Senator Joe O'Toole:** I raised previously the need for this House to discuss the Government's response to the Ryan report, which is not due to be published until the last week in July. I believe the House should reconvene to discuss that, if only to show to the victims our concern and where we stand on these issues.

A huge amount is taking place under the radar in this regard. Over the last week or so I have been dealing with a case that dates from 1955. Ireland was a depressed country at the time and the father in the case was working in England, trying to get money together. The mother became ill and their youngest child, an 11 month old baby, could not be looked after at home. It was suggested that she be looked after for a fortnight in Goldenbridge while her mother convalesced. A healthy child went into Goldenbridge but four days later the child was dead. A telegram was sent to the father in England telling him the child died of dysentery. He came home immediately and went to see his child in St. Ultan's Hospital in Palmerstown and, to his horror, discovered two identical holes on each of the child's knees. He realised there was some other cause of death. He went to the Garda station and reported that he believed his child had been killed or murdered. He demanded that it be investigated but was fobbed off.

Now, no record can be found of anything I have just outlined, except the child's death certificate which states she died of dysentery. This is the fall-out from the Ryan report. What does this family want? They think they have identified where the baby is buried and want to have her body exhumed to try to establish the cause of death, if that is possible. They certainly wish to establish her identity. This baby was under the care of the Sisters of Mercy who refused to discuss the case with the parents. There is much talk about people apologising, showing remorse and forgiveness. This family is worrying, crying and emotional about this to this day. The parents have gone to their graves.

That is the reason the House must reconvene to deal with these issues. We must examine cases such as baby Marion Howe. Having looked through the section on Goldenbridge in Volume III of the Ryan report there is no reference, good or bad, to any babies dying. One wonders how much more there is to hear about and discover. It is important that we revisit the matter.

**Senator Dominic Hannigan:** I welcome this morning's report from the Competition Authority on the price of goods in the Republic. One of its findings is that food prices in the South are 30% higher than those in the North. Last month, Tesco made many cuts to food prices in its stores in Border areas and last week SuperValu made almost €100 million worth of cuts, a move it says will help to reduce food prices by 23%. That is all very welcome. Members of the House have been calling for such action for some time. However, I am concerned about the permanence of some of these cuts. This morning in Dublin Tesco announced further price cuts, using the phrase, "Change for good". I am not sure if that message is getting through to some of its stores in the Border region. *The Irish Times* carried out a survey yesterday in the Drogheda store, which had many of the price cuts announced last month, and found that prices of some goods have increased again. Tesco admits that prices of 200 different products have risen in the past month. I believe it is important that when people say "Change for good" they mean long-term reductions. We must keep pressure on these retailers to ensure these reductions are indeed long-term ones and not short-term publicity-seeking attempts.

I am very pleased to see the publication of legislation in respect of civil unions. The Civil Partnership Bill has many fine points such as issues relating to inheritance rights, power of attorney and next of kin. I note the Government has stated it will deal with other matters such as tax and social welfare issues in the Finance Bill in December. I accept the Government's commitment to do this and we will keep a very close eye on it to ensure it delivers on that commitment. However, I am disappointed the Bill does not address the issue of children, many of whom are affected in this country. This needs to be addressed and we must have a debate on the matter when the Bill comes before the House.

I express my congratulations to my fellow Senator, Michael McCarthy, on the birth of his child last week and to Senator Lisa McDonald on the recent birth of her child.

**Senator Terry Leyden:** Senator Fitzgerald raised the matter of an bord snip nua and the report by Mr. Colm McCarthy. First, the report should be considered by the Government before it is published but the Government should publish it subsequently before any decisions are made in order to allow people to absorb the seriousness of the situation. Senators could make observations in this House to the Government regarding the decisions that must be taken. A consensus must be reached regarding the proposals which I understand are proposed by an bord snip nua. If the Government does not release a report I am sure it will be released by Sunday week in the national newspapers. It is circulating so much through the system that someone will make the media aware of what it contains. I would like to have it up front and on the table so that people can see what is involved.

**An Cathaoirleach:** Questions to the Leader please.

**Senator Terry Leyden:** It would be worthwhile to have a debate in this House, if possible, on the report by Mr. Colm McCarthy when it is published by the Government. We can discuss the steps to be taken.

Regarding the economic debate which has been discussed and promised, I am concerned about export credit insurance, which is extremely difficult for small businesses to obtain at present. There are some indications that there is an increase of up to 300% in the cost of getting export credit insurance. When I was in the Department of Enterprise, Trade and Employment, export credit insurance was vital. It was the engine of our success in increasing exports. We should bear in mind that we traded approximately €86 billion in 2008. In March there was a reduction of about 6% and it is now vital that the Government acts as other countries have done. Britain has brought in a scheme, as have Denmark and Luxembourg. We are competing with these countries and it is very important that the Department of Enterprise,

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Trade and Employment, should refer this to the committee which is advising the Government in this regard. Export credit insurance is absolutely vital if we want to maintain exports out of this country. Exports are vital for the survival of this country at this very competitive stage. I know from experience that export credit insurance is vital for small and large exporters. I ask the Leader that this subject might be incorporated into a debate on overall economic recovery and the economy.

**Senator Liam Twomey:** I ask for a debate in the House on the role of civil and public servants within this State. They have always remained very impartial in the way they carry out their duties. It is very important that when senior civil and public servants make public comments they are seen to be impartial by those who listen to their remarks.

I express concern at some of the comments made by the Governor of the Central Bank on the day of the local elections. He made a statement that the economy was improving without backing it up by any means. Any report published up to that time and since would not have given the same positive account. We should debate the matter to ensure people are not being influenced and people do not express their opinions publicly when their role is clearly to serve the State and the people impartially.

**Senator John Hanafin:** I also ask the Leader for a debate on the report of an bord snip nua when it becomes available. During the last debate on the Lisbon treaty, it seemed that a new question was put whenever another question was answered. For instance, if the question of neutrality was answered, a question was asked about taxation. If that was answered, some hidden codicil meant that a referendum could never be held again. This only goes to prove that the Seanad would be well served were all parties to table their proposals on what they believe are necessary taxes and cuts. It is what an bord snip nua is doing. Instead of the Opposition stating that X, Y and Z person would be hurt by every cut, the people would be well served were those parties to table their proposals, which they have never done. In every radio and television interview, Opposition parties have always refused to answer the simple question of what they would cut and what taxes they would introduce.

**Senator Jerry Buttimer:** Remember what the Government did in 1987-89.

**An Cathaoirleach:** No interruptions, please.

**Senator Jerry Buttimer:** Senator Hanafin was not referring to the facts.

**An Cathaoirleach:** Senator Buttimer will have his opportunity to speak, if he wishes.

**Senator Jerry Buttimer:** We are getting the same old spin from him every day.

**Senator David Norris:** I note with interest that the Civil Partnership Bill 2009 has been published. I cannot welcome it——

**Senator Joe O'Toole:** Hear, hear.

**Senator David Norris:** ——but I understand that a considerable amount of work has gone into it. An historic opportunity has been missed through a lack of vision on the part of Government. What we have is the copperfastening of inequality and discrimination, but it is an advance. When will the Bill be presented to the House and will it be introduced in this Chamber, where such legislation was pioneered some five or six years ago?

The worst aspect of the Bill is that the position of children is completely ignored. This is not a matter of sex or religion. Rather, it is about the rights of children. During the commemorations of the 1919 sitting of the first Dáil, we heard much bleating about cherishing the children of the nation equally and children's rights, but it looks as if the Government has learned nothing. It does not give a fish's tit for the rights of children, going by the Bill.

I also wish to raise a subject to which my good friend and colleague on the other side of the House, Senator Harris, will want to contribute, namely, the Shell to Sea campaign. He and I asked for a debate. I suggest that Members might like to look at the picture in last weekend's *Sunday Independent*. It shows an enormous ship with its jaws open like a dragon to devour the mineral resources of this country. Another picture shows a vast ship dwarfing one of the Naval Service vessels. The pictures tell us who is in control. All of the oil companies have their tongues out a yard long for oil. Its price is increasing as its amount decreases. Now is the time to renegotiate on behalf of the people. Shell can take our gas through our land and expose people to danger, but we have the opportunity to bid for it on the open market. Well, gee, thanks, Shell.

### **Visit of US Delegation.**

**An Cathaoirleach:** Before I call the next speaker, I am sure that Members of the House will wish to join me in welcoming a delegation from the United States of America led by Congressman Richard Neal. On my behalf and on behalf of my colleagues in Seanad Éireann, I extend a warm welcome to the delegates and a sincere good wish for a successful visit.

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

**Senator Eoghan Harris:** I will touch on two issues. Senator Norris and others will join me in expressing condolences to the Cloney family of Fethard-on-Sea, as Sheila Cloney has passed away. We salute physical force republicanism and physical force heroes, but we do not salute moral heroes sufficiently. The Fethard-on-Sea boycott was one of the shabbiest periods in history, but it was also one of the noblest. It saw great moral courage by Sheila Cloney who refused to give in to the infamous *ne temere* decree to rear a child as a Catholic and sent the child to Belfast. The child lived to take an active part in the divorce action campaigns of the 1980s. I was privileged to be involved in another project, as I suggested this story to the film makers of "A Love Divided", which turned out to be a popular film.

Two or three other people in that difficult period deserve credit. One is Donal Barrington, the great senior counsel and later a judge who showed significant moral courage. The other is Éamon de Valera, who stood up in the Dáil and effectively ended that boycott with one short, terse reprimand of those involved. I hope the Leader will write to the family and express the sympathy and condolences of the House. The Cloneys are one of Ireland's historic families.

Without anticipating the debate on an *bord snip nua*'s report, nothing could be ideologically clearer than our present position. We are seeking €5 billion and it must be found either by taxing the social welfare class — a voiceless class full of new recruits from the jobs market — or by tackling public sector pay. Instead of dealing with the matter in simple ideological terms, it has been obfuscated by RTE and other commentators right across the board. It has been obfuscated by talk about public sector expenditure cuts etc.

The public sector is objectively and relatively a privileged class. When I was a socialist, I would look around and ask who were the fat cats. If I were an active socialist today and looked around, I would realise the only fat-cat class, permanent and pensionable, is the public sector. While it is not the public servants' fault, the benchmarking system was not meant to give them 20% more than those in the private sector. Mr. Peter Cassells, former general secretary of the

[Senator Eoghan Harris.]

Irish Congress of Trade Unions, said that last week at the Seán Lemass conference. It is wrong that public servants are paid 20% more than their private sector counterparts; it must be taken back. If we want €5 billion, which is what we are looking for, the simplest way to get it is to cut public sector pay by 20%, or one fifth. That would yield the €5 billion and one would not have to target unmarried mothers, annoy anyone by means testing or torment the social welfare class. In doing so, the lead would have to be given by this and the other House. So far, the reason we are not hearing much debate on cuts of public sector pay in this or the other House is because we are up to our necks in it and our snouts are super-glued into the public purse.

**Senator Eugene Regan:** Let me draw the House's attention to the decision of the German constitutional court, which found the Lisbon treaty was compatible with the federal constitution. There are some adjustments required in domestic law but the fundamental fact is that it has been found that the Lisbon treaty is compatible with basic German law. The judgment found that the European Union is based on international law and the responsibility for integration remains with member states, which remain masters of the treaty. This clears the way for ratification of the treaty by Germany. The Czechs and Poles have approved the treaty and it remains to be signed by those countries' Presidents subject to the outcome of the referendum in Ireland. They will only sign when Ireland approves the treaty by referendum. We are back in the limelight.

All the member states want the treaty. We have an interest in it and have received our clarifications on taxation, neutrality and the right to life. It is an international treaty and, subject to ratification on the basis of the guarantees we received, it will become part of EU law. When will the Taoiseach announce a date for the referendum so we can start the campaign on making this very important decision?

**Senator Ann Ormonde:** On the last point, it is very important we keep the Lisbon treaty on the agenda and decide very quickly when the referendum should be held. It is more than necessary that we keep the debate alive.

I endorse the points raised by many speakers, including Senators Harris and Hanafin, on an *bord snip nua* and the question of where the cuts should come from. We should all make an honest contribution in this regard.

Today I note the Combat Poverty Agency is about to be integrated into the Department of Social and Family Affairs. Now that there is new thinking because of the downturn in the economy, perhaps the national action plan dealing with social inclusion should be revisited to determine what kind of programmes we could implement to tackle the new risks of poverty. I refer in particular to the service area, irrespective of whether it pertains to schools, health centres or social housing providers. The action plan, which was introduced in good times in 2007 and which is to cover the period to 2016, should be revisited in light of the changes that have taken place.

**Senator Fidelma Healy Eames:** Is the Minister for Education and Science aware of the plans of two primary schools in a well-off area of Cork city to hire a teacher privately and to levy parents to achieve that? This is a really serious development. It widens the gap between rich and poor as public education becomes a two-tier system. This is the result of cutbacks and will further institutionalise educational disadvantage. This plan will hit parents hard from 1 September when they will have to pay because they know the value of education. Will the Leader ask the Minister for Education and Science to respond to

3 o'clock

that question for me and this House prior to our summer break which will begin in two weeks? I would appreciate if the Leader could bring the Minister's answer back here.

I strongly support Senator O'Toole's remarks about the importance of keeping the Ryan report on the agenda. This is a history of shame in our nation and many continue to suffer. The Seanad should play an active role in ensuring the recommendations of the Ryan report are implemented. I would be prepared to put my shoulder to the wheel if the Seanad considers forming a sub-committee to ensure the recommendations are implemented so that these human atrocities never happen again.

**Senator Jerry Buttimer:** Well said.

**Senator Cecilia Keaveney:** I agree with the concept of having more emphasis on consumer watchdog activity so companies do not get free short-term advertising for something that they reverse when people are no longer aware of it. People living on the Border have been aware for some time about the price differential. While we like to wrap the flag around ourselves and be republican it is important to vote with our feet. That is the message for consumers in this report.

The Adjournment matter I have raised today for the Minister of State with responsibility for youth affairs relates to communications strategies here. I commend the initiative of the Oireachtas education programme going to schools and the activity last weekend of opening the Oireachtas for families to come to see what we do. Will the Leader inquire from the Committee on Procedure and Privileges, or maybe in the far off fields of Seanad reform, whether we can consider youth councils and Dáil na nÓg? We give them the potential to develop ideas, they come together to make reports which are published in nice colourful brochures yet how many of us see, read or react to them?

We are often criticised for travelling but last week I was at the Council of Europe with my colleague Senator Leyden and Senator Joe O'Toole.

**An Cathaoirleach:** Senator O'Toole was here.

**Senator Cecilia Keaveney:** I apologise, Senator Joe O'Reilly.

**Senator Joe O'Toole:** I would like to have been there.

**Senator Cecilia Keaveney:** The President of Ireland gave a presentation there about which representatives from 47 countries spoke for the entire week. I did a report on teaching history in areas of conflict and post-conflict that was unanimously approved on Friday morning after contributions from Georgia, Croatia, Russia, Turkey, Cyprus and many other countries——

**An Cathaoirleach:** The Senator can make that contribution on another day.

**Senator Cecilia Keaveney:** My question may apply to the Cathaoirleach and the Committee on Procedure and Privileges. How can we find a mechanism to come back here and tell either House about our activity and work? There does not seem to be such a mechanism and a lot of good work is being done but we are open to criticism because we cannot tell the House about it.

**Senator Jerry Buttimer:** I join Senator Healy Eames in urging the Leader to continue our debate on the Ryan report before the summer recess. As Senator O'Toole said, it is not good enough to park the debate now that the report has been published, and for the President, Mary McAleese, to make an apology and meet with the victims as she did last weekend. As the Second House of the Oireachtas we need to keep this debate going so we can keep the issue of the impact on victims alive and make changes to ensure this never happens again.

[Senator Jerry Buttimer.]

Like Senators Hannigan and Norris I welcome the publication of the Civil Partnership Bill. I pay tribute to Senator Norris for his fearless campaigning. When will it come before the House? I regret that we have not taken the opportunity to protect and enshrine the rights of children and it is important that we do so.

This morning, we received a very important information leaflet from the Irish Tobacco Manufacturers Advisory Committee which identified that €387 million of revenue lost to the State as duty is not paid on one in five cigarettes consumed. That is a savage amount that is being denied to the State. It is done through the illegal activity of criminals who have no interest in the State. I ask the Leader for a debate on the importation and smuggling of cigarettes and on the role of Revenue.

Will the Leader bring Mr. McCarthy, the chairman of an *bord snip nua*, before the House to debate with him the remit of his committee and what it proposes? Unlike Senator Harris, I worry that we are demonising public servants in this House and in the debate throughout the media. We should avoid pitting private sector against public sector. Many thousands of good public servants do great work. Senator Harris is correct that it is not their fault benchmarking was introduced. We should stop demonising public servants. They do a valuable job for our country and perform a great service, and we should not be derogatory towards them in any way. What we should be derogatory towards is the fact that the Government awarded them benchmarking in the first place; that is where the mistake was made.

**Senator Marc MacSharry:** I join Senator Leyden in calling for a debate on export credit insurance, given its importance at present. In times with such challenging news on an ongoing basis, I welcome the fact that the value of exports rose by 5% in April and in the same period imports fell by 6%, which increased the State's trade surplus. That is a very strong and encouraging performance at a time when worldwide all economies are recording strong declines in trade. I also welcome the news in recent days that consumer confidence is up to a 14-month high and there are a number of factors for that. It is important that when we have such challenging decisions to make we note good and positive developments.

On the recommendations made by Colm McCarthy's group on the savings of up to €5 billion, it would be much better if Members of the House came up with their suggestions on where the savings could be made rather than react to what it is clear will be very stark and difficult recommendations. It will be extremely difficult to have consensus on a set of recommendations where cuts are involved. Ultimately we will all want to see €5 billion in cuts provided we, as collective people — I do not mean us as politicians — are not affected. No sector wants to be directly affected. It will require many painful decisions and I ask the Leader for some time to be made available, sooner rather than later, so we can come up with our own suggestions on what priorities should be made for those cuts. I do not know whether the report in its entirety will be published prior to the summer recess or whether our reactions to those proposals can be as proactive as I know Members of the House would be anxious that they be to achieve the levels of savings required.

**Senator Labhrás Ó Murchú:** Tá an samhradh ag sleamhnú thart anois agus deirtear go mbeidh reifreann nua againn maidir leis an gconradh Liosbón san fhomhar. Tá súil agam idir an dá linn go mbeidh seans againn sin a phlé anseo mar má tá ceacht le foghlaim ón reifreann deireanach is é sin go gcaithfidimid éisteacht leis na rudaí atá rá ag na daoine atá i gcoinne an chonartha.

It is very important that the House has an opportunity to discuss the promised new referendum on the Lisbon treaty. There is always a danger that we might be lulled into a false sense

of confidence. There will be a very long period during the summer when we will not be involved in debate in the Houses of the Oireachtas. If the referendum is to take place some time in the autumn there might not be a great amount of time to debate the matter when we return after the summer recess. It is very important that we do not make some of the mistakes we made during the previous campaign. It is important we do not try to demonise people who are opposed to the treaty or look down on their views, because it is particularly important that we bring as many people as possible with us. It is accepted that in the current economic situation there may be a new sense of reality when the time comes to vote, but that should not be the main focus for us. There must be a commitment to what the Lisbon treaty is trying to do.

I recommend to the Leader that an invitation be given to An Taoiseach to come in here prior to the summer recess and let us hear precisely from the Government what exactly has been agreed in the new guarantees. I am confident about them and confident that they have a legal basis, but already I see mutterings outside questioning them. If that builds up and we are not able to respond in a coherent manner, we could find ourselves in exactly the same situation as we did before. I ask the Leader to accommodate my request and ask An Taoiseach to come in and let this House set the tone for the upcoming debate because it has to be set and we all must have a clear focus on what it is we want to achieve.

**Senator Feargal Quinn:** I congratulate all those involved in the arrangements last weekend for the family day in Leinster House. I am not sure who was in charge of it, but those who were involved deserve a great deal of credit. I heard many words from people who were pleased to be able to show their children and families how democracy works and it reminded me that although we see many schools in here, they do not often have the opportunity to understand how it works. It is very important. It also came to light when I met somebody last month who did not bother voting and said he never votes. I realised how sad it is that, having fought for and gained our democracy, some people do not regard it highly. Praise is due to those who organised the event.

I read that Wexford and Ennis became the cleanest towns in Ireland and Athlone and Mallow were at the bottom of the list. The point I noted was that a number of towns said they can no longer afford to employ cleaners to the same extent. We should not need cleaners. Those citizens among us who value our democracy and country will not drop litter on the ground in the first place.

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

**Senator Feargal Quinn:** It is our own behaviour. It is not a question of having to clean up afterwards, rather it is a question of making sure we behave ourselves.

I live near a beach and I am stunned every now and then to see the amount of litter left on it because people assume somebody will clean it up afterwards. We have to remind ourselves how fortunate we are to have the country we have and make sure we use our hands so it is not lost. I notice the biggest offender is chewing gum and yet I understand the chewing gum companies have supported the efforts to have chewing gum holders throughout the city — I am not sure if it is the same throughout the country. We have nobody to blame but ourselves if we have a country that is not clean. It is not because we do not employ enough people to clean up, but because we are making it dirty.

**Senator Paddy Burke:** There is no doubt that this economy needs a kick start and needs to grow. One area that could help is the tourism industry. I ask the Leader, as a matter of urgency, to have a debate on tourism. Recently, the hotel industry, golf clubs, restaurants and so forth have brought down their prices. They have made this country more attractive and competitive

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as a destination for tourists, not least for the domestic market. We need a debate on this and on reducing VAT for the food and tourism industries. In the aftermath of the Volvo race and the northwest car rally, we should examine how we performed and how valuable those events were to our economy. We could have a very valuable debate on tourism.

**Senator Rónán Mullen:** I know not everybody can be congratulated in the House, but special circumstances apply with regard to the excellent contribution made by John Bowman over the years on “Questions and Answers”. I am sure other Members will agree that he distinguished himself in his chairmanship of that programme at a time when many in these Houses feel the broadcast media is not always as impartial or professional as it might be. That could never have been said about Mr. Bowman’s chairmanship of “Questions and Answers”. I am very sorry to see an end to that programme.

I regret the delay in the publication of the mental capacity Bill as reported today. This is important legislation, especially considering the importance of issues such as the need to safeguard older people against financial abuse. Codes of behaviour for financial institutions would be contained in this legislation and I hope it will be published without delay.

Comments have been made about the Civil Partnership Bill which has been published. When listening to the debate in recent days, I was struck by the media’s presentation of this issue as though it was a debate between those who feel this is fully welcome and timely legislation and those who feel it does not go far enough. There is a third point of view — the one I hold — which is one of support for people in caring dependent relationships and for whom certain protections should be made available, while expressing concern that the legislation, as currently presented, is moving us towards a family diversity model and ignoring the real advantage we should all recognise——

**Senator David Norris:** Splendid, I wish it was.

**An Cathaoirleach:** No interruptions, please.

**Senator David Norris:** He is asking for it.

**Senator Rónán Mullen:** ——the real advantage for children in the family based on marriage between a man and a woman, which is statistically supported. I would like to see changes to this legislation and hope there will be a full and courteous debate on the issue. I intend to propose changes so that any protections to be enjoyed will be enjoyed equally by people in caring, dependent relationships——

**Senator David Norris:** The Senator would love to dilute any bit of decency, celebration or human rights out of it. We know that perfectly well.

**An Cathaoirleach:** Will Senator Norris please allow the Senator to speak without interruption?

**Senator David Norris:** He is inviting it.

**An Cathaoirleach:** Senator Norris had his opportunity to speak. It is now time for Senator Mullen.

**Senator David Norris:** It is part of the tradition of this House to interrupt contentious comments.

**An Cathaoirleach:** No interruptions, please.

**Senator Rónán Mullen:** I simply hope we will be able to have amendments that will provide that any benefits to be enjoyed by unmarried couples will be enjoyed by people in caring, dependent relationships of any kind.

**Senator Nicky McFadden:** Will the Leader arrange the meeting he agreed to arrange last week between Oireachtas Members from County Westmeath with the National Roads Authority? I am sure this is still uppermost in his mind and I look forward to the meeting as soon as possible.

The €3 billion provided to the Anglo Irish Bank was found within the Central Bank and if I, as a mother, had a child who was ill and in pain in Our Lady's Hospital for Sick Children, Crumlin I would find the money for the necessary operation. We had a major debate in the House last week on the issue of Crumlin hospital and the reasons sick and ill children are left without help and that money cannot be found to open a closed operating theatre and closed wards for them before the end of the summer. This is unacceptable. Will the Leader let Members know when the Minister for Health and Children will come to the House to answer these questions?

**Senator Pearse Doherty:** D'ardaigh mé an cheist sa Teach cúpla uair cheana i dtaobh ceist na Gaeilge agus an ról a ba cheart don Seanad a bheith ag imirt ó thaobh na ceiste seo. Phléamar An Staidéar Teangeolaíoch ar úsáid na Gaeilge sa Ghaeltacht, an cheist faoi thumoideachas sna scoileanna agus an cheist fá dtaobh de *Foinse*. Ach ó tháinig mise isteach sa Seanad ní raibh plé ar cheist na Gaeilge sa Seanad againn. Since my election, the issue of the Irish language has never been discussed in the Seanad. In that time we have seen huge challenges in the Gaeltacht, have spent €500,000 on a report that has never been discussed and whose recommendations in terms of the future of the Irish language have never been published and have had the issue of tumoideachas and how we teach Irish in the gaelscoileanna. We have had the closure of two Irish language newspapers, given the recent closure of *Foinse*.

No. 39, motion 26 has been placed on the Order of Business by Senator Joe O'Toole and I. It recognises that the first Dáil, held 90 years ago, was conducted completely in Irish and asks that the leaders of the groups in the Seanad would between themselves work out a system as to how we would promote the use of Irish in the Seanad. To have a day when we let all the gaelgóirí come to the House to discuss Irish issues or the Gaeltacht is not good enough. Caithfidimid bheith dáirire — we need to be serious about the Irish language. We face a huge challenge. I know the economic crisis causes serious distress and hardship to many families but if we do not keep our eye on the ball and look at what is unique to Ireland, namely, our language, culture and heritage, we are at risk of losing all of that identity.

The Seanad, the Upper House, needs to use more Irish. We need to do this not by ramming it down anyone's throat but by coming up with a sensible proposal. No. 39, motion 26 proposes that we would agree between ourselves how we would set out that perhaps 10%, 20% or 30% of the work of the Seanad would be done through the medium of Irish.

**Senator Donie Cassidy:** Before I deal with the Order of Business, as Leader of the House, I join everyone, including the Minister for Foreign Affairs, who saw the significant progress made in regard to decommissioning in the North of Ireland over the weekend. I do not want this important and historic occasion to pass without remembering the words of the Minister, who stated:

In recent years, loyalist organisations have been making effective progress towards conflict transformation, and [the weekend was] an important landmark in this process. Northern Ireland has now moved closer to achieving the genuinely shared future for which many

[Senator Donie Cassidy.]

people have taken risks over the past decades. I wish [as do all Members of this House] to express the Government's appreciation to the loyalist leadership and all those who took crucial and courageous decisions to facilitate [the steps which took place over the weekend under the stewardship of General John de Chastelain].

Senators Fitzgerald, O'Toole, Hannigan, Leyden, Hanafin, Harris, Buttimer and MacSharry called for various important and challenging issues, and the reports that are coming to Government for its consideration, to be discussed in the House before the summer recess. Calls have been made to me on several occasions with regard to the IMF report and Senator Fitzgerald repeated that call today. I will be outlining to the House on the conclusion of the Order of Business the proposals for our consideration over the next three weeks. The IMF report will be considered on the final sitting day before the summer recess.

The report of an bord snip nua is coming to the Government for its consideration and I await developments in that area. If the Government wishes to publish part or all of that report for our consideration, we have no difficulty whatsoever with that. As Senators Leyden and MacSharry have pointed out to the House, we would like to have our input into this issue and it is of the utmost importance that we debate it in the House at the earliest possible time. In addition, we want to let the Government know what our proposals in this area would be, especially in regard to Senator Harris' proposal today, which is a worthwhile example of what can be done if everyone puts their shoulder to the wheel.

Senators O'Toole, Healy Eames and Buttimer raised the issue of bringing the Ryan report back to the House for the further consideration of colleagues. I have already given a commitment in this area and I will not be found wanting when time is required.

Senators Hannigan and Keaveney referred to the consumer report and the cuts in the price of food in recent months, which are very welcome. We should debate this on an ongoing basis. It is a serious challenge especially now that the groceries order has been eliminated. The House should keep an eye on this area and be the protector, in so far as we can, on behalf of the consumer.

Senators Hannigan, Norris and Mullen welcomed the Civil Partnership Bill, which provides for property rights. It possibly does not go as far as some people would want but certainly it is a move in the direction of the requests and calls on the Government over the years to respond to the matter.

On behalf of all of us, I congratulate our colleague Senator Lisa McDonald on the birth of her daughter in recent days and wish her and her husband well. I also congratulate Senator McCarthy. It is also a joyous time for him and his wife with the birth of their baby in the past week. It is good to see all the young family Members of the House having their celebrations and experiencing the joy of birth, which is the greatest gift the good Lord could give any family or individual.

Senators Leyden and MacSharry called on the Government urgently to establish export credit insurance. It has been said here that many other countries and competitors in Europe in particular have brought this in again. I will certainly pass on the urgent views of the Senators to the Minister, especially the comments of Senator MacSharry who outlined to the House that the value of exports increased in the month of April by 5%. Japan and China have experienced a substantial reduction in their exports and this augers well for us as an export nation.

Senator Twomey commented on the role of the public service and the Civil Service and expressed his gratitude for what they have done. He referred to the utterances of the Governor of the Central Bank, and perhaps the Governor was correct. I would not like to think that Fine

Gael is always the party of “No”. Let us wait and see whether he is correct. We will know in a short period of between six and 12 months.

**Senator Liam Twomey:** I asked for an explanation that backs it up.

**Senator Donie Cassidy:** Senator Norris once again expressed his concern about Shell to Sea which, as we are all aware, employs 1,000 people in the west at present. We all wish to see higher royalties and intellectual property rights and all the various other issues, but I understand there is a substantial amount of the basin for licensing within the whole area, representing a serious vote of confidence. I remember when licences were granted in 1987 or 1988 and at the time there was very little interest, practically nil, and share prices, particularly exploration share prices, were at an all-time low. We wish to see as much as we possibly can but we can renegotiate at any time for the future and hopefully this will be seriously considered.

Senator Harris offered the condolences of the House to the Cloney family and the champion of the horrific experience at Fethard-on-Sea. I saw the film of which Senator Harris reminded us and Donal Barrington and Eamon de Valera did their part by not condoning what took place there. I will send a letter on behalf of colleagues following the bereavement of the Cloney family.

Senators Regan, Ormonde and Ó Murchú referred to the Lisbon treaty. Senator Regan outlined to the House the up-to-date position in Germany and the court decision there, particularly on taxation, neutrality and all the other issues brought before the Irish electorate at the last referendum on the Lisbon treaty. The Taoiseach will be in the House next week at 11.45 to debate, discuss and hear colleagues' views——

**Senator Paddy Burke:** Is that a.m. or p.m.?

**Senator Donie Cassidy:** It will be on Thursday, 9 July at 11.45 a.m.

Senator Ormonde called for a debate on the National Action Plan for Social Inclusion 2007-2016, a very worthwhile call for which I will allocate time. Senator Healy Eames called for a debate on education. I have outlined to the House the amount of legislation due for our consideration in the next three weeks. With the exception of Fine Gael Private Members' time, it will be very difficult to allocate time for statements or anything such as what is being called for at present.

Senator Feargal Quinn and Senator Cecilia Keaveney offered congratulations to the Ceann Comhairle and the Cathaoirleach for a wonderful weekend of festivities at the Houses of the Oireachtas open days for the public. I had the privilege of being here on Sunday morning with my family. I am pleased to say that another Cassidy sat beside me in the seat of the deputy Leader.

**Senator Jerry Buttimer:** Did he sit in your seat?

**Senator Donie Cassidy:** He felt very comfortable in it. I told him that as long as he did not move in next door to myself he was very welcome. It was a wonderful experience and I was amazed at the number of ordinary people who came up to me and said they had never been inside the gates of Leinster House. They are very appreciative of the great work we are doing. The media should be invited to the open days to hear the views expressed by the public, the ordinary, plain people of Ireland, the silent majority of Ireland and how they appreciate the great work being done on their behalf by politicians of all political parties. I congratulate everyone concerned. The theme of the open days was the 90th anniversary of the First Dáil.

[Senator Donie Cassidy.]

Perhaps next year Seanad Éireann can play its part and highlight the achievements of this House and its role in the scrutiny of legislation.

Senator Feargal Quinn expressed his strong views on the great work of the Tidy Towns committees. He referred to the volunteers and the fact that the reward is small. I congratulate all the local authorities who gave small allocations of funds to the Tidy Towns committees to enable the purchase of lawn-mowers and other equipment. Most of us in this House were members of local authorities. The work of the Tidy Towns committees is to be commended from the highest level. I fully support the Senator's views about the efforts of the Tidy Towns committees to keep everywhere nice and clean and tidy.

Senator Burke asked for a debate on tourism and I will endeavour to have this debate take place. The hotel and restaurant industry and golf, are all in difficult times and under pressure. The services sector provides significant employment and anything the House can do to help it should be done.

Senator Mullen offered his congratulations to John Bowman and everyone associated with "Questions and Answers" and I wish to be associated with those congratulations. I never had the privilege or the honour of being invited to participate on the programme in all the years. It has been one of the most successful television programmes and I was proud of Senator Norris last night. He spoke splendidly and he looked magnificent. Senator Mullen and most colleagues on the Independent benches were the privileged ones as they were always the people who were invited, and they did not let the House down.

**Senator Jerry Buttimer:** They missed the Leader.

**Senator Donie Cassidy:** They were always magnificent

*(Interruptions).*

**Senator Jerry Buttimer:** The Leader missed his opportunity.

**An Cathaoirleach:** The Leader to reply on the Order of Business.

**Senator Donie Cassidy:** It would have been a dream come true to have the Senator and myself participate.

**Senator Jerry Buttimer:** That would be some combination.

**Senator Donie Cassidy:** Senator McFadden asked about arrangements for Oireachtas Members from Westmeath to meet the NRA. I will endeavour to arrange this after the summer recess and I hope to have a date by this weekend.

The proposed Order of Business for the next three weeks is, Criminal Justice (Surveillance) Bill 2009 — Second Stage; Justice (Miscellaneous Provisions) Bill 2009; Enforcement of Court Orders (Amendment) Bill 2009; Broadcasting Bill 2008 — Report from Dáil; Local Government (Charges) Bill 2009 [*Seanad*]; Housing (Miscellaneous) Bill 2009; Aviation (Preclearance) Bill 2009 — Report from Dáil; Health Insurance (Miscellaneous Provisions) Bill 2008; Health (Miscellaneous Provisions) Bill 2009 — Second Stage. All these Bills must be dealt with in the House before we finish on Friday evening at 7 p.m. or 8 p.m.

Next week's business is, Health (Miscellaneous Provisions) Bill 2009 — Committee and Remaining Stages; Health Insurance (Miscellaneous Provisions) Bill 2008 — Committee and Remaining Stages; Oireachtas (Allowances to Members) and Ministerial and Parliamentary Offices Bill 2009 [*Seanad*] — all Stages, to be taken next Tuesday night; Justice (Miscellaneous

Provisions) Bill — Committee and Remaining Stages; Criminal Justice (Amendment ) Bill — all Stages; statements on the Stardust tragedy, which took place on St. Valentine's Day, 14 February 1981; and Land and Conveyancing Law Reform Bill 2006 - Report from Dáil.

On Thursday of next week the Lisbon Bill will be debated with the Taoiseach in attendance; Harbours (Amendment) Bill 2008 — Report from Dáil; and Eligible Debt Securities Guarantee Scheme Bill 2009 — all Stages.

Bills to be dealt with on 14 and 15 July 2009 will be, Defamation Bill 2009 and Local Government (Charges) Bill 2009 [*Seanad*]; and statements on the IMF report——

**Senator Jerry Buttimer:** On a point of information regarding the business outlined by the Leader, is it proposed to take all Stages of that Bill on Thursday and what is the schedule for Friday, 10 July? I thought it was agreed not to take all Stages of a Bill on one day.

**An Cathaoirleach:** The Senator should talk to the Whips.

**Senator Donie Cassidy:** When a Bill is initiated in the House we endeavour to leave a week between Second Stage and Committee Stage, but as that is the final week before the summer recess, which is almost into the last week in July——

**Senator Jerry Buttimer:** On a point of information, is the House sitting on Friday, 10 July?

**An Cathaoirleach:** The Senator should talk to the Whips.

**Senator Donie Cassidy:** Yes, of course it is.

Order of Business agreed to.

### **Criminal Justice (Surveillance) Bill 2009: Second Stage.**

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

**Minister of State at the Department of Justice, Equality and Law Reform (Deputy John Curran):** I am pleased to have the opportunity to open this Second Stage debate on the Criminal Justice (Surveillance) Bill 2009. This is an important Bill and one which will provide further support to the Garda Síochána, the Defence Forces and the Revenue Commissioners in their continuing drive against serious and organised crime.

The objectives of the Bill are clear-cut — to allow material gained by covert surveillance to be used as evidence in criminal proceedings, while at the same time ensuring that the intrusion into rights relating to personal privacy and privacy of property, which this necessitates, is both controlled and proportionate.

The Bill deals with these objectives essentially in two ways. It provides, for the first time, a statutory framework for secret surveillance by the bodies concerned, mainly the Garda Síochána in its role as the primary law enforcement and security agency of the State. The Defence Forces are included because of their parallel responsibilities in protecting the security of the State, mainly against the threats posed by subversives and international terrorism. The Revenue Commissioners have a vanguard role in protecting the financial interests of both the State and the European Union, and in guarding against the illegal importation of drugs and firearms. It is easy to see how the interests of these agencies may coincide, for instance, in the case of joint operations by the Garda and the Revenue in targeting money laundering and tax evasion, a key element in the fight against organised and subversive crime.

[Deputy John Curran.]

The Bill also lays out the rules which will apply in regard to the admissibility of evidence covertly obtained in court proceedings.

When the Bill was published on 17 April last, the Garda Commissioner said that surveillance is as old as policing itself. It takes many forms, the simplest of which is keeping track of a person's movements on foot or in a car, or using binoculars, a camera or CCTV in public places. However, the Bill is not about this type of surveillance that is part of ordinary policing. There is also electronic surveillance — the interception of telecommunications provided for by the Interception of Postal Packets and Telecommunications (Messages) Act 1993. The Bill does not deal with that type of surveillance either.

What the Bill seeks to regulate is the use of covert electronic surveillance devices which are specifically designed to eavesdrop, film, monitor movements and make recordings in order to gather information for the purposes of preventing and investigating serious crime and in safeguarding the security of the State.

Constitutional and European Convention on Human Rights principles must be considered before any interference with privacy rights is contemplated as covert surveillance is fundamentally an invasive and intrusive process. It is accepted, however, that there are some circumstances in which the State in the common interest may exercise special powers denied to ordinary citizens. The right to privacy is a case in point, and it may be interfered within certain circumstances once appropriate safeguards are provided for. The Bill contains several procedural safeguards aimed at achieving an appropriate balance between the competing privacy rights of the individual citizen and the interests of the wider society.

In its 1998 report entitled *Privacy: Surveillance and the Interception of Communications*, the Law Reform Commission provided a detailed analysis of the issue.

Both *Bunreacht na hÉireann* and the European Convention on Human Rights guarantee an accused person's right to a fair trial. Central to this are evidential issues such as admissibility and disclosure of evidence, and the Bill has specific provisions on the admissibility of surveillance evidence as well as rules regarding disclosure. These matters are dealt with in the Bill because, as I said at the outset, the legislation is designed to facilitate the use of information and material obtained by covert surveillance to be used in evidence. Cognisance of the pertinent human rights and constitutional principles has underpinned the drafting of the Bill.

I believe we have provided for the correct balance in the Bill as between the competing interests of privacy and due process on the one hand and the protection of persons, the prevention of crime and the security elements on the other. I am pleased to note the Bill has received a general welcome, not just from all sides in the Houses but from the various non-governmental organisations which have a particular interest in this area. Observations made by the Irish Human Rights Commission have been considered and, where appropriate, have been incorporated into the Bill in the course of its passage through the Dáil. The Bill before this House contains additional safeguards for the subjects of surveillance.

Until now, the Garda has been reluctant to use evidence obtained by covert surveillance in court, mainly for legal and operational reasons. That policy has now changed. In the opinion of the Garda Commissioner, the changing nature of crime, in particular the growth of organised and gangland crime, requires a buttressing of the security response. In addition, the threats to society and to the integrity and effectiveness of the criminal justice system itself posed by these gangs, notably the attacks on ordinary people going about their daily lives, requires correspondingly robust legal measures.

The use of hi-tech surveillance devices can provide real time intelligence on the plans and actions of criminals, subversives, terrorists and other sources, which allows the relevant agencies to disrupt their plans and thwart their actions. It can identify the perpetrators and facilitate their arrest. It can reveal the existence of new sources from which a better understanding of the threat posed by criminals and others can be gauged and from which preventive strategies can be developed. It is a technique employed in law enforcement and security in many jurisdictions.

Regarding the investigation of crime, the use of covert surveillance after a crime has been committed can result in the arrest of the perpetrators. It can also assist with the recovery of the proceeds of crime and with the disentanglement of related money laundering operations. Crucially, surveillance can prevent loss of life.

I will set out more fully the provisions of the Bill. Section 1 deals with definitions, a number of which are worthwhile expanding on. In defining member of the Defence Forces and member of the Garda Síochána for the purposes of surveillance under the Bill, it is important to note that any powers of surveillance granted to the Garda or to the Defence Forces are not granted to reserve members.

Revenue offences are defined for the purpose of the Bill as arrestable offences under specific legislation which primarily deals with tax fraud and smuggling. Surveillance powers of the Revenue Commissioners under the Bill are restricted to these offences.

The Bill defines surveillance as monitoring, observing, listening to or making recordings of persons, places or things by or with the assistance of surveillance devices. As such, it does not include situations where persons are followed or observed without the use of surveillance devices. Surveillance devices are defined in the Bill as apparatus designed or adapted for use in surveillance. Certain devices are specifically excluded such as devices designed to improve night vision where the image is not being recorded; and CCTV and cameras used to photograph persons in places to which the public has access.

Sections 2 and 3 provide that the Bill applies to surveillance carried out by the Garda Síochána, the Defence Forces and the Revenue Commissioners and that any such surveillance may only be carried out in accordance with the Act. For clarity, the Bill sets out certain activities that are excluded from the provisions of the application of the Act such as any activity that would constitute an interception within the meaning of the interception Act of 1993, tape recording of interviews with suspects in accordance with the provisions of the Criminal Justice Act 1984 or the use of CCTV in Garda stations.

Section 4 deals with applications for authorisations to conduct surveillance. It provides criteria which must be satisfied before an application can be made.

In the case of the Garda Síochána, surveillance can be sought as part of an operation concerning an arrestable offence, to prevent an arrestable offence and in regard to the security of the State.

The Defence Forces may apply for an authorisation in regard to matters concerning the security of the State. The Revenue Commissioners may apply in regard to revenue offences. In all cases there must be reasonable grounds for believing that the surveillance is necessary for the purposes intended and that the surveillance being sought is proportionate to the objectives and is reasonable.

Section 5 deals with the issuing of authorisations for surveillance by a District Court judge, applications for which shall be made *ex parte* and shall be heard in private. The application can be made to a judge assigned to any District Court district and the authorisation will have effect in any part of the State. Before a judge issues an authorisation, he or she must be satisfied that

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it is justified to do so having regard to all of the relevant circumstances. An authorisation may be issued for a maximum of up to three months. The judge, when issuing an authorisation, may authorise the person named in it or other members or other persons considered necessary to enter property, if necessary by reasonable force, to initiate or carry out such surveillance.

Section 6 provides for the variation of the conditions attached to an authorisation and for the renewal of an authorisation for a further period of up to three months.

Section 7 provides for the approval of surveillance in situations where the matter is urgent and where there are reasonable grounds to believe that before an authorisation could be issued, it is likely that a person would abscond to avoid justice, that evidence would be destroyed, or that the security of the State would be compromised. In such a case, a superior officer may give approval for surveillance for a limited operational period of up to 72 hours. If continued surveillance is required, an authorisation must be obtained from a judge of the District Court. The section also requires the keeping of written records and the making of reports by the parties involved.

Section 8 provides for the approval of the use of tracking devices for a maximum period of four months. Judicial authorisations are not required but the approval of a superior officer is necessary. This approval is based on strict qualifying criteria in line with the criteria for the approval of surveillance. Tracking devices are used to monitor the movements of persons, vehicles or things and to provide information on their location. Again, the Bill requires that written records and reports must be maintained.

Section 9 provides for the retention, for a specified period, of all official documents relating to authorisations and approvals. The period in question is either three years from the end of the surveillance or the day after the information is no longer required for any prosecution or appeal for which they are relevant. The section further provides that the material will be destroyed, as soon as is practicable, once it is no longer required except in cases where the relevant Minister gives written authorisation for the retention of information and documents, having regard to certain matters.

Section 10 deals with the secure storage of and authorised access to information and documents generated as a result of the carrying out of surveillance with the intention of protecting people's privacy and other rights. The section also allows the Minister for Justice, Equality and Law Reform to make regulations in respect of the disclosure or non-disclosure to the subject of surveillance or to persons who are materially affected by it. Disclosure will, however, only occur in certain specified circumstances.

Section 11 provides for a complaints procedure where a person believes he or she may be the subject of surveillance or where a superior officer involved in the authorisation or approval process applies to the complaints referee. Where the referee finds that there has been a contravention of sections 4 to 8, he or she has the power to direct the quashing of an authorisation, the destruction of any information obtained and to recommend payment of compensation up to €5,000. However, if the referee believes it is not in the public interest to do so, he or she may decline to make such directions or recommendations. The referee may also undertake an investigation of a case on his own initiative and must investigate a case referred to him or her by the designated judge who has oversight of the operation of the legislation. The matter may also be referred by the referee to the Garda Síochána Ombudsman Commission, the Minister for Defence or the Minister for Finance, depending on the particular State agency concerned. The complaints referee may also refer a matter to the designated High Court judge who has oversight of the Act.

Section 12 provides for the appointment of a judge of the High Court to oversee the operation of the main provisions of the Bill and to make regular reports to the Taoiseach on any matter. Such reports will be laid before both Houses of the Oireachtas. The designated judge may also refer a matter to the complaints referee for investigation.

Section 13 is a confidentiality provision. It prohibits the disclosure of any information about the operation of the Bill unless it is made to an authorised person, as defined, and is in connection with specified criteria such as the investigation and prosecution of offences or in the interests of the security of the State. The section applies both to members or officers of the agencies concerned, including members of respective reserve forces, and to persons engaged in contract work. It also applies to persons generally. Breach of this provision is an offence which may be prosecuted summarily or on indictment.

Section 14 is a core provision of the Bill. It deals with the issue of admissibility of evidence in the narrow and very specific context of evidence obtained by means of surveillance. It provides that such evidence, notwithstanding any error or omission on the face of an authorisation or a written record of approval or notwithstanding any failure by any member or officer to comply with a requirement of an authorisation or written record, may be admitted in evidence in certain clearly defined circumstances where the error or omission was inadvertent or where the member or officer acted in good faith and the failure was inadvertent and the interests of justice would be served by the admission of such evidence. The court, when deciding on the admissibility of such evidence, will have regard in particular to matters set out in the section, whether the error or omission or failure was serious or merely technical in nature, the nature of any right infringed, any circumstances of urgency and the possible prejudicial effects of the information and the probative or conclusive value of same. In effect, this means that a breach of statute-based procedures or a failure to fulfil particular statutory requirements will not, of themselves, mean that the material in question must be excluded.

Section 15 deals with the disclosure of information about surveillance in court proceedings. It provides that disclosure by means of discovery or otherwise will not be made unless a court authorises otherwise. A court will not authorise such a disclosure unless it is satisfied that to do so would not create a risk to the security of the State, to the ability of the State to protect persons, including witnesses, or to the integrity and effectiveness of security and crime-fighting operations.

Section 16 provides that the Ministers for Justice, Equality and Law Reform, Defence and Finance may make regulations under the Act. Any such regulations must be laid before each House of the Oireachtas.

Section 17 amends the Garda Síochána Act 2005 to provide for the non-application of the provisions of the Act to the Garda Síochána Ombudsman Commission. This is in line with the existing non-application of provisions of the Offences against the State Acts 1939 to 1998 and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

Section 18 provides for a technical amendment of Section 32A of the Courts (Supplemental Provisions) Act 1961 to extend the provisions of that section to include this Bill. Section 19 is a standard provision and provides for the Short Title of the Bill.

I consider this Bill to be a significant milestone in the process of bringing those involved in serious criminal, subversive or terrorist activity to justice. It is evidence of the Government's ongoing commitment to the fight against crime and to the safety of its citizens. It builds on measures already introduced by the Criminal Justice Acts of 2006 and 2007 in dealing with the prosecution of gangland crime.

The Bill provides for an appropriate and, more importantly, a proportionate balance between the competing demands of protecting the privacy rights of persons and of ensuring the society

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in which we live is safe from the threats of violent crime and terrorism. The Bill respects our obligations under the Constitution and European Convention on Human Rights while ensuring effective mechanisms are put in place to support the gardaí and other agencies in carrying out their work.

The opportunity to introduce additional safeguards was taken during the passage of the Bill through Dáil Éireann. A number of these provisions reflect proposals put forward by the Irish Human Rights Commission in its observations on the Bill.

Technological developments in this area continue to evolve so quickly that the potential intrusiveness into our personal lives requires that the type of surveillance dealt with by this Bill may only be resorted to in a proportionate way, accompanied by proper and effective legal safeguards. I believe the Members of this House will agree that the Bill before them meets these requirements. I commend the Bill to the House.

**Senator Eugene Regan:** The purpose of the Bill is to allow material gained by covert surveillance to be used in evidence in court. Gardaí have conducted covert surveillance for many years but this Bill provides for the information so gathered to be presented as evidence in court. It is aimed at organised crime but it is also relevant to white collar crime.

The Bill provides for the carrying out of surveillance on foot of an authorisation of the District Court for a period of up to three months and which can be renewed in urgent situations by authorisation from a senior officer for a period no longer than 72 hours. It provides for the creation of written records, the admissibility as evidence of information obtained and a mechanism for dealing with complaints and separate judicial oversight of the operations of the Bill by a High Court judge, which I will refer to later.

The Bill encompasses three main enforcement agencies: the Garda Síochána, the Defence Forces and the Revenue Commissioners. Considering the range and interlinking of the activities of criminals, including drug smuggling, customs and excise fraud, VAT fraud and money laundering, it is appropriate that all those bodies are included within the ambit of the legislation.

Fine Gael welcomes the publication of the Bill and urges its immediate implementation. We have called for it for some time on the basis that we will support any measure which makes inroads into tackling gangland crime. Given the conviction rate of 12% of 171 shootings which have taken place in the past 11 years, our evidence gathering measures clearly need to be improved in tackling this form of serious crime.

Covert surveillance legislation is essential but there is no guarantee it will have a major impact unless the necessary resources are put in place and an investment made in training, the provision of the best equipment and ensuring all procedures and structures are in place to implement it effectively. It will also be necessary to resource the national surveillance unit which will run the new bugging and tapping operations. The Garda Commissioner says a new unit does not need to be created, but additional resources will be required to handle the increased workload, comply with written records procedures and so forth.

There are two other fundamental issues that complement this operation. When there are cutbacks in budgets they tend to be across the board. This can be very damaging in the case of some fundamental services provided by the State. One of those is the Office of the Director of Public Prosecutions. The Director of Public Prosecutions has indicated he will be unable to carry out his duties with the budget cuts this year. That cuts across the entire policy of the Oireachtas on tackling and combating the most serious forms of crime. One of the other essential elements in the armoury the State requires to deal with this problem is the establishment

4 o'clock

of a DNA database. This is long overdue. All EU member states are required to maintain a DNA database and to participate in sharing information. The Minister for Justice, Equality and Law Reform promised legislation to deal with a DNA database last year but it has not been produced.

These are the essential prerequisites for the Garda and the Director of Public Prosecutions to ensure both the detection and prosecution of crime. This Bill can play a part but we should not exaggerate what it can achieve without the resources I mentioned. The most notable case where this type of technology and surveillance have succeeded was the case of the mafia boss, John Gotti. Such cases are rather dramatic and one hopes the resources will be in place, the necessary training will be provided and the sophistication of the gardaí involved in these operations will succeed in having similar success in the case of some of the most notable gangland criminals in this country.

I do not wish to be negative as we welcome this Bill but the Law Reform Commission produced a report, *Privacy: Surveillance and the Interception of Communications*, in 1998 which dealt with the introduction of legislation such as this. It is extraordinary that it has taken so many years for the Government to act. The problems did not arise yesterday; there has been a serious escalation in gangland crime for some years, yet in 2007 the Government informed the Houses that no such legislation was in place. The Minister said:

Up until now, the Garda has been reluctant to use evidence obtained by covert surveillance in court, mainly for legal and operational reasons. That policy has now changed. In the opinion of the Garda Commissioner, the changing nature of crime, in particular, the growth of organised and gangland crime, requires a buttressing of the security response. In addition, the threats to society and to the integrity and effectiveness of the criminal justice system itself posed by these gangs, notably the attacks on ordinary people going about their daily lives, requires correspondingly robust legal measures.

It is extraordinary that the Garda Commissioner dictates when we pass legislation. It is up to the Minister for Justice, Equality and Law Reform to take the initiative in these areas and it is a matter for the Oireachtas to make these decisions. This undue deference to the Garda Commissioner in terms of dictating the pace at which we introduce legislation is inappropriate.

The right to privacy is a fundamental right under our Constitution and the European Convention on Human Rights, to which we subscribe. It is legitimate to interfere with that right for the general good if the interference is necessary, proportionate and carried out in accordance with law. Given the extent of criminal activity and gangland crime, and the fear and intimidation which local communities endure, the interference envisaged in the Bill is clearly legitimate. The setting down in law of the conditions under which this interference with the right to privacy by way of surveillance takes place means it takes place in accordance with law. This is why the Irish Council for Civil Liberties has welcomed the Bill. The council says it will place Garda surveillance on a lawful basis that broadly conforms to Article 8 of the European Convention on Human Rights. The council is also correct in its statement that intelligence-led policing, and not the restriction of fair trial rights, is the most effective way to tackle gangland crime. Intelligence gathering and the securing of evidence are essential ingredients in the detection and effective prosecution of crime.

With regard to the specific provisions in the Bill, which we will discuss in detail on Committee Stage, we should expressly include gangland crime among the objectives set out in the Bill. There is an issue with legal professional privilege and how we define the interference with the right to private property. However, two particular issues should be noted with regard to judicial supervision. We have the referee system but, in section 12, there is provision for the engage-

[Senator Eugene Regan.]

ment of a sitting High Court judge to oversee the operation of this legislation. This provision is in the precursor to this Bill, the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993. I have some concern about the provision in the Bill. The provision is welcomed by many bodies who see it as providing oversight and a necessary safeguard. It provides that a designated judge shall keep under review the operation of the legislation and report to the Taoiseach from time to time, and at least once every 12 months, concerning any matters relating to the operation of the sections that the designated judge considers should be reported.

I appreciate that this provision is in the 1993 Act but has the Attorney General's view been obtained on it? It seems to involve the Judiciary unduly in the executive legislative function. Requiring a sitting High Court judge to report to the Taoiseach on the operation and implementation of specific legislation appears to cut across the basic principles of the separation of powers. I await the Minister's response on this issue. In addition, where is a sitting judge to get the time and resources required? Will he or she have staff to carry out investigations of any maladministration or flaws in the legislation? I question the constitutionality of the provision, even if it is already in other legislation.

The other issue I wish to raise is the role of the Garda Síochána Ombudsman Commission. On the point I mentioned about supervision, the Garda Síochána Ombudsman Commission would be the appropriate body to carry out that review. The commission is not given a role in the legislation, nor is it available to the commission to use the provisions of the legislation to carry out its own investigations of issues concerning the Garda Síochána. That is a flaw in the Bill.

I welcome the fact that there is a remarkable similarity between this Bill and some of the provisions in the Bill I introduced in this House, the Criminal Law (Admissibility of Evidence) Bill 2008. Therefore, I cannot but support it.

**Senator Denis O'Donovan:** I support this Bill and welcome the Minister of State, Deputy John Curran, to the House. I compliment him on his endeavours in respect of the national drugs strategy and other such issues in community affairs. It is very appropriate that this Minister of State is present because, regrettably, one of the major problems we face in society at present, not only in Dublin, Limerick or Cork but in most of our major towns, is drugs and drug related gangland crime. Unfortunately, this is a very serious and growing issue. I was deeply concerned today to read in some newspapers of a study carried out in Limerick that showed that young children of five to seven years of age are being used by these drug gangs. They are manipulated at a tender age to carry out intimidation and, in some instances, arson attacks on neighbours or anybody who may stand in the way of the illegal, furtive and dangerous activities of these drug lords.

This Bill is not before time. Its advent was heralded by the Law Reform Commission some years ago. I have no doubt it is another addendum to the armour of the Garda, the Defence Forces and the Revenue in tackling organised crime. The Criminal Justice (Surveillance) Bill has two important functions in this regard. As the Minister of State pointed out, the first and most basic is that it gives a legal framework to the carrying out of covert electronic surveillance and the eavesdropping, filming, monitoring of movements, the making of recordings and gathering of information for the purpose of investigating and preventing serious crime. It is important we realise this Bill deals with serious crime. We are not talking about run-of-the-mill minor misdemeanours but crimes that carry a very hefty custodial sentence for those apprehended.

The second, and equally important, issue is the question of admissibility in our courts of evidence collected. To a degree, the Bill upturns the exclusionary use of evidence which hitherto prevented such collected evidence, data and information being used in court. Evidence is collected primarily, but not exclusively, by gardaí or the Revenue Commissioners, although it is possible the Criminal Assets Bureau or the Defence Forces may be included. The Minister of State might clarify this. I have no doubt there are probably a large number of cases where the Garda and the other authorities are 99% sure of who has committed serious crimes but hitherto, because of our legal system, criminals got away on technical issues.

It is also important to note when surveillance can be used. For the first time, the Bill provides for a regulatory framework for the use of surveillance in the investigation and prevention of arrestable offences. The offences in question carry penalties of five years' imprisonment or more on conviction. The Revenue offences in question are also arrestable offences in that they carry similar sentences. My colleague, Senator Regan, made a very important point, namely, that in addition to the normal subversive organisational type of crime or drug related crimes, the legislation applies to white collar crime such as major tax scams or the smuggling of diesel, cigarettes or other such material.

It is noted that persons have rights under the Constitution and under the European Convention of Human Rights in respect of the inviolability of the dwelling, and breaches of privacy, etc. In this regard, as Chairman of the Joint Committee on the Constitution during the previous Dáil, I had close dealings with Article 40.3.1<sup>o</sup> and Articles 6 and 8 of the European Convention on Human Rights. The admissibility of material obtained through surveillance as evidence, therefore, is contingent on it being deemed compliant with both the Constitution and the ECHR. It is a belt and braces set-up.

The Irish Council for Civil Liberties often forewarns legislators and Members of this House of doubts and pitfalls when bringing forward legislation. I put on record and welcome, as did my colleague Senator Regan, that the ICCL, by and large, has welcomed and supported this concept.

There is no doubt that intelligence-led operations, especially by the Garda, are the way to solve crimes. Regrettably, we are dealing now with very intelligent, ruthless and sophisticated gangs on our streets who are supported by and have links with gangs not just in Europe and the United States but throughout the world. They have the most sophisticated methods. It is worth noting also that even though we are making strides to prevent it happening, in many instances serious crime is being directed from prisons and prison cells. We think that when a person gets a sentence of 15 or 20 years behind bars he or she is locked up, secure and safe. Regrettably, we still have not stamped out communication and direction of criminal activities, threats and the issuing of fear in one form or another from prison cells.

I was delighted some months ago to visit the Midlands Prison. It was an education to see the mechanisms, trickery and chicanery used by criminal gangs working inside and outside, getting mobile telephones into prisons and all sorts of devices being hidden in shoes and other such methods. I was very impressed by the search methods and stringent security checks like those at airports that ensure people do not bring in illicit drugs or any kind of weapons. Even simple items can be adapted for weapons or for mobile telephone use in prisons. That has serious implications.

It is important also to note that in the operation of the surveillance framework, the Bill provides for a system requiring authorisations and approvals to be given for the use of surveillance devices in security operations aimed at investigating and preventing arrestable offences. Such authorisation will be issued only on application to a District Court judge who must be satisfied on the evidence presented to the court by a superior officer of the Garda, Defence

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Forces or Revenue Commissioners that the surveillance is both necessary and is the least intrusive method available. In general, such authorisation will be required for surveillance to take place but there are two exceptions where approval from a superior officer will allow the surveillance to be initiated. For the purpose of this Bill, a superior officer is at least the rank of a superintendent in the case of the Garda, a colonel in the case of the Defence Forces and a principal officer in the case of the Revenue Commissioners.

I note the two exceptions. The first exception is in exceptionally urgent situations where there is no time to get a court authorisation and there is a risk of a person evading justice, committing an offence or where information or evidence regarding a crime may be destroyed. In such cases, the superior officer must be satisfied that the surveillance is necessary and the least intrusive method available. There is a strict time limit of 72 hours for the use of approved surveillance. If the surveillance is to continue, an authorisation must be sought from a judge within the 72 hour period.

The duration of the surveillance is important. It must be noted that authorisations are valid for up to three months but can be renewed on application to the court. Emergency approvals are only valid for 72 hours and cannot be renewed, as a new authorisation must be sought. Tracking device approvals are valid for up to four months.

The issue of confidentiality is also important. Strict rules govern the storage and disclosure of material connected with surveillance in order to protect the integrity of the surveillance system and the security of all parties involved. It will be a criminal offence to disclose any such information. I imagine the section on confidentiality refers to possible leaks, particularly to newspapers. Often we wonder how our excellent crime correspondents have information as soon as, if not quicker than, the Garda.

This is excellent legislation that, among other legislation in the past 12 years in particular, creates a significant plate in the armoury of the Garda and the Defence Forces in the fight against crime. In this regard, I wish the Bill a speedy passage through the House.

**Senator Ivana Bacik:** With the permission of the House, I would like to share time with Senator Quinn equally.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

**Senator Ivana Bacik:** I welcome the Minister of State and the opportunity to debate this important Bill, which was prompted by a change in the climate in which we view criminal justice legislation, a change that was largely a result of horrific, so-called gangland killings. Somehow, that phrase sensationalises them and is not the best that could be used, but we are all reminded of the horrific killings of Shane Geoghegan, Roy Collins and others. For this reason, the Bill has received a broad welcome, in which I share. The Bill also marks a change in the Garda's attitude. As the Minister of State mentioned, the Garda previously did not necessarily want the power to use the product of bugged conversations in court, as it would have exposed their investigatory techniques. This has been alluded to by other speakers.

It is important that, for the first time, covert surveillance will be placed within a statutory framework. I welcome section 3 in particular, since it provides that surveillance would only be carried out by gardaí, members of the Defence Forces or Revenue officers in accordance with valid authorisations or approvals. This is an important and necessary safeguard against the arbitrary use or abuse of such surveillance techniques. It is important to note the Bill does not apply just to the Garda, as it also applies to the Defence Forces and Revenue, a point to which I will revert.

The other core provision, as has been stated, is section 14, which provides for the admissibility of evidence obtained through surveillance carried out in accordance with an authorisation or approval. I should declare an interest in that I am a criminal lawyer. Speaking as such, section 14 is interesting, as it represents the first statutory attempt in a Government Bill to place in a legislative form the principles that have been developed through extensive case law on the admissibility of evidence on foot of search warrants where the warrants are in some way defective. Recently, I carried out some work on case law in this respect. I would be interested to know how the courts will interpret section 14. Inevitably, there will be some conflict with some of the case law, given the Kenny and O'Brien cases. More certainty is necessary, but the section is welcome.

My concerns about the Bill derive primarily from the case law that has evolved around search warrants. The right to privacy has been mentioned by others, including the Irish Council for Civil Liberties, ICCL. We must bear this important right in mind when considering the granting of powers to conduct surveillance. Another constitutional right will be as important or even more so in the case law that will evolve from the Bill, namely, the inviolability of the dwelling under Article 40.5. The provisions that carry the most potential for abuse of citizens' rights are those that provide for the right of members of the Garda, Defence Forces and Revenue to enter anywhere to plant and remove bugs. I am considering subsection 5(7) in particular, which allows entry by force, if necessary, to any place, including a dwelling, for the purposes of carrying out surveillance and withdrawing a device without a person's consent. There is extensive case law on when a judge — it is usually a judge — can issue a search warrant to a garda to enter a dwelling or other place. Generally, the case law provides that there must be safeguards in place to ensure that search warrants would only be granted when due process has been observed.

Legislative provisions allow senior gardaí to issue warrants. Interestingly, a provision in the Criminal Justice Act 2006 that would have extended a general power to issue search warrants to Garda superintendents was withdrawn by the Minister on Report Stage. The Act, when initiated, had allowed for a Garda superintendent to issue a search warrant in respect of any arrestable offence in circumstances of urgency. This would have been innovative because the current provisions allowing the power for senior gardaí to issue search warrants arise from specific types of offence, such as drug trafficking or offences against the State under the Offences Against the State Acts. Senior gardaí do not have a general power to issue search warrants, even in circumstances of urgency, for arrestable offences.

I am slightly concerned by the Bill. Sections 4 and 5 provide an important procedure whereby a District Court judge can issue authorisations for surveillance for up to three months. The procedures and criteria set out for the judge are proper. Of more concern are sections 7 and 8, which allow for the approval of surveillance by superior officers in the Garda, Defence Forces or Revenue in respect of any arrestable offence. Although the Bill has been prompted by concerns about gang crime, it applies to all arrestable offences. Sections 7 and 8 provide for surveillance devices to be granted, withdrawn and so on and for homes to be entered without authorisation, by District Court judges but on approval of superior officers. I understand and appreciate that, in circumstances of urgency, it may be necessary to make such a provision. Section 7 is specifically titled, "Approval for surveillance in cases of urgency". Subsection 7(2) provides criteria regarding the conditions that must apply before a superior officer, a superintendent or above in respect of the Garda, can give approval. We should focus attention in this area to ensure abuses do not occur. I will table amendments in this regard, as approvals can apply for up to 72 hours, which might be too long. Getting a District Court judge to issue an authorisation should be possible within 24 hours. I am concerned about non-judicial

[Senator Ivana Bacik.]

approval. We should also consider the matter of principal officers in Revenue being able to approve the use of such devices.

Of even more concern is section 8 on tracking devices rather than surveillance devices. It does not allow for the taking of content of conversations. Rather, it allows for entry into a home to place or remove a tracking device on the approval of a superior officer without any requirement that there be a condition of urgency. This seems like an omission and I will table an amendment to suggest the same conditions that apply in section 7 should apply in section 8 before a superior officer could approve such surveillance.

I do not mean to take away from my overall welcome of the Bill, but I wish to ensure it is water tight, which is an important issue for everyone concerned with the prevention of crime and any more horrific killings. We must ensure that safeguards are in place. Previously, people's homes were bugged illegally in the interests of so-called State security. We all want to guard against a recurrence. With these concerns in mind, I make my comments and give a cautious, broad welcome to the Bill. I urge caution in respect of some of its provisions, particular sections 7 and 8. Will the Minister of State consider them? We will have a chance to debate them on Thursday.

**Senator Feargal Quinn:** I thank Senator Bacik for sharing time.

I look upon this Bill with some experience because during the years I was in the supermarket business there were occasions on which the Garda was able to acknowledge there were threats to the effect that poison would be placed in the supermarkets for blackmail purposes. I do not know how the Garda obtains this kind of information or how it solves cases. It clearly had some sort of information but it would not have been able to use it in court given that doing so is only being made legal now.

Three of my colleagues in the supermarket business have been kidnapped. In the case of Don Tidey and Ben Dunne, there was perhaps subversive activity rather than criminal activity but on another occasion, many years ago, there was criminal activity. My family was very concerned. I am not sure how the Garda handled the case at the time but it was certainly able to do so with ability and knowledge. I do not know the technology it used but the suspects were certainly using technology that was not available elsewhere and which could certainly not have been used in a court of the law had it been used for surveillance by the Garda.

I was stunned at the conviction rate referred to by Senator Regan, namely, 12% of 171 cases involving shootings in the past 11 years. This shows we need modern technology and legislation such as that under discussion.

I was going through a very modern airport in a modern city in Europe last year and noted the equipment being offered for sale in the duty-free shop was exactly the sort that would enable white-collar crime to take place. I had not seen the technology before and I am sure it is not legal to sell it here. However, it is capable of being sold in a duty-free shop in an airport.

A person from another country told me he had some concerns about information from his own company being disclosed. When the company swept its boardroom – I believe this is the phrase used – it found technology being used to disclose information. The individual was not able to tell me exactly what it was used for but it is clear that information very valuable to the company was being stolen by somebody and obtained by somebody else. This is the sort of white-collar crime I am sure we are talking about and about which preventive action should be taken.

I met the former Mayor of the City of New York, Mr. Rudy Giuliani, some years ago. I had read his book in which he spoke about the use of DNA in securing convictions in New York.

I asked whether there were concerns over civil liberties and he said there had been some. However, he referred to a case in which a person ready to be charged was proven not to be the culprit through the analysis of DNA. The suspect would have had considerable difficulty only that the analysis of DNA relieved him of the possible charge that would have been applied to him.

There is an obvious concern that surveillance powers can be abused by a state, not only in undemocratic countries but also in democratic ones. Senator Bacik and others referred to this. However, with this particular Bill, it must be kept in mind that the new powers afforded to the Garda will allow it to fight like with like, just as criminals have been monitoring gardaí for a long time and using monitoring as a weapon against the Garda through intimidation and other means.

I have a concern raised with me by a former detective superintendent in the Garda Síochána and former national head of Interpol and Europol, the international and European police information exchanges, respectively. He stated:

In my view this Bill fails two tests, those of common sense and what I will call “investigatory necessity”, and by a considerable margin, for the following reasons.

1. It adopts a generalist approach by seeking to apply this law to the entire population and not directly to criminal organisations as defined in the Criminal Justice Act 2006.

2. The threats emanate from specific and defined sources, criminal gangs and subversive organisations. The threats do not emanate from the population as a whole and arguably the population as a whole should not be subjected to these measures.

3. The definition of surveillance data is far too wide.

4. It can be construed to include all surveillance activity, including intelligence and evidential material.

5. The material received from foreign agencies could be disclosable and electronic devices fitted by them to assist Irish authorities could be rendered inadmissible.

6. There may be a loss of confidence at international level in the Irish systems which may inhibit the flow of intelligence and subsequently of evidence.

7. The rules on disclosure are unclear.

8. It is not clear if telephones and electronic mail are covered. [I believed they were.] Some of the measures may have the effect of neutralising current surveillance practices, particularly in relation to telephone intercepts and electronic mail.

9. Placing authorisations at the District Court level is unnecessarily indulgent and it exposes a greater number to possible threats from the criminal elements. [I would like the Minister to comment on this.]

10. The authorisation process is rigid at the operational level and lacks operational reality.

11. The rules on privilege are also unclear.

12. Surveillance officers may be compromised in terms of personal safety and their identities may become known to the criminal gangs.

[Senator Feargal Quinn.]

This legislation is necessary and has reasonable balance. I have some concerns based on the detective superintendent's experience of Interpol and Europol and I would like to ensure they are taken into account.

**Senator Dan Boyle:** The essence of the march involving 5,000 people after the death of Mr. Roy Collins in Limerick was to express solidarity with the Collins family, particularly Roy's close family. In impassioned speeches given by Roy's father, Steve, and the then Mayor of Limerick, Mr. John Gilligan, it was clear many people were present to discover how circumstances could and should change through legislation. Specific reference was made to this Bill, which was being worked upon at the time. The House will be doing a good job in placing it on the Statute Book and giving a clear signal that things must be done differently.

In a democratic society, where the freedom of the individual is paramount, it is difficult to maintain the balance between the right to privacy and the need to carry out surveillance during the investigation of crime. However, we live in times in which certain individuals compromise the rights of society in general and communities in particular. This makes us consider changes of the law in this regard. However, as other Senators noted, a particular balance has been struck and it was informed by the drafting of the legislation and previous legislation during Private Members' time, as Senator Regan mentioned. Senator Bacik referred to the inadmissibility of evidence. If there is criticism of the Bill, it concerns how it can be refined. Senator Regan mentioned the inadvertent use of the Garda Commissioner in determining future applications of the legislation and Senator Quinn referred to a number of areas in respect of which we need to be careful.

We live in an age of ever-quickenning technological advances. While intercepts can be secured from telephone calls on landlines and mobile telephone calls, the way we communicate with one another is becoming increasingly complicated. The Skype telephone system, whereby people can talk to each other over computers, exemplifies an obvious difficulty with the type of surveillance in question. It is clear that, even with the passage of laws of this nature, there will be technological advances that will require us to revisit the legislation very quickly to ensure we keep up with technology.

My fears do not concern the admissibility of evidence necessary to convict those who are undermining society. My fears, which I hope can be dealt with through the appropriate choice of powers from this Bill and the writing of orders by the Minister to allow the legislation to come into effect, concern the use of information subsequent to a conviction and not its use as evidence in trials. We have seen how information leaked during investigations might have a prurient value for the media or individuals who gain access to it. I seek safeguards in this regard. It is not so much that an individual who engaged in criminal activity or had criminal intent would be compromised on foot of statements made in the compilation of evidence but that innocent citizens might be compromised inadvertently by this information. That is the thin line we tread on these occasions. I support the Bill, however, and am pleased that the House seems to be speaking with one voice about its necessity and the importance of putting it on the Statute Book. While it probably does not cover all the angles, no Bill can do so. It is intended to keep a close eye on how this area of law develops and how we as legislators can make sure that it can be kept up to date so that public confidence can be gained and maintained in this important area.

**Senator Dominic Hannigan:** I welcome this Bill and I welcome the Minister of State to the House. I commend the significant work that the Department of Justice, Equality and Law Reform has done on the Bill. I read the Bill and reviewed the debates on, and amendments to,

it and it seems clear that its provisions are necessary and fit for purpose in the current climate. I commend my party colleague, Deputy Pat Rabbitte, on the work he has done on this issue in the past two years. I recognise the tremendous contribution of Senator Eugene Regan who tabled a Bill in Private Members' time last year which contributed positively to the debate and kept the issue on the agenda. At the time I had some trepidation about the Bill but it kept the issue alive and as a result this legislation is introduced.

I am confident that the procedural checks and balances in the Bill succeed in the difficult task of bestowing wide-ranging but proportional legislative powers in the face of an unprecedented threat to society from organised crime. I see no reason to criticise its spirit and central purpose. It is unconscionable that the Collins family in Limerick suffer further intimidation following the horrific death of their son, Roy. In the middle of May 5,000 people marched silently in solidarity with them in that city. A report in the *Limerick Independent* quoted a female marcher as saying "We're not going to take it anymore; people are angry, people are afraid, people are intimidated and we shouldn't have to live like that anymore." None of us needs wonder at the likely outcome had that woman spoke on the record.

The sentiment of that march captures the necessity of this Bill. There is an urgent need to send the message that challenges from organised criminals will be viewed as an attack on the State. In recent years there has been a collapse in people's trust in the institutions of civic and political life. Many of the cogs in the machinery of society, such as the church, politicians and the banks, have suffered a haemorrhage of public confidence as scandal after scandal breeds cynicism and detachment. This Bill provides us with an opportunity to fulfil at least partially our first and most important commitment to people, to protect their basic human right to live without fear of intimidation, harm and terror.

The need for the Bill is obvious. Deputy Charlie Flanagan pointed out that of the 171 prosecutions for shooting in the past decade only 12% resulted in a conviction. The tools that the Garda and associated agencies, such as the Revenue Commissioners, have at their disposal are inadequate. Not only are criminal gangs evading the law, they manage to go about their business while ignoring a hamstrung and weak set of criminal justice procedures.

While I welcome the Bill and look forward to its speedy enactment, I wish to raise several issues. I apologise in advance if these concerns have been adequately dealt with on Committee Stage in the Dáil. I echo the concerns of my colleague, Deputy Rabbitte, about the applicability of the complaints provisions. How can one avail of a redress procedure if one is not aware of the surveillance in the first place? Presumably if one manages to seek redress that indicates a failure in the surveillance operation. I appreciate the difficulties in achieving a balance and put forward that query in an operational rather than an ideological context. How was the figure of €5,000 arrived at as a suitable sum for redress? It seems like an arbitrary figure. Will all records of the authorisation papers from the relevant authorities enacting surveillance be retained for only three years after that enactment or until the day after the possibility of an appeal is exhausted?

It is important to have exacting standards for information retention. Once this kind of data is collected it will have a very high value for the people whom it targets. In certain State agencies and others in recent years, laptops and desk tops containing highly sensitive information have disappeared. Encryption is not the rule. Many agencies encrypt their data but others do not. While I realise that the two situations are not directly comparable, many agencies have a cavalier and dangerous attitude to data security and that must be addressed.

Several speakers mentioned resourcing, which is very important if the measures in the Bill are to have any degree of success. Reports in last Sunday's newspapers referred to cutbacks in Garda numbers in the Templemore training college and to closures of rural stations. While the

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country is broke, closing Garda stations and taking gardaí off the beat will send out a message that contravenes the spirit of this Bill.

The other Deputy for Tallaght stated proudly that he will never take the view that young people will not turn to crime if they have community centres. Surely the Deputy is aware that nobody is proposing community centres as a cure for these problems. The broader societal aims of community support and early intervention in deprived areas, however, are crucial. Bills such as this deal with those who threaten ordinary, decent people across the country. The State, however, has a duty of care to young people in these areas. Socially, morally and financially we must complement a punitive approach to criminals with an intervention-based approach to the next generation.

I mentioned an acclaimed report from *The British Journal of Criminology* which makes the express link between criminality and learned parental behaviour. The authors of the report found that the children of persistent criminals commit more delinquent acts during every phase of their lives than those of non-offending parents.

My colleague, Deputy Jan O'Sullivan, yesterday highlighted disturbing research by Dr. Niamh Hourican that suggests that in parts of Limerick and other areas young children are being dragged into a life of crime and intimidation. The research finding suggests that criminal gangs and drug dealers have used children as pawns to intimidate individuals and communities. Without early intervention and investment in these communities the estates and open spaces that these children occupy serve as incubators for the next generation of criminals. The communities and good people in these areas need and deserve our support and they want action. This Bill is appropriate and timely, but I urge the Minister of State to accept or at least acknowledge that without meaningful intervention in the communities involved we will continue to visit this worsening crisis well into the future.

**Senator Eoghan Harris:** When criminal justice issues are debated they are dominated by lawyers but it might not be a bad thing to hear more voices from the ordinary, non-legal side of the community. One of the reasons for the popular success of movies that deal with policemen who break the rules such as "Dirty Harry" is that the public sees the heroes carrying out justice as distinct from law. The public feels that we get a lot of law but very little justice. I am not against the rule of law. "Dirty Harry" is a tribute to the rule of law because when the hero stands over a guy on the ground with a gun he says to him "Do you feel lucky, Punk?" If he was an Iranian or Syrian policeman he would just pull the trigger but he does not do that because he is restrained by the Western jurisprudential, criminal, legal system that goes back to Grotius. "Dirty Harry" is about law. I am in favour of law but I am also in favour of justice.

This Bill is a very thin piece of Elastoplast on a large wound. No Bill or response by the Government has been adequate. The criminal gangs are a *sui generis* and a new thing in Ireland because they are based upon the delinquency created by the armed struggle of the Provisional IRA and the disrespect for human life is geometrical whereas the response of the community has been arithmetical to it.

I believe in a system of proactively searching out and tracking down the criminal gangs. Therefore, I believe in a system of investigating magistrates who are part of the Executive arm of Government but who, because they are lawyers, may not frighten the civil liberties lobby too much. It would be far better if, under section 12 of the Bill, instead of a High Court judge an investigative magistrate would take responsibility for surveillance and report back to a High Court judge.

I am glad that under section 15 there is not a petty fogging refusal to admit matters on small minor technicalities but that the general public good is taken into account. Having said that

this Bill, like all others I have read in recent years, is inadequate for the level of crime that exists. I believe in two things when dealing with the new kind of criminal gangs. I believe in the investigative magistrates of the Italian model and I believe in internment where the State acts *in loco parentis*, that is selective interment for the sake of the criminals.

In a place like Limerick or many parts of Ireland, the rise of these feral gangs of young people — these *Lord of the Flies* scenarios — point out to us the inadequacy of the old criminal justice system which says that one person committed a crime and that person is fined, brought to court or jailed. That is not true because now the criminal gang, like the Provisional IRA in Northern Ireland, is deeply intertwined and cross-stitched with the community. Short of lifting out entire sections of that community for intensive periods of rehabilitation I do not see any real means of dealing with it.

Modern prisons should be created where entire families would be lifted and subjected to intensive social rehabilitation by the State. This is so difficult now because of the Ryan report, which has put a cloud over all efforts by the State to act *in loco parentis* at the very time we most need it to deal with these *Lord of the Flies* gangs of feral kids parading through Limerick. Everybody who has ever been to Dublin city centre has been mobbed by gangs of kids and it is a frightening thing because it is so unnatural.

Where the parents have failed and where the community is supporting this delinquent structure where older criminals are corrupting youth what answer is there in the long run? How can individual prosecutions handle that? This is where the non-legal mind comes in to play. Lawyers deal with case history, precedents and past performances. There is a new kind of criminal abroad. The Bill is a thin bandage on the wound, fair enough. I have nothing against it and I am for it in so far as it goes but it does not go far enough. We need to examine the entire criminal justice system from the view of the public, not so much previous case law but how we go about rooting out these serious quasi-military criminal gangs which operate like the Provisional IRA on quasi-political interventions and the creation of social structures to sustain them. That requires a mixture of political, legal and social interventions by the State for which we have no provisions at present. I do not expect any Minister to answer on the basis of this Bill the type of questions I am putting.

I am glad the Bill has the shadow of Senator Regan's work; imitation is the highest form of flattery.

**Senator Jerry Buttimer:** Like Senator Harris, I come here with a non-legal mind. However, I come with a sense of justice and a sense that we need to put things back on the right track. I welcome the Bill, the backdrop to which is the increase in crime. I welcome the comments of Senator Harris that we should examine our entire criminal justice system; let us do so not from the perspective of the legal mind but from the perspective of the victim, the ordinary person living in the community who must endure crime. The Minister of State, Deputy Curran, knows from his Department that drug lords are selling drugs and preying on the most vulnerable targets in our communities. I live in Cork city where we are undergoing a huge heroin epidemic.

Gangs are roaming the streets of all our urban areas, in particular Dublin and Limerick. The elements of fear and surprise at the news of death or attack is gone. That is a very sad indictment of society and how we handle crime and those who perpetrate crime. They are criminals and thugs and deserve precious little, but conscious of civil liberties one must give them due process and I accept that.

I get upset because various categories of crime are increasing, including white collar crime. I never wanted to see the zero tolerance approach introduced by the former Minister for Justice, Equality and Law Reform, Deputy John O'Donoghue, because that one-size cap does

[Senator Jerry Buttimer.]

not fit all and does not lend itself to what we are doing. We need to re-examine the way our Prison Service operates and what function we want prisons to have. If we are serious about tackling crime we must have sentencing and rehabilitation but we must also enable people to see that crime cannot be made to pay in any shape or form.

I welcome the Bill and I commend the Minister of State. Like Senator Harris — I hate agreeing with him on everything this afternoon — I think Senator Regan had a very good Bill before the House earlier this year. However, we need to see the colour of the money within the Bill. The speech of the Minister of State, Deputy Curran, highlighted the various sections of the Bill but there must be overarching cross-party support for anything that can tackle gangland crime and can deter criminals from prospering in Irish society.

This afternoon on the Order of Business I raised the matter of a very interesting pamphlet received from the Irish Tobacco Manufacturers Advisory Committee. It states that duty is not paid on 20% of the Irish tobacco market, accounting for one in five cigarettes consumed. This comes from illegal activity and represents €387 million of revenue lost to gangland and criminal activity. Any effort that can be made to allow the Garda, or whatever organ of security or defence we want to use, to prevent drug use and sale, gangland crime and illegal activities must be supported.

It comes down to addressing resources and investment in structures and I would love to hear the response of the Minister of State. We can have all the fine blueprints and great Bills but how will we resource the Office of the Director of Public Prosecutions? How will we fund the national surveillance unit? If we are discussing the establishment of a DNA database, what will its structure be and how will we fund all these activities?

While I welcome the Bill, there must be assistance given in the carrying out of surveillance. There has always been surveillance by the Garda. In the estate in which I grew up, there were always gardaí and we knew they were watching certain people and doing certain things. We need to commend the work of the Garda. We all need to play a strong role in being vigilant with regard to crime. In stating this, we should not become completely negligent with regard to provisions on privacy and due process for all citizens, be it a fair and just trial or in terms of not invading privacy. However, in stating this, covert surveillance legislation needs to be introduced and needs to be a top priority of the Government in the context of tackling gangland crime and drugs.

This morning, Dr. Chris Luke, the emergency medicine consultant at Cork University Hospital and the Mercy Hospital, said, “The drug problem was all over the country but people did not seem to realise how big the problem was”. He was referring to the recent concert in Slane, where drugs were freely available and people were walking around off their heads after consuming a cocktail of drugs and alcohol.

Regarding drugs and the illegal sale of drugs, the Garda’s hands are tied. In many cases gardaí know house X or person Y is involved, but they cannot catch the people involved because they cannot see them exchanging the product. The Minister of State and I are involved in our own briefs and know full well that gardaí want surveillance to be introduced. It is about time that was done. This is not a populist message. I have been in the houses of people who had debts to pay and whose children have committed suicide, and of families who have to endure thugs who are getting away with everything.

The Bill allows for the gathering and use of information. If one takes it in simplistic terms, a drug dealer or criminal has no difficulty in using technology and the State has an obligation to protect its citizens. It is important we tackle gangland and organised crime, have no respect for the people involved in that and use all the means and methodologies at our disposal to deal

with it. The Bill is welcome. It is important that we put the resources and structures in place to tackle the issue, particularly of drugs which, as the Minister of State knows, is becoming a major crisis on our streets. I commend the Bill. I thank Senator Regan for his work. Perhaps Senator Harris's contribution on the whole structure of our criminal justice system should be looked at in a different debate. Senator Harris might call for such a debate at a later time.

**Senator Jim Walsh:** Ba mhaith liom an Aire Stáit a fháiltiú go dtí an Teach chun an Bille tábhachtach seo a phlé. Senator Harris made a very interesting contribution to the debate on Second Stage. If we return to first base on the law, there is far too much emphasis on technicalities and legalities and not enough on ensuring effective investigation and prosecution within the system. We have seen, and still see, serious criminals, who are well known to the Garda and are involved in the most heinous of crimes, walking our streets. It is only when they are killed or murdered that their names and the kinds of activities they are involved in come to our attention.

It begs a very serious question of society, that is, what is wrong with our system which allows people who have a total disregard for the law, human life and the rest of society to be able to indulge in criminal activities, almost with impunity? Mention has been made in the House today, and on many occasions, of the activities in Limerick and, in particular, the callous murders of good citizens who stood in the way of criminals and were trying to protect others, such as Brian Fitzgerald and Roy Collins, who was playing his part in our judicial system.

It is a challenge to all of us to work to ensure that the legislative framework and the calibre and effectiveness of the investigative arm, namely, the Garda, and our legal and judicial system, operate to ensure people who are outside the law are held to account for their serious criminal activities. It is interesting that in the press release by the Minister, Deputy Dermot Ahern, on this Bill he stated: "Covert recordings will help to nail crime gang bosses and therefore we must advance this new law as quickly as possible." He emphasised that the work of the agencies which are covered in this Bill is directed specifically at serious gangland crime. He mentioned offences such as witness intimidation, assaults, murder and extortion, while other offences connected with money laundering, drugs and firearms importation activities may also be involved. He said such activity is a deliberate attack on the foundations of our criminal justice system and society at large by ruthless gangs who are willing to murder. Nobody in this House would disagree with any of that. The challenge for us, in many instances, is to balance the right of the citizen under our Constitution and various human rights provisions on privacy, while ensuring the well-being of society is fully protected. Sometimes that is a fine balance.

I welcome the provisions of the Bill, with one small misgiving which I will come to later. I welcome the fact that the interests of the three main authorities involved, the Garda, the Defence Forces and the Revenue Commissioners, coincide in the Bill. I note with interest that no new powers are given to any of the agencies to provide increased covert surveillance. The powers are already in place for the agencies involved.

The purpose of the Bill is to prevent and detect serious crime and safeguard the security of the State against subversive and terrorist attacks. It allows the information and evidence accumulated as a consequence of surveillance to be used in the prosecution of criminals. It removes any legal objections based on the exclusionary rule. It specifies the types of crimes for which the Bill is applicable. It allows for a regulatory framework for the use of surveillance, but deals specifically with offences which carry a penalty of five years imprisonment. The Bill defines arrestable offences with reference to the two previous Acts, which are in the definitions. An arrestable offence is defined as an offence for which a person of full capacity and not previously convicted may, under or by virtue of any enactment or the common law, be punished

[Senator Jim Walsh.]

by imprisonment for a term of five years or by a more severe penalty and includes an attempt to commit any such offence.

That point brings me to my misgiving, which was well illustrated by Senator Bacik when she made an analogy with search warrants and noted that search warrants do not apply to all arrestable offences. There are certain restrictions on them. If we examine this point, there is a clear comparison between getting a search warrant to enable the authorities to gather evidence and using surveillance to achieve the same result. I am a little concerned. I wonder why we did not restrict the measure to very serious crimes, such as organised gangland crime, which is a real threat to the State and society, rather than extending it further than search warrants. I am interested to hear the Minister of State's view on why there should be a disparity.

I welcome the fact that surveillance is subject to judicial application, except in exceptional circumstances, and that there is a requirement in the Bill that the provisions be compliant with the Constitution and the European Convention on Human Rights. That will protect the personal rights of the citizen. I do not have any great concerns about the operation of the framework and do not necessarily disagree the 72-hour period is desirable. However, it is important oversight of it is effective and I welcome the fact it will go before a High Court judge who will report to the Taoiseach and that the report will be laid before the Houses. That is appropriate and I disagree with Senator Regan's comments in that regard.

**Senator David Norris:** I welcome the Minister of State. Like many preceding speakers, I am an amateur and do not have legal qualifications. Unfortunately, I missed the contribution by my colleague, Senator Bacik, who has an astute, professional view on these matters. However, I have some comments to make.

I will comment first on the Minister of State's speech and then on a short briefing I got from the Irish Human Rights Commission. This Bill comes, I presume, in the context of various murders, in particular gangland murders and drug related offences. This area is a huge industry. It is astonishing these offences take place so flagrantly and blatantly. People even boast about their involvement in these matters, at least by implication, on sites like Facebook. Some notorious criminals and their molls in Limerick have put material up on Facebook boasting about "my favourite gun" in the aftermath of a murder. This is an affront to civilised, decent society.

There has been a notable, changing, sophisticated pattern of the use of electronic information in murder trials over recent years, for example, the use of mobile phone patterns where signals are picked up from one centre to another. However, whereas the pattern of movement of a suspect can be placed before the court as evidence, I have yet to learn of a situation where the substance of a conversation has been placed before the court. This means we have a situation where the police may know a crime has been or is about to be committed, but is paralysed in terms of bringing the evidence before the court. Therefore, I welcome the development that will allow this to happen. We must be careful however, because we are talking here about secret surveillance. Any involvement by the State in spying, which is what it is, on individual citizens must be examined carefully in case of what the American military would call "friendly fire". We do not want decent citizens or people involved in minor infringements to be involved in this area.

The Minister of State said in his speech, "Both Bunreacht na hÉireann and the European Convention on Human Rights guarantee an accused person's right to a fair trial." That is only right. However, I noticed he did not refer to privacy. I would think that an important element. We have an obligation in international law to respect the privacy of the citizen except in rare and circumscribed circumstances. The privacy of third parties has not been raised in this debate so far. The police may be able to listen in to conversations and to sit some distance away and

use electronic instruments to penetrate into a person's home, but while there may well be a criminal present, there may also be a perfectly innocent third party present whose activities should not be of interest to the police. In cases where the news media also have access, an innocent person could be dragged unwittingly into the situation. I ask the Minister of State to consider the rights of innocent third parties who may, willy-nilly, have become involved in a criminal situation.

I am glad Senator Walsh raised the matter of an arrestable offence because this is something I marked as needing further consideration. There seems to be a fairly low threshold for this and there are a myriad of arrestable offences.

**Senator Jim Walsh:** We agree on many things.

**Senator David Norris:** On one or two, but it is a pity the Senator is such a sour puss on gay rights.

**Senator Jim Walsh:** I agreed with the Senator on the civil partnership issue.

**Senator David Norris:** Perhaps we will subject the Senator to surveillance, put a tracking device on him and see what he is up to see if we can embarrass him into supporting it — a bit of blackmail.

**Senator Jim Walsh:** Senator Norris said today he was going to oppose it.

**Senator David Norris:** No. We must not let this debate get too light-hearted because this is a serious matter.

**An Cathaoirleach:** It is time to move on.

**Senator David Norris:** I notice the Revenue Commissioners can apply to carry out surveillance. This must be considered only in a serious situation. I do not believe every little person who is massaging his tax returns should be subject to this. They deserve a little slack and not this kind of surveillance. The Minister of State spoke about *ex parte* applications. Of course the application would be *ex parte* as one would hardly send a notification to the person to be subjected to secret surveillance.

The provision in section 11 is excellent. It is a necessary and important corrective that people who are subjected to secret surveillance will have the right to make an appeal and should be compensated. I say this as someone who had his telephone bugged a number of years ago. I found the situation irritating, laughable and entertaining, but I would have made a complaint if possible and would have claimed €5,000 as well. That would have been welcome.

I note the Ministers for Justice, Equality and Law Reform, Defence and Finance may make regulations under the Act. Why is this? This function should be centralised. This is a matter of justice and only the Minister for Justice, Equality and Law Reform should have this power. I do not want the Minister for Finance sticking his nose into this, nor do I want the Minister for Defence doing so. They should have to work through the Department of Justice, Equality and Law Reform and should not be given free rein.

Before I come to the briefing by the Irish Human Rights Commission, I refer to the dreadful lost opportunity by the Government when it downsized and made its mean-minded attacks on various organisations. Today, I am sad to say, is the day of the funeral of the Combat Poverty Agency, which is shameful. The Irish Human Rights Commission has survived but in a slightly downsized form. I urge the Minister of State to take back to his colleagues the suggestion made at the launch of the last annual report that the Irish Human Rights Commission should be used

[Senator David Norris.]

by Government. It should send legislation to that so that it can be human rights proofed. The Government does not have to take up all its suggestions but this practice would be very useful and would cut some corners. The commission suggests that the definition of surveillance should include ongoing repeated photographing of people so that such actions by the Garda would also be subject to review. What is sauce for the goose is sauce for the gander.

With regard to tracking devices, four months is too long a time without a requirement to return to the judge to ask for an extension. In the case of a review by a High Court judge, when something suspect is discovered, the object of surveillance must be informed. This is good. I believe the Garda Síochána Ombudsman Commission should also be included in the Bill. I suggest we follow the principle that what is sauce for the goose is sauce for the gander. If there is criminal activity against a member of the public by a person who happens to be a member of the Garda, that person should have the right to get the Garda Síochána Ombudsman Commission to use the same machinery against that member.

A detailed and accessible code of human rights-based practice should be included in the regulations to be published by the Minister for Justice, Equality and Law Reform so that citizens can consult it to see where they stand with regard to this important new legislation. In general and in outline, I welcome what the Minister is doing with this Bill.

**Senator Fiona O'Malley:** I welcome this Bill. It may not be overdue, but it is necessary. I listened to what some previous speakers said about how the Government often only gets spurred into action after a particular incident. The legislation on the Criminal Assets Bureau was a case in point. This legislation represents a similar type of move. It is never easy to change policy on an issue like surveillance, a policy that, as mentioned by the Garda Commissioner, has been around since policing began. A compliment is due to the Minister for having the courage to do this.

Senator Norris referred to the area of human rights and said it was a pity the Human Rights Commission did not get the opportunity to human rights proof the Bill. I find this comment offensive. It is as if the Government will not protect the human rights of the individuals although this is at the heart of the legislation.

Reference is often made to gangland crime, particularly in Limerick. This is slightly unfair to Limerick because while the area has problems, the Minister of State will know that major cities and smaller urban areas throughout the country have similar problems. Beginning with anti-social behaviour and moving right up to ferocious intimidation of a gang type, these are the issues with which we must deal. I commend the Minister for producing a Bill which tries to do so. The people in Limerick, Mr. Roy Collins in particular, just would not accept this kind of violence. His courage and dignity was quite remarkable and it is for such decent human beings who live in this society that this legislation is being drafted.

The Bill is totally appropriate. We are dealing with communities where there has been a complete breakdown of normal behaviour, sometimes over generations, and we must tackle this. I was very interested in Senator Harris's point in this regard. It is intervention before people commit crimes rather than incarceration afterwards that is needed. There is much to be said with regard to the question of responsibility, in particular parental responsibility. This is why I admire what the Minister is doing in the Bill. It is fine to be pious and to have great aspirations about upholding the rule of law, which we of course all do, and protecting the criminal's rights. However, in many cases, as in the case of Mr. Roy Collins, when does anyone stop to think about the most basic fundamental human right we would all uphold, and which Mr. Collins was denied, namely, the right to life?

We need to have perspective in this regard, which is why I particularly welcome the measures in the Bill. We need to apply a firm hand in dealing with people who have absolutely no respect for law and procedures, particularly concerning intimidation during trials. I welcome measures that will strengthen law enforcement and the services of the Garda Síochána, the Defence Forces and the Revenue Commissioners.

I have listened to the point made by others that the Bill needs to be applied correctly. As with other professions, we have to a certain extent rooted out problems where they have existed in the police force. We need to arm our police force with an appropriate ability to deal with the modern criminal and, for this reason, we must provide gardaí with legislation that does not hinder them. I made the point earlier with regard to Garda Commissioner Murphy's statement that policing cannot be effective without surveillance. This is just a modernisation of policing in that evidence which has been procured through surveillance will now be allowed before the courts.

We are not crossing a major Rubicon because this is the position in which we find ourselves. The first duty of a government must be to the safety and security of its citizens. If people can operate throughout the country believing they are above the law and showing a total disregard for the lives and property of others, we must show a tough response.

I was interested in Senator Harris's point concerning rehabilitation for families. He is correct that a young child who is before the courts does not become a criminal in isolation. All kinds of resources are needed in dealing with this problem and a part of the solution must be how we empower the whole community, particularly parents, in delivering a sense of responsibility to children.

It would be welcome if the President would consider calling together the Council of State to examine the Bill when it is passed by the Houses of the Oireachtas. We need to ensure as soon as possible after the Bill is passed that it is legally watertight because I can foresee it becoming bogged down in court cases. While it is not for a Member of the Houses of the Oireachtas to suggest to the President what she may or may not do, there would be a certain value in her calling together the Council of State. It would serve to support the Garda Síochána at a time when we need to send a very clear signal that the Oireachtas supports the Garda in the conduct of its work.

**Minister of State at the Department of Community, Rural and Gaeltacht Affairs (Deputy John Curran):** I thank the many Senators who contributed to the debate on the Bill. Many important points were made and I will deal with many of them, if not all. I am sure several of these points will be raised again and debated in detail on Committee Stage and Report Stage.

I thank Senators for generally supporting the Bill. It is important legislation which will be very useful to the Garda Síochána, although it must not be viewed as the only answer and must be taken in the context of and in conjunction with other strong legislation that is being published and to which I will refer.

At the outset, Senator Regan referred to the right to privacy in the context of the Bill, as did a number of other Senators. The right to privacy is not an absolute right. It may be affected by other interests, so while the European Court of Human Rights has held that secret surveillance amounts to a serious interference with privacy, it has indicated that such interference is permissible once it is proportionate and strictly necessary in a democratic society. This may be for the protection of national security, public safety or the economic well-being of a country; for the prevention of crime or disorder; and for the protection of health or morals, or the rights and freedoms of others.

[Deputy John Curran.]

A key consideration is that any measure must be prescribed by and in accordance with the law. This is where the Bill comes in. As Senators may have noticed, the Bill is quite detailed and strives to achieve a balance between the competing rights in this sensitive area. It provides the necessary safeguards in that respect, first by prescribing what is permissible by law and second by clarifying the position as to the admissibility of material obtained on foot of surveillance and the rules governing the disclosure of information connected with surveillance.

Senator Regan and other Senators commented on the Garda Síochána. I point out that the Garda Commissioner has indicated that the time is right to be in a position to use this type of evidence in courts. Sometimes the material which becomes available as a result of secret surveillance is so valuable and compelling that gardaí believe its use in evidence would be persuasive and significant. This may be to strengthen a case or it may be that the material on its own may support conspiracy charges. The Garda Commissioner has also indicated that additional resources are not required. The Bill effectively gives statutory effect to current operational practice.

With regard to provisions in regard to the designated High Court judge, this provision is similar to the oversight provision in the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 and is included on the basis that the oversight provision of that Act has worked well since 1993.

I refer to points raised concerning the Garda Síochána Ombudsman Commission and its role under the Act. The decision taken at the time of the enactment of the Garda Síochána Act 2005 was that it would be preferable to wait until the ombudsman had gained more operational experience before considering the application to it of interception powers. That position also applies to surveillance powers under the Criminal Justice (Surveillance) Bill now. Accordingly, this is why section 17 has been included. It amends section 98(5) of the Garda Síochána Act 2005 such that the provisions of the Criminal Justice (Surveillance) Bill do not apply to the ombudsman. The ombudsman has a role under the legislation in that section 11 allows the complaints referee to refer a matter to the ombudsman where he or she believes there has been a contravention of the Act by the Garda Síochána.

I refer to Senator Bacik's comments on the authorisation of entry into places to initiate surveillance. Sections 7(5) and 8(5) provide that authorisation or approval to carry out surveillance may be authorised by a superior officer in the relevant agency. An officer accompanied by any other person considered necessary may, if necessary, enter by reasonable force any place for the purpose of initiating or carrying out surveillance. Such an authorisation or approval may be subject to whatever conditions the issuing judge or superior officer considers necessary. An authorisation or approval will only be issued where the judge or superior officer is satisfied surveillance is necessary for obtaining evidence or information related to the commission of an arrestable offence, preventing the commission of an arrestable offence, to maintain the security of the State and when the surveillance sought is the least intrusive means available proportionate to its objective and of reasonable duration.

Senator Bacik referred to the emergency approval of 72 hours' surveillance. This applies only in cases of exceptional urgency, for a limited period of up to 72 hours and is not renewable. The Bill provides for such surveillance to take place under the sanction of senior officers: a superintendent in the case of the Garda, overseen by an assistant commissioner, or officers of comparable rank in other agencies. Approval is confined to cases in which there is a risk that a suspect may abscond, the surveillance is necessary to prevent a serious crime or there is information evidence may be destroyed or lost. Surveillance beyond this period requires judicial authorisation.

I refer to Senator Bacik's comments on tracking devices, the use of which is regarded as a less intrusive means of surveillance than the use of other devices. For the purposes of the Bill, tracking devices are defined as those which provide information regarding the location of a person, vehicle or thing. In providing for a system of approvals rather than authorisations, the Bill seeks to achieve a balance between the necessity for fast action in the placing of tracking devices and the provision of an effective regulatory framework for their use. As a counterbalance, the Bill provides a stringent system of control for the use of tracking devices which includes rules on record keeping and reporting where such an approval is granted.

I refer to the comments on John O'Brien's newspaper article. The author considers the Bill solely from an operational point of view, but we must also consider the Constitution and the European Convention on Human Rights, ECHR. This is why the safeguards such as the judicial District Court authorisation process are essential. We have also taken on board some of the concerns of the Irish Human Rights Commission which were included during the Bill's passage through the Dáil. I refer to Senator Hannigan's point on retention of records. The measures are in keeping with the emerging ECHR jurisprudence. Section 9 allows for relevant Ministers to retain documents beyond the specified period, which relates to the point made by the Senator. There is provision to go beyond that specified period.

I refer to Senator Walsh's comments on offences covered by the Act. It is not intended that the surveillance covered in the legislation would be used widely, only in certain specific circumstances in response to a threat posed to citizens by criminal elements. It is also subject to stringent safeguards. Senator Norris referred to people materially affected by surveillance such as a third party who is overheard. Such people are covered by the complaints procedures.

Most of the comments of Senator Harris did not relate to the legislation. However, they were provocative and thought-provoking and merit a wider debate in their own right. One comment was whether the legislation would be an effective tool in the fight against crime. The Bill will help to ensure more prosecutions and to secure convictions in cases which might not otherwise have progressed to court. The Garda Commissioner believes the potential of the Bill to fight against gangland crime, such as the tragic events which occurred in Limerick recently, is very significant.

At the outset I remarked that we should not simply view the legislation on its own. In the coming days the House will be asked to consider additional measures to tackle organised criminal gangs. In the light of the situation we face with ongoing intimidation of witnesses and jurors, the Criminal Justice (Amendment) Bill 2009 provides that the powers available to combat subversive organisations may be applied to criminal gangs. This would mean crimes involving criminal gangs could be scheduled offences for the purposes of the Offences against the State Act such that those involved could be tried in the Special Criminal Court unless the Director of Public Prosecutions states otherwise. The Bill provides for the new offence of directing the activities of a criminal organisation which carries a maximum penalty of life imprisonment. Provision is also made for organised crime offences with penalties upon conviction of up to 15 years, including intimidation of witnesses and jurors. The Criminal Justice (Amendment) Bill 2009 complements, to a large extent, the provisions of this Bill.

Senators have welcomed this legislation which is part of a wider package of legislative measures. To deal with gangland crime, more legislation is necessary. However, this is very specific legislation to give effect to the operational procedures followed by the Garda at present. I am pleased Senators have recognised the necessity of the legislation, I thank them for their constructive input and look forward to returning to the House in the coming days to proceed with Committee and Report Stages.

Question put and agreed to.

Committee Stage ordered for Thursday, 2 July 2009.

*Sitting suspended at 5.40 p.m. and resumed at 5.50 p.m.*

**Broadcasting Bill 2008 [Seanad Bill amended by the Dáil]: Report and Final Stages.**

**An Cathaoirleach:** This is a Seanad Bill which has been amended by the Dáil. In accordance with Standing Order 103, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question “That the Bill be received for final consideration”, the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators’ convenience, I have arranged for the printing and circulation of the amendments.

There is one amendment, proposed by Senators O’Toole and Quinn, to page 171 of the Bill. For the convenience of the House, I propose to allow the Minister to first explain the changes made by the Dáil and when this is completed, the House will deal with the amendment. Is that agreed? Agreed. I suggest 23 groupings of amendments based on the subject matter of the 297 amendments made by the Dáil to the Bill. The Minister will deal separately with each group. Each Senator may speak once on each grouping. I remind Senators that the only matters that may be discussed are the amendments made by the Dáil.

Question proposed: “That the Bill be received for final consideration.”

**Minister for Communications, Energy and Natural Resources (Deputy Eamon Ryan):** I am pleased to return to the Seanad to discuss the Bill which was initiated here. I will deal with each grouping of amendments. My contribution will be long and detailed and I ask Members to bear with me.

Group 1 amendments relate principally to the core definitions in section 2 of the Bill. Amendment No. 1 deals with the definition of broadcasting service to bring it into line with the concepts set out in the new audiovisual media services directive. This directive, which must be fully transposed by December 2009, draws a distinction between traditional linear broadcasting services and newer, video on demand or non-linear services. The amendment makes it clear that broadcasting services, as well as having many other characteristics, are only those of a linear nature and non-linear audio services are excluded from the definition of broadcasting services within the Bill. The regime for non-linear services will be set out when the directive is transposed by regulation next year.

Amendments Nos. 4, 106, 107 and 121 clarify that IPTV is a network on which services carried are deemed to be broadcasting services. Amendment No. 6 broadens the definition of media literacy to reflect the reality that media can include that created by an individual or community as well as the more traditional creations of media. Amendments Nos 7, 8, 197 and 198 bring the spelling of “radio” into its Irish format for the purposes of identifying Raidió Teilifís Éireann. Amendment No. 9 inserts in section 2 a definition of the word “sectoral”, which is used in a number of sections in the Bill.

**An Cathaoirleach:** Senators may wish to contribute on group 1 amendments. There are no contributions so I invite the Minister to continue.

**Deputy Eamon Ryan:** Group 2 amendments consist of a large number of amendments but these are all minor drafting amendments which are necessary to improve clarity and in turn the consistency of the text of the Bill and to excise errors and omissions.

The group 3 amendments primarily address the issue of a new appointments mechanism proposed by the boards of the BAI, RTE and TG4. Amendments Nos. 11 and 132, in particular,

provide clarity of the roles of the Minister and the Oireachtas joint committee, including requiring the Minister to indicate to the joint committee the relevant experience and expertise of the persons he or she proposes to appoint. Amendment No. 16, precludes a person who has an interest in a newspaper from membership of the BAI or its statutory committees. Amendments Nos. 17 and 160 provide that meetings of the board of the BAI, RTE and TG4 may be conducted by phone or videoconference if required.

**Senator Joe O'Reilly:** I welcome the Minister to the House. It was encouraging and important that the Bill was initiated in this House, and it was addressed very well at that stage.

I welcome the requirement of the Minister to identify the qualifications and suitability of candidates for nomination to the board and to indicate those suitabilities to the joint committee and *vice versa*. However, I still believe there is an omission in the section to the extent that the Minister did not accept our idea of a public hearing by the joint committee on the board members. While the committee can recommend names, the Minister selects the candidates. The merit of a hearing would be that it would ensure transparency and accountability and that it is not a case of party personnel being appointed for the sake of it. Given that public moneys are involved and that high competency levels are required, this is an important consideration and there was an opportunity to include it. I register my happiness that certain amendments allow for the Minister to declare competencies but I am unhappy with the fact that there will not be full hearings as these could have avoided anything extraneous to their competency for membership of the board. This is a missed opportunity as it would have gone a long way to allay public cynicism and alienation which sometimes exist towards the process of politics and government. It was important to display that we do not appoint party hacks. The Minister was given a great opportunity with a revolutionary concept in an Irish context and it is regrettable he did not take it. I do not know if procedures allow the Minister to rethink that decision.

**Senator Joe O'Toole:** I welcome the Minister and congratulate him on the Bill, which is fine legislation that will have a significant impact. I rise to discuss the same issues raised by my colleague, Senator O'Reilly. I have a few searching questions and I would appreciate the Minister taking the time to give a correct answer. I note the amendment put forward by Deputy Simon Coveney in the other House and I note the Minister rejected it. He did not accept the Fine Gael amendment that there would be a public hearing. With regard to those appointed following the nomination of the committee, I take it there would be nothing wrong or contrary to the law were the committee to decide as part of its process to have a public hearing with some of the people whom it intends to nominate. This is crucial information.

There are three members of the communications committee present. I would like to hear the Minister's view on whether we, as a committee, could decide that as part of the process of coming up with names, there would be a public hearing. I am not talking about a grand inquisitorial hearing but a place where the people to be recommended would come before the committee.

That is a specific point, but on a broader aspect I spoke to the chairman of the committee, Deputy M. J. Nolan, on a number of occasions and the committee has had a number of private discussions on how we would approach this issue, and there is a general consensus that at a time when politics has never been under such close public scrutiny and issues of transparency, accountability and so on are trotted out, often in a meaningless way — people use them without giving them thought — the Minister, as a Green Party Minister, should take the opportunity to plough what is a virgin furrow. The Minister can correct me if I am wrong but I do not recall a committee of the House effectively nominating people to the committee. I am aware that, strictly speaking, the names are presented to the Minister and the Minister nominates, but that

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is the normal procedure for everything. It might be the ICTU or IBEC, and that is the normal process, but effectively this is new and for that reason it will attract public scrutiny, which we should welcome. A committee decision has not been taken on this but I get the view from the members of the committee on both sides — there is no division on this matter — that we should be seen to do this business openly, unquestionably and in an unchallengeable way.

I said to the committee that in dealing with this issue we have an opportunity to show politics at its best. We should plan carefully and take time to put in place a process which would be as transparent as possible and above reproach in terms of fairness and balance and which would be sound in the event of a challenge to it. Above all else it should win the trust and confidence of the public, which I believe the Minister would want too. There is nothing in what I am saying here that any of my colleagues in any party or in government, including the Minister, would work against. I am not sure whether the Minister will be before the committee tomorrow morning but this is one of the issues that will arise and I would appreciate hearing the Minister's views on it on record.

To make it happen it is crucial that the committee goes through a process as rigorous as an appointment. In other words, before we make choices and recommendations to the Minister we, as members of the committee, should go through a process as rigorous as an appointment. The Minister knows what will happen. Regardless of who he appoints people will make some connections, and Ireland is a small country. People do not know their second cousins but the media will find out who are their second cousins. They will find out that they drank with the Minister one night 20 years ago in Rosslare, and immediately we have a headline. We can take it as read that something like that will arise.

I cannot tell the Minister what to do. I agree with Senator O'Reilly it is regrettable the Minister did not opt for some form of public hearing, not a place where people are turned upside down like the American system but where they are given the opportunity of showing their experience, expertise and knowledge in a calm environment. It should not be a place where people would be marked on that but where people would simply get over the line, in other words, the members of the committee or the public would say that the people they have seen know what they are talking about.

We must agree on the principles that will inform the process, but the Minister has not done that. There are two ways of looking at it. The Minister could rightly reply that it is the committee's business and the Minister should not be telling it how to do its business. On the other hand, it might reflect certain views of the Minister were he to insist that there must be certain principles informing the process of the recommendations of the committee on deciding how, for instance, advertising will be done or the way a job description will be developed and to determine the essential and desirable criteria.

The Minister should remember that all members of the committee have received communications and letters from people expressing an interest. There is nothing wrong with honest people reading the legislation and indicating that they would like to be considered. There should be a way of dealing with people who want to offer themselves and we must then go through a fair process to select but what I do not want to see happen under any circumstances is committee votes on nominations that come without any process. That would be madness and it would not do the Minister any good. I am sure it is not what he would intend but it could easily happen.

I would like to hear the Minister say on record that there will be a clear job description and a list of essential and desirable criteria which must be developed and a process which would include short listing, marking, interview selection, interview procedure, interview board compo-

sition and post interview committee approval. The post interview committee approval is the approach where we could make manifest the suggestions by Senator O'Reilly in that people could come before the committee but not to be marked. The selection board or the sub-committee of the committee, whatever way we decide to do it, would come up with three names, say, Joe O'Reilly, Joe O'Toole and Jim Walsh. They would come before the committee not to be questioned, harassed or embarrassed in any way but to outline the reasons they believe they are suitable people for the job. The persons would simply outline their backgrounds etc. Somebody else might do the job equally good but at least the committee would be assured those are people we can comfortably put forward as recommendations.

That is the type of approach we must take. In my reading of the legislation there is nothing to prevent the committee, as part of one of its stages, bringing the people before the committee in public session in a controlled environment. It would not be done to control or embarrass them but to allow them display their expertise, knowledge, background, suitability and whatever else we talk about for the public.

Whatever way the committee does its work, it must be done in an open way. In other words, everything must be challengeable and accessible subsequently to ensure that disappointed candidates can say that they put their names forward and that the person who got it, say, Joe O'Toole, does not come near their level of expertise, knowledge or whatever. The marking system must be in place. People can disagree with it but it is all on the record. That is what happens with any appointment in the public service. If it is done by the Civil Service Commission or whatever it must list the candidates and order them in priority. They must give a first, second and third and it is all on the record. Apart from anything else it is an absolute protection for members of the committee because regardless of who we put forward we will be told we did it for all the wrong reasons, we had vested interests, we were pushing particular candidates and we had a private agenda.

For the sake of accountability and openness, the Minister's reputation, politics being seen to work, the public sector operating best practice and committee members being protected from their own procedures, that is the way we should go about this at committee level. I do not believe it is open to me to say that is the way we should proceed at ministerial level but I would like the Minister to put on record how he believes the committee should go ahead with that process. It is not binding but the Minister's views would be helpful to all of us in discussing this issue. When the process is over it would be a fine thing for a Minister to have left his mark as being the first Minister to put in place a process of appointment to boards which is open, transparent, challengeable, understandable and comprehensive.

That could be done another way. I am not proposing it in this situation but I refer to the fact that the Minister's party supported the recommendations of the Sub-Committee on Seanad Reform. One of its recommendations was that the Seanad would have a role in the approval of people being appointed to certain positions. I do not say it anticipated what we are talking about today but it shows there is a political view that we need to have political involvement which is open and transparent. That is our best protection.

As the Minister has said, a number of boards will be established. There is a 90-day limit on the period the committee can take to do its business. That is why we should do some of the work beforehand. We are already marginally compromised by the fact that certain people have written to us expressing an interest. It could be argued we should not have seen that correspondence before we developed a job description or essential criteria. We should now be working on this matter in conjunction with the Minister and his officials.

The Bill states that: "the Minister in respect of an appointment...shall provide a statement to the Joint Oireachtas Committee indicating the relevant experience and expertise of the

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persons or person nominated by the Minister for appointment". I presume that refers to the group appointed by the Minister. The Bill goes on to say: "the Joint Oireachtas Committee shall within a period of 90 days...advise the Minister of the names of the persons or name of the person it proposes that the Minister should nominate...giving reasons, such as relevant experience and expertise, in relation to the proposed named persons". I have no opposition to that whatever. However, it should go slightly further. The Minister should write to the joint committee saying that in his view certain matters should be taken into consideration. One does not want a board of communicators or media people. Obviously, one needs a certain number with a media background but one wants a balance of people with experience of the media, business and the public and private sectors. The Minister needs to give guidelines. The committee can then decide which road it wants to travel. It would be helpful if the committee worked in tune with the Minister. It is bad politics if a committee does work and does not realise until it is too late that it is moving in a direction different from the Minister's thinking. The Minister should take some influential control. There is nothing in the Bill to prevent him from doing that.

The Minister should write to the committee asking it to bear in mind the need for a balance of board membership along certain stated lines. Ministers do not have difficulty in requiring boards to have a gender balance. When the Minister has stated those guidelines, the committee can then develop the job description and the principles towards which it will work and how it will establish openness and transparency. The committee will then go through the process, presumably having appointed a sub-committee or sought outside help to carry out the process. The whole committee can hardly be involved in all the stages but the whole committee will have to approve the appointment. If the whole committee must approve a name, then at some stage the whole committee must have some engagement with that person. I am sure it is intended that the appointment would be more than a paper operation.

When the sub-committee or outside group selects two or three names, the committee must exercise discretion in order that its decision should not be challengeable. Recent case law is clear in stating that where people have discretion, they are required to show they have exercised it. There must be a reason for each member of the committee to approve the appointment of, say, Jim Walsh, Joe O'Reilly and Joe O'Toole. Therefore, each member of the committee must have some engagement with those people. The best way to do that is to have the process explained to the committee in great detail, the steps to be gone through outlined and the three people brought before the committee to explain their backgrounds and what they each have to offer.

Am I right in saying the committee could do all that? The members of the joint committee feel they will be under a magnifying glass in carrying out this process and the political system will be scrutinised. Will the Minister indicate how we should progress in that matter?

**Senator Jim Walsh:** Cuirim fáilte roimh an Aire. We have had a comprehensive debate on the Bill and there has been a general welcome for its provisions, which have been amended and improved in the Dáil. Some of those amendments reflect comments made in this House.

For the first time an Oireachtas joint committee is invited to have an input into the composition of such statutory boards. This is to be welcomed. It is important we do not find ourselves at cross-purposes with the Minister and the Department with regard to nominees. That is the essential issue.

**Senator Joe O'Toole:** Hear, hear.

**Senator Jim Walsh:** However, Senator O'Toole may go too far. If the Minister and the Department become overly prescriptive, some of the independence will be removed from the joint committee's evaluation. A process is required and it is important it works effectively because it may provide a template for future appointments. All the members of the joint committee are anxious to get this right and to do justice to the initiative which the Minister has taken in giving a joint committee a say in what has always been the prerogative of the Minister and the Department. The initiative is progressive and welcome.

I would like to see the joint committee bringing forward a list of criteria and, perhaps, fine-tuning the criteria in consultation with the Minister and the Department. Rather than being presented with a complete menu of the expertise the boards will require, could the joint committee not compile such a menu, present it to the Minister and have him make the appointment? The sequence in which things are done is important to the functioning of the process. Some thought should be given to this area. Members of the joint committee discussed the question of gender balance, which is the only requirement stated in the Bill. There is also a need to have a range of expertise.

We should not become too concerned about this matter. We are capable of meeting the challenge before us. We should accept it in a constructive way. I agree with Senator O'Toole that some fine tuning is required to ensure the joint committee and the Minister do not end up at cross-purposes. The worst possible outcome would be for the joint committee to recommend four names and for the Minister to accept one and appoint three other people. That would leave us all with egg on our faces. We must focus our attention on avoiding that.

I note that the objectives of the BAI were amended in the Dáil. I support some of the amendments. According to the note I received, the regulatory environment will be required to sustain independent and impartial journalism. I am not sure if the word "sustain" is accurate. It might be the case that it might engender independent and impartial journalism. I am not simply referring to the national broadcasters, although I could comment on them, but also to those at local level. I am aware of a current affairs programme whose main presenter has no difficulty saying the Government is appalling and that he is totally opposed to what it does. He injects his own opinion. I do not mind this broadcaster having a guest on the show who makes these points, but I am not sure that the presenter should make them, particularly when he is from a particular political background. It jaundices the matter. There is a need not for sustaining but for ensuring independent and impartial journalism. In that regard, if the BAI intends to operate like the Broadcasting Complaints Commission, BCC, it will tend to be reactive. When one brings something to the attention of the BCC, it will say it is not its job to monitor. Unless some citizens are sufficiently energised to make a comment or complaint, these issues are not examined. I wonder if that is correct and whether it justifies the expenditure we make on these regulatory authorities.

There is also a need to sustain compliance with applicable employment law.

**Senator Joe O'Toole:** Which amendment is that? I am a little confused.

**Senator Jim Walsh:** There is only one amendment before us, as I understand it.

**An Leas-Chathaoirleach:** We are dealing with group 3.

**Senator Jim Walsh:** Is section 25 included in that?

**Senator Joe O'Toole:** No, that is under group 4.

**An Leas-Chathaoirleach:** We are dealing with the subject matter of amendments Nos. 11 to 17, inclusive, No. 24, Nos. 132 to 134, inclusive, and Nos. 138, 143 and 160.

**Senator Joe O'Toole:** I apologise for interrupting the Senator but I believe that issue is dealt with in the next group.

**Senator Jim Walsh:** It is section 25.

**Senator Joe O'Toole:** That is dealt with in group 4.

**Senator Jim Walsh:** Fair enough. I will deal with it when we are discussing that group.

**Deputy Eamon Ryan:** The Oireachtas committee has an interesting and new task in proposing members to the RTE broadcasting authority and TG4. The power to propose rather than oppose is a significant power and I hope it works.

Senator Joe O'Toole made points about setting out the type of process. I would not disagree with the sentiment he set out in his comments, that it would be better to try to get consensus on this rather than it being a vote mechanism. With regard to the job description, the Bill contains the actual job description. The role of the agency is set out in detail so if I was offering a job description, I would photocopy the relevant sections and give them to any candidates. That is what the Bill does.

As regards the ministerial direction, it was inserted so the members of the committee would be assisted in their deliberation on the mix. Everybody knows the type of mix we will be seeking. It is a mixture of legal, financial, employment and possibly disability interests. I do not wish to be specific but there should be a mix of the different interests involved. Hopefully, the process for doing that should be easier given the staged way provided for, whereby the Minister indicates to the committee the appointments he or she intends to make first, and the committee can propose the people to fill the remaining vacancies to provide for a balanced board.

As to whether there are public or private sessions, that is a matter for the committee. There is a case for having people who will hold such positions answer questions and set out their vision in a public forum. That would be an interesting and welcome addition. However, the details of that are a matter for the committee. It will have to be reasonably quick because once the Bill is signed by the President the time lines begin. There are very serious broadcasting issues at present. It is a very difficult time in the broadcasting sector with commercial revenue decreasing, the development of the web and so forth. There is a range of serious issues that require consideration so this board must be in place and working very quickly. I did not hear anything today with which I would disagree in terms of proposed mechanisms and I look forward to addressing the Oireachtas joint committee directly as we go through the process.

**An Leas-Chathaoirleach:** Group 4 deals with the objects, functions and duties of the Broadcasting Authority of Ireland. The amendments are Nos. 25 to 27, inclusive, No. 29, and Nos. 34 to 36, inclusive.

**Senator Joe O'Toole:** I am not sure how we are doing our business. We have now finished group 3 but we have not agreed them.

**An Leas-Chathaoirleach:** We do not agree them until the end.

**Senator Joe O'Toole:** Then we go through all of them again.

**An Leas-Chathaoirleach:** This is only information on them.

**Senator Joe O'Toole:** What are the rules of this debate?

**An Leas-Chathaoirleach:** Members can make one contribution on each group of amendments.

**Senator Joe O'Toole:** One input on each group. When we go back over the amendments can people start talking again? We will be here all night.

**An Leas-Chathaoirleach:** We are not discussing each amendment, we are only discussing the subject matter. We will proceed to group 4.

**Deputy Eamon Ryan:** The amendments in group 4 address the objects, functions and duties of the BAI. The amendments require the BAI to take what steps it can to ensure the sector provides sustainable quality employment for journalists, to protect the interests of children, particularly in respect of commercialisation, and to ensure that in setting the regulatory environment for broadcasting such environment is conducive to and supportive of compliance with employment law. They also require the BAI to have a more proactive role in respect of the development of Irish language programming. Amendment No. 26 is intended to fulfil a commitment given to Senator O'Toole in the course of the Seanad debate. The amendments also address the treatment by the BAI of the commercially sensitive information received from broadcasters in the course of its regulatory functions.

**Senator Jim Walsh:** As I said earlier when I rambled from group 3 to group 4, sustaining independent and impartial journalism is an important point. Politics needs a free press; it is important that it is open to scrutiny and criticism. However, people plying certain personal agendas brings the entire system into disrepute. There is a little of that taking place at present. The problem is that if it goes unchecked, the tendency in society is to gravitate to the lowest common denominator. I have genuine concerns in that regard. How to deal with that without at the same time interfering with the necessity for freedom of the press to comment is the challenge. We have seen examples, some of which have ended up in court but most of which have not, where there is a real tendency in this regard. I do not know if it is due to competition but it was felt, in recent years, that perhaps competition from English tabloids was driving it, and it probably was. The downturn in the economy is exacerbating the situation. We should collectively consider how we can ensure that the necessity for freedom of speech and the enhancement it brings to our democratic processes do not undermine the overall intention, and how we can ensure that it is both independent and impartial. I have no ready-made sparks of wisdom that can direct us how to do that but we should certainly examine it. The BAI has a role to play. I do not believe that is a reactionary force. I imagine that people in such positions are probably reasonably well paid. It should not be beyond them to consider monitoring this, perhaps on an *ad hoc* or spot basis, and forming their own independent views without waiting for people to complain. In general, people do not complain but shrug their shoulders and carry on.

The second point I wish to raise in that regard is the objective to sustain compliance with applicable employment law. I wonder why we would place an onus on a broadcasting authority to enter an area which usually is regulated between the employer and employees. There may be an employees' union. Concerning foreign direct investment coming into Ireland, some of which has union representation although most has not, there has been a very good enlightened approach to industrial relations and to the application of employment law. I wonder, therefore, why this step is necessary. A number of other agencies, such as the National Employment Rights Authority, NERA, and the Health and Safety Authority, have become very proactive

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in this area since the onset of the recession, far more so than they were in the good times. I raise that question.

I agree with the other inclusions, such as protection of the interests of children, the vulnerability of children to undue commercial exploitation and also the measure to stimulate Irish language programming. I believe we all subscribe to this.

**Senator Joe O'Reilly:** I wish to comment further on broadcasting content standards which I believe to be particular to group 7 of the amendments. I shall wait until they are being dealt with.

In broad observation, I have no issue with the principle set out by Senator Walsh — if I understood him correctly — that there should be a high standard of political impartiality and a high ethical standard in the way news and analysis are presented. I have no difficulty with that. I do not propose to comment on the bona fides of Senator Walsh or his observations but in my view RTE and TG4 are discharging their function as public service broadcasters in an exemplary fashion. I am on the road a great deal at night because of meetings, as are all of us who are political practitioners. We are away much of the time and do not see many broadcasts. Perhaps I am missing some programmes that are to the contrary but the impression I have is of a high objective standard. I wish to state that, to be fair. There are times, of course, when we might look on this matter differently. It depends on the programme or the context.

I shall leave it at that for now because I do not wish to delay proceedings unnecessarily.

**Senator Joe O'Toole:** I thank the Minister for responding to my worries about taking the interests of children into account. I deeply appreciate his doing that. It raises an issue that perhaps he might answer. First, it is hugely important that the interests and vulnerability of children and their exposure to undue commercial exploitation are taken into account. It is really important that this can now be dealt with on a legal basis. The gain is that the Broadcasting Authority can now consider it from the point of view of all broadcasters. Until now, if one broadcaster decided to take a moral stand it would simply be undercut by another broadcaster which would see money available.

If the Minister has had a chance to look at his post today, he will have received, like the rest of us, a nice glossy publication from the tobacco industry telling us how bad things are. It does not mention health or anything like that, only how badly we are looking after the industry. It is very important that people take a strong stand against that kind of disinformation. I do not say it is misinformation but there is a lack of understanding. I heard a man on the radio yesterday blaming the Green Party for the collapse in the car industry, which I thought was a bit rich. He sounded quite plausible as he made his case. It is the same with the tobacco industry which tells us about the cost of cigarettes without bothering to tell us the cost in terms of health and other ways.

Is the situation now such that the authority can take a decision to exclude all drink advertising before the watershed time of 9 p.m.? As I understand it, it seems able to do so under section 25(f). Is that a clear understanding? I have been arguing about this publicly for quite a while and so far my argument has been based on the fact that there needed to be a legislative base to exclude tobacco or drink advertising to children. There is a voluntary code at present and the drinks industry has dealt with the matter by excluding drinks advertising between 6 a.m. and 10 a.m. That gives some indication of how likely we are to make progress if matters are left to a voluntary code. A voluntary code makes proper action impossible. If one considers a large sporting body, for example, it cannot take action on its own because that would leave the market open to its chief rival in competition. I very much welcome this measure. It gives a

legislative basis for a decision to be taken. The Broadcasting Authority could decide to protect children from undue commercial exploitation, taking into account their vulnerability. I do not say it would or will or can do this but it seems it now has a legislative basis to do so. I ask the Minister to respond to this point.

These are all very positive changes in respect of the functions of the authority. They are very helpful. I like the idea of the right to reply but I wonder how it will be treated. I agree completely with Senator O'Reilly that as a public service broadcaster RTE has been extraordinarily balanced. In any of its news programmes, from "Morning Ireland" to "News at One", it may give us a hard time in terms of an interview. That is its job and nobody can complain about it.

However, I make one point in this regard. In my 22 years in the Seanad Members have been given a fair, hard time from the media now and again by way of interview. On such occasions they might say they did not get the best outing or had a tough time. Twice in the past year, I felt there was consensus in this House. I do not believe Members articulated this outside because it sounded like whingeing. I refer to the two "Late Late Shows", one on the Seanad, the other on the Dáil. People felt the presentation was mishandled and did not give a balanced view. I do not wish to go into the details but offer this example only by way of explanation. I agree with Senator O'Reilly. Normally, one does not come across a problem in news programmes because presenters simply follow a line of questioning, putting forward hard questions and demanding answers. That is what politicians are elected for, to be able to deal with that. It is not an issue. People might have views one way or another. However, the non-news programme also needs to be balanced. It can go wrong along the way.

I thank the Minister again for dealing with the issue of children being vulnerable to commercial exploitation and remind him of the need to keep that in mind. I am interested to hear his answer.

**Deputy Eamon Ryan:** I shall address those three issues. Regarding the first, impartiality, the reason section 42 has a specific provision that "broadcast treatment of current affairs, including matters which are either of public controversy or the subject of current public debate, is fair to all interests concerned and that the broadcast matters is presented in an objective and impartial manner and without an expression of the broadcaster's own views" is to try to ensure that those high standards apply.

The second point concerned employment issues and obviously the key role is for NERA or other employment bodies to be taken into account. I wanted to include this as an amendment to signal the concern that it is important there should be high standards and high wages. We cannot have a broadcasting industry which, because of commercial pressures, might rely for staff on a large number of part-time, freelance or younger people. The specifics of employment law depend on other agencies and legislation, but it is important to signal that we want a proper industry in which people have long-term career prospects and resources are deployed in such a way as to allow people to conduct investigative research and to ask good questions.

I wish to confirm to Senator O'Toole the provision in respect of children. If the broadcasting authority takes into account evidence of what children are watching and what the main audiences are, it can introduce stricter codes that could exclude such advertising in the times mentioned by the Senator.

**An Leas-Chathaoirleach:** Group 5 concerns community broadcasting, which is the subject matter of amendments Nos. 28, 97, 98, 109, 111, 112, 114, 119, 126 and 127.

**Deputy Eamon Ryan:** These amendments add to the criteria of what constitutes a community broadcaster by including terms such as "account to the community" and "seeking to provide a

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social benefit to, the community concerned". The amendments also require the broadcasting Authority of Ireland, BAI, to consider the specific needs of community broadcasters in respect of the licensing of digital services. Amendment No. 126 empowers the BAI to specify that a community channel should be carried on an analogue or digital network maintained by a network provider.

**An Leas-Chathaoirleach:** Group 6 concerns the ability of the Irish film channel to advertise, which is the subject matter of amendments Nos. 30, 31, 76, 123 and 224.

**Deputy Eamon Ryan:** These amendments provide that the Irish film channel may carry advertisements subject to certain restrictions and approval and adds the Houses of the Oireachtas and Irish film channels to the list of must-carry services on digital networks.

**Senator Joe O'Reilly:** As I did on Second and Committee Stages, I wish to put on record my strong welcome for the Irish film channel. I am sure that colleagues also feel this way. It is an excellent development and the fact that the Irish Film Board will be intimately involved is important.

I welcome the Minister's acceptance of Deputy Coveney's amendment in the Dáil to allow advertising to fund the new channel. Given the times we are in, the amendment and its acceptance made commonsense. The normal standards of timing, ethics and content will apply to those advertisements, which is welcome. I also welcome the Oireachtas channel, which will be worthwhile and important. How will it be funded, given the funding crisis in RTE, which one understands will run the channel? In terms of funding, we must congratulate RTE's unions and staff on their initiative in recent weeks in taking wage reductions, their restraint and their commitment to the public good. They must be saluted, as they have been extraordinary and have shown remarkable patriotism, courage and generosity.

What is the timeframe for getting these channels, particularly the Oireachtas channel, up and running? That channel will be important in establishing the connect between people and the Legislature. As I stated on Second and Committee Stages, local government should be included in broadcasting at appropriate times, as highlighting local government assemblies would be important. The broadcasts should also include the European Parliament. It could bring the whole democratic apparatus into people's homes, thereby establishing transparency. Would it not be great if the serious manner in which we are taking the Bill could be made visible to people through an Oireachtas channel?

**Senator Jim Walsh:** I concur with the Senator fully. Reverting to a previous point, the channel will be a way through which to communicate with people directly. Many people watch Question Time in the Dáil when it is broadcasted and comment to us afterwards. Where a message is dressed up and mixed with other matters when presented to the public through the general media, it is important that people see the debates and hear what is stated at first hand and are exposed to what is occurring at local government level. Undermining democracy would have serious consequences for society. During the past six months or longer, Senator O'Toole spoke eloquently, strongly and passionately in this regard. As participants, it is easy for us to be seen as protecting our own patches, but a healthy democracy that is subject to all necessary scrutiny while not being undermined for commercial or personal reasons is essential for society. The more direct exposure that people get, the more they can form independent opinions.

**Deputy Eamon Ryan:** I thank Senators for their support for the Oireachtas and Irish film channels, which will have difficult births in these economic circumstances. The former is a matter for the Houses of the Oireachtas Commission, which has been considering which mech-

anism to use to put the channel together and to transmit it. Whether RTE will transmit the channel is not certain. Understandably, a number of people have been arguing that they might be able to process and manage the system, but the mechanism is yet to be decided.

The discussions to date have been to the effect that the funding would need to come from the budget of the Oireachtas. This poses a difficulty, since our budgets have been cut. However, we should rise to the challenge because being transparent, open and available would be of more interest than anything else. It would benefit our work and provide a good service to the people with relatively little expense. Given that we already have cameras and a sound system, the costs would be low and we could bring in many feeds from other parliaments, including the European Parliament, European Council meetings and so on. A stream of information on political meetings is available for broadcast at a low cost compared with other programming. This point should drive us to deliver the channel now that we have provided for it legislatively.

The film channel should be equally as cheap in terms of its transmission and editing process, although not in its quality. A large archive of digitally recorded material is available to us and, at a low cost, we could tap into a range of international and Irish films and broadcast them in a way that would build an audience. My initial instinct was not to include advertising, but I wanted to keep it as an option, given our commercial difficulties and the tightness in the budget of the Department of Arts, Sport and Tourism, from which the channel's money would come. I did not want a lack of advertising to block the station's establishment. We will need to determine whether this would be possible in the budgetary process but, if necessary, the channel will carry advertising to cover its budget.

**An Leas-Chathaoirleach:** Group 7 concerns broadcasting content standards, the subject matter of amendments Nos. 32, 43 to 45, inclusive, and 63.

**Deputy Eamon Ryan:** These amendments address the issue of broadcasting content standards. Amendments Nos. 43, 45 and 63 replace the phrase "taste or decency" with the less subjective term "harm or offence". Amendment No. 44 also allows the BAI to adopt a more flexible approach in respect of religious advertising. Amendment No. 32 requires the Minister for Communications, Energy and Natural Resources to lay before the Houses of the Oireachtas reports received from the compliance committee in respect of compliance with Irish broadcasting codes of broadcasts targeted at Irish audiences by broadcasters located in other EU member states.

**Senator Joe O'Toole:** I certainly welcome the changes, particularly those to sections 43 and 44 to allow for religious broadcasting. Not allowing it was a case of liberalism gone too far in the wrong direction. Tolerance should be the issue. I have never seen the democratic process or free will undermined by allowing religious advertising. Not allowing it was a step too far. If a church wants to spread its message through the media, it should be allowed to do so. I might not like the message but that is not my call.

While I am glad "offending good taste or decency" is being replaced by "causing harm or offence", which change is very welcome, I would hate to be the judge of what causes offence. The question is like that which arose in the blasphemy debate. On Second Stage and Committee Stage, I felt content that causing offence must be calculated to incite hatred.

Causing offence is very much a passive process. While I agree that people who set out to cause offence should be made answerable, I believe there is a difference between doing so and causing offence inadvertently. If somebody tells me I offended them greatly, which happens to me regularly, I apologise immediately if I did not intend to cause offence. It would not matter if there were no intention to cause offence because, if I actually caused offence, I would have a civilised duty to deal with the matter. It is not difficult to apologise and state one did not

[Senator Joe O'Toole.]

wish to cause offence. On the other hand, people can be overly sensitive about taking offence when it was never intended in the first instance.

How will the Minister decide what is offensive and what is not? It is like the debate on what constitutes blasphemy. We have heard various views on what might offend followers of Allah or others. In Ireland, making certain remarks about the Moslem religion would cause offence but the Catholic religion would be regarded as fair game. There is some justification to this contention because there is a lack of balance in our approach. I am not putting up a staunch defence on behalf of the Catholic church because it can do its business without me. It is an Irish phenomenon that it seems to be okay to have a go at that church but not at others. As a disinterested observer, I must say that. I have seen this occur time and again and have often got into arguments over it. Perhaps it is a case of familiarity breeding contempt – I do not know – but am using this as an example of the difficulty in determining what causes offence. Perhaps the Minister has no answer.

The provision is not a bad idea in that nobody can say it is not fair enough for the Minister to say he does not want people to cause offence. However, if somebody says he was offended, is his saying so enough to point to an offence? Must one prove it or must we do so? How do we get to that point? The provision is not implementable. It is like motherhood and apple pie in that it is hard to speak against it. However, I welcome the other changes. The changes have improved the Bill but we will have difficulty with the provision on causing offence. I am worried an authority will spend years trying to sort out small complaints.

**Senator Joe O'Reilly:** I second Senator O'Toole's remarks on religious advertising. The change in this regard is very good and enhances legislation we fundamentally welcome in its totality. There is no reason a religious event or charitable auction, for example, that is contributing to a good cause should not be advertised. The same standards should apply to religious advertising as to any other form. The measure in this regard is positive and Senator O'Toole summed it up very well in saying its contrary would be liberalism gone mad and taking things too far. There is no efficacious reason to prevent religious advertising.

I take Senator O'Toole's point on it being difficult to identify what is offensive and contrary to good taste. Of course it is subjective but there are certain objective criteria one could establish, one of which would pertain to the mockery of people with physical disabilities or any exaggeration of their condition in a comedy show. This would be offensive but we will not debate the matter in detail now because we could have something of a student debate that could last until midnight.

I welcome the right of reply, which was in the legislation before its amendment in the Dáil. I welcome the right of reply for those to whom an injustice has been done or who have been defamed or lied about. I subscribe strongly to the view expressed by Deputy Coveney in the other House on when somebody is defamed in a very transparent way, as was the Lawlor family after the tragic death of Mr. Liam Lawlor. It was suggested that he was travelling with a lady other than a PR lady on the night in question. The article containing this suggestion, which does not merit repeating, was in the Sunday newspapers the day after the accident. When such circumstances occur, it can be tremendously traumatic for a family, including the wife and children. Any of us could be the subject of defamation in the broadcast media today. We could be killed in a car accident – God forbid – on the way home, thereby technically removing the right of reply for our families.

I know the Minister has good will on these matters and I do not believe we should be at odds. However, it is regrettable he did not accept the amendment in this regard in the Dáil. Will he respond on how he would cope with a clear and obvious injustice? There are four

elected Members in this room, one of whom could be the subject of defamation tonight. The Member could die shortly afterwards and his family would suffer extraordinary trauma. This is a real issue and the case of Mr. Lawlor highlights it in its most dramatic form. There is a myriad of other cases but it would not be fruitful for me to begin citing them. However, it is fruitful to bring the matter to the attention of the Minister again in this Assembly, where we are covered by privilege. The matter is serious and I am not engaging in polemics or wasting time. I am very serious because the next person affected could be the Minister, me or another Member. Who knows that it will not? It is a terrible thing to happen to a family.

**Senator Jim Walsh:** I largely concur with Senator O'Reilly's last point. The right of reply, which is provided for and which we very much welcome, enables the High Court to have the flexibility to use an expert assessor in making a decision. How might that be perceived to work in practice? Might it dilute the ability to exercise the right to reply? Will the Minister comment on this important question?

I welcome the greater flexibility for religious advertising. We debated some amendments on this point. It might have gone further, for example, there is no strong reason why religious orders could not advertise for vocations which are a problem for many of them but they are barred from doing so.

Will the Minister explain the reason behind the change from "taste and decency" to "harm and offence"? I was foolhardy enough to raise at the Oireachtas Joint Committee on Communications, Energy and Natural Resources an issue about something I saw late at night. I think Senator O'Reilly was present and Senator O'Toole certainly was. Without using the wording, it connected one part of a person's anatomy with another part of a person's anatomy in very graphic terms which crossed the threshold of an obligation under the terms of taste and decency. The Broadcasting Complaints Commission, BCC, decided that it did not breach the taste and decency threshold and I respect its decision. It did say, however, that it was borderline and brought to the attention of the offending broadcaster that this was the second occasion on which it had gone to the outer limits. That was in line with the response of the broadcaster. The incident would not breach the terms of harm and offence but it was a significant breach of taste and decency. Based on that interpretation this amendment is a significant dilution of the barrier for the broadcaster.

It seems that after the watershed time, which is now 9 p.m., anything goes. In my complaint I said that if the incident did not breach the broadcasting obligation I could not envisage what might breach it. We have an expensive apparatus to adjudicate on it which begs the question whether we should have criteria and if we have, how we interpret them. I realise they are subjective. Nine o'clock is probably far too early for the watershed. I asked the BCC for its views on whether it should be extended to 10 o'clock. Between 9 p.m. and 10 p.m. is a borderline for children, particularly for young adolescents who may not be in bed and may still be watching television, perhaps in their rooms. That should be considered either in the context of this Bill or in another context because it deals with children's access to material which probably is not in their interests.

**Senator Joe O'Reilly:** On a point of clarification, when I spoke about a deceased person I gave the example of a public representative but the point applies to every citizen who can be equally defamed or slandered.

**Deputy Eamon Ryan:** I take the Senator's point that it applies across the board. We must also, however, take the defamation legislation into account because where there is a real slight and recourse to justice on that point it does not extend to those who are deceased. While the right of reply provisions are separate and different there are certain similarities and that is why

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we followed the precept that it does not open a right of reply to someone who is deceased. I understand the arguments raised.

The use of “harm and offence” instead of “taste and decency” is an attempt to be more specific. One can be subjective about taste or what is decent but what is harmful and offensive is more specific and easy to determine. It is not seen as a diminution of the standard but an attempt to have crisper, more accurate language that makes the broadcasting code and policies more specific.

**Senator Jim Walsh:** Does the public know that?

**Deputy Eamon Ryan:** The code will set the guidelines. It is the job of the broadcasting authority to implement them. We had a long and interesting debate on religious advertising at various stages in the drafting and amendment of the Bill. Concerns could arise if there was no restriction because some religious groups by dint of having large resources could advertise for members. I would find that problematic. It is a strange area in which one has to recognise that there are restrictions. The changes we have made allow the authority greater flexibility in assessing advertising. We have recently seen some high profile cases in which the codes that were in place provided too inflexible a regime. The BCC and some of the people involved in those cases said that the solution we have found should work because it is more flexible. It is up to the new authority to apply it in a sensible and respectful way.

It is for the High Court to appoint and decide how the expert assessor works. There is legal provision for it now and I am confident the High Court will apply this appropriately.

**An Cathaoirleach:** Group 8 deals with amendments Nos. 38 to 40, inclusive, which deal with the levy to fund the operation of the Broadcasting Authority of Ireland, BAI.

**Deputy Eamon Ryan:** The amendments in group 8 provide that the Broadcasting Authority of Ireland will be required to prepare and, with the consent of the Minister and the Minister for Finance, publish, three year Estimates of expenditure which is intended to allow broadcasters subject to the BAI levy an indication of the likely financial impact on them in future years.

**Senator Jim Walsh:** I raised this matter when the Bill was before the House. I have some concerns about public bodies which have untrammelled control over their finances, particularly where this applies on an income and expenditure basis. Cost controls and cost-effectiveness are often not applied as diligently as they might be. Despite what we said earlier about salaries in many of the bodies that come under the remit of Government and these Houses they are excessive. Unfortunately, that applies across the public and private sectors and is a significant part of our overall economic difficulty and our challenge is to overcome it.

The International Monetary Fund spoke recently about the need to restore competitiveness. We do not have the control to devalue our currency which means there will be pain in respect of pay and salary. I am concerned that there is no system of checks and balances within the BAI to ensure that costs are controlled properly and that it functions as a normal competitive commercial enterprise. Will the Minister examine where levies can be applied to the bodies being overseen? I am concerned that this can lead to a level of incestuousness within the system which is not good and to some extent makes blunt some of the independence of these bodies in the administration of their functions. Perhaps that is a general comment rather than being

specific to this body. It is probably more applicable to other State bodies from the point of view of its implications for effective policing in areas that are fundamental to public policy.

**Senator Joe O'Toole:** I am not sure whether Senator Walsh attended a recent meeting of the Joint Committee on Communications, Energy and Natural Resources when Mr. Cathal Goan gave a perfect example of how to do it properly. He simply stated that income had dropped by €70 million and presented the business plan for the year. In other words, he balanced the books and that is what it is about. There are three ways this can be done. The State can run it entirely, the State can be semi-detached as at RTE, or it can use the version in New Zealand where there are crown companies which effectively must be run as private sector operations and work independently but are owned by the State which has a type of golden vote or a golden share.

It would be remiss of me having listened and questioned very closely the RTE Authority in recent times not to point to the trust and confidence it created by stating its income. It did it so well that members of the committee kept asking the witnesses how they would deal with having negative books. They did not understand that a drop in income is involved and not a charge on the Exchequer or the returning of a report of minus €70 million. It is a drop in income from advertising or whatever and it is being dealt with. It is a perfect example of doing what Senator Walsh discussed. That is the way it is done and it is happening very well in RTE at present. I am not discussing issues of waste because I do not know anything about them. I am stating that in terms of the business plan and balancing the books, what is required by amendment No. 38 is being done at present.

**Deputy Eamon Ryan:** I agree that we must keep tight control on spending. This amendment will give at least a form whereby the broadcasting authority has to justify and set out a budget and plans so it is not allowed to creep in an unscrutinised manner. When it comes to regulators, where they are funded by the industry, as in this case and we have a similar context in telecoms and energy regulation, it is a model that works. A good regulatory system leads to a better business environment. It is in the interests of the people in the industry to have a fair referee. It is like paying for the referees in a junior league where everyone chips in. Payment for the referee is not on a competitive basis in terms of one team or another haggling to bring down the price.

The main cost is employees, which is subject to the approval of the Ministers for Finance and Communications, Energy and Natural Resources, and that oversight is subject to that approval. Far from excessive costs, my main concern is that it will be difficult for the new authority employees in these times of the embargo on the recruitment of public sector workers because they will have to be incredibly productive to meet the range of tasks we are asking of them.

The experience of the performance of the Broadcasting Commission of Ireland is that while people in the industry may originally have been nervous and reluctant about the cost, they would say that the setting and policing of standards and the independent allocation of licensing is the most important element in their business environment because it gives them certainty and fairness and that justifies the inevitable cost.

**An Cathaoirleach:** Group 9 is concerned with the subject matter of amendments Nos. 42, 101, 103 and 246, which is the maximum term of contract extensions for radio stations.

**Deputy Eamon Ryan:** Group 9 addresses the issue of contract extensions for commercial radio stations. The amendments respond to concerns raised by Senators and Deputies by increasing the maximum period of any contract extension the BAI may grant under the fast-track procedure outlined in section 67 from seven to ten years and by increasing from four to six years the maximum period of any contract extension the BAI may grant under section 134 in respect of an FM radio licence to a station which is willing to simulcast its services on a digital radio multiplex.

**An Cathaoirleach:** Group 10 addresses the subject matter of amendment No. 53, which is self-regulation mechanisms.

**Deputy Eamon Ryan:** Amendment No. 53 in group 10 will enable the Broadcasting Authority of Ireland to co-operate and engage with persons or groups in the development by them of codes and standards and the establishment of self-regulatory systems. This recognises the role that self-regulation and self-regulatory bodies such as the Advertising Standards Authority of Ireland have and can play in the future to complement statutory regulatory mechanisms, especially in addressing the challenges posed by cross-jurisdictional services and by non-linear media services.

**An Cathaoirleach:** Group 11 is concerned with the subject matter of amendments Nos. 54 to 60, inclusive, and 67, which is audience redress.

**Deputy Eamon Ryan:** The amendments in group 11 relate to Part 4 and primarily arise from discussions with the Broadcasting Complaints Commission regarding the practical implementation of the redress mechanisms proposed in sections 48 and 49 with a specific focus on the discretion of the compliance committees on timelines for decision making and how much time a broadcaster, employee of the broadcaster, independent producer or advertiser is afforded to comment on a complaint.

**An Cathaoirleach:** Group 12 is concerned with the subject matter of amendments Nos. 69 to 75, inclusive, 81 and 86, which is enforcement mechanisms.

**Deputy Eamon Ryan:** Group 12 relates to the enforcement provisions contained in Part 5. Amendment No. 74 in this group provides clarity that the financial sanctions mechanism proposed only applies to significant or continuing breaches of broadcasting standards. Amendments Nos. 69 to 73, inclusive, clarify the respective roles of the BAI and the Commission for Communications Regulation with regard to responsibility for investigating interference with the frequency spectrum utilised by commercial and community broadcasters.

**An Cathaoirleach:** Group 13 deals with the subject matter of amendments Nos. 88, 90 and 92 to 96, inclusive, which is emergencies and illegal broadcasting.

**Deputy Eamon Ryan:** The amendments in group 13 relate to sections 61 and 62. Section 61 empowers the BAI to require a broadcasting contractor to allocate broadcasting time for announcements for and on behalf of any Minister of the Government in the event of a major emergency. The amendments to section 61 extend this requirement to networks located in the State which distribute, transmit or retransmit broadcasting services to the public, for example, cable systems.

Section 62 precludes persons who have been convicted of an offence in respect of illegal broadcasting under wireless telegraphy legislation from being awarded a sound broadcasting

contract for a set period. The amendment to section 62 addresses the concerns that the exclusion period of five years is too long and may act as a disincentive for a pirate operator to regularise his or her position. In that regard the amendment reduces the exclusion period to 12 months.

**An Cathaoirleach:** Group 14 is concerned with the subject matter of amendments Nos. 130 and 131, which is the “must offer” requirement on Irish television broadcasters.

**Deputy Eamon Ryan:** Amendments Nos. 130 and 131 in group 14 require RTE, TV3 and TG4 to offer their service for carriage on any network which provides television broadcasting services in Ireland but that no extra charge for their presence can be sought from the public by that network provider. The objective is to ensure Irish public service channels are available on networks providing a broadcasting service in Ireland.

**Senator Joe O’Toole:** I spoke at length on this issue on Second and Committee Stages. I welcome this very much and it has been long in coming. People were trying to make the case that there were copyright reasons it could not be delivered whereas it can be delivered by set-top boxes or cards.

I live all of 17 miles away from here and I do not have broadband in my house. The only way I can get it is through satellite. The satellite provider provides broadband from the Astra satellite which also broadcasts television. In Europe, one provider usually provides a combination of broadband, voice over Internet, telephone and television. Do they come under this restriction? Until now, the situation was that RTE had a particular agreement with Sky and unless one was a Sky account holder, one could not receive RTE through the Astra satellite. Even though one could see the signal was there, one could not receive it. The reason given for this was that the Astra satellite has a footprint all over western Europe and RTE would be breaching its copyright, which was buying it for the population of the State. I understand that.

However, in terms of what I described to the Minister, somebody receiving broadband from an Irish supplier to an Irish address for an Irish citizen in Ireland is not in any way breaching copyright, but have not been able to be supplied with RTE until now. I want to be assured that people in that situation will not be blocked. I am not saying I would prefer RTE to be free-to-air from the Astra satellite.

Where customers in an Irish household, with an Irish address, receiving a signal delivered from an Irish company which is supplying them with broadband and perhaps with voice over Internet telephone and television, RTE will now be required and must be offered as part of that deal from here on. It always wanted to offer it but it was not allowed to until now. I hope the question I am asking is clear to the Minister. I do not think it is overly technical and it is straightforward. Can this be done? I have raised this matter with RTE on a number of occasions. It should be much broader than this but I do not want to go into that at this point.

I want to be clear that where providers are doing what is happening all over Europe, that is, providing television, VOIP and broadband, that RTE will be part of that package.

**Deputy Eamon Ryan:** This is providing a must-offer obligation for RTE or other free-to-air programming to apply to network systems regulated in the State. Where an Irish broadcaster is using such satellite provisions, there is the ability for it to carry Irish free-to-air channels such as RTE. There is a slight technical difference when one is using voice or broadband connection in that it is one-to-one transmission, whereas the satellite broadcasting signal thrown is one-to-many. Otherwise, the Senator’s interpretation is correct.

**An Cathaoirleach:** Group 15 concerns the subject matter of amendments Nos. 163, 166 to 180, inclusive, and 220, 222, 225 and 226.

**Deputy Eamon Ryan:** The amendments in group 15 develop and clarify the planning and performance measurement framework for public service broadcasters proposed in sections 99, 101, 102 and 124 of the Bill. Amendment No. 177 also requires RTE and TG4 to set out, up front, their programming proposals to meet the social and cultural needs and interests of children in Ireland, including animation and children's programming in the Irish language, that is, their Irish stories for Irish children.

**An Cathaoirleach:** Group 16 concerns the subject matter of amendments Nos. 181, 186 and 187.

**Deputy Eamon Ryan:** The amendments in group 16 relate to the commercial activities of public service broadcasters. Amendment No. 181 proposes that, following consultation with the Broadcasting Authority of Ireland, the Minister for Communications, Energy and Natural Resources will set the daily time for broadcasting advertisements by RTE and TG4. Amendment No. 186 requires RTE and TG4 to conduct transactions between their commercial and public service objects on an arms length and commercial terms basis.

**An Cathaoirleach:** Group 17 concerns the subject matter of amendment Nos. 190, 219 and 221.

**Deputy Eamon Ryan:** The amendments in group 17 aim to address the concerns raised by Deputies and Senators in respect of the need for a multi-annual perspective in the public funding of TG4. Amendment No. 190 allows public service broadcasters to enter into arrangements among themselves to share archive material at cost in pursuit of their public service objectives, a measure that may prove to be of particular benefit to TG4.

**Senator Joe O'Toole:** Luaigh mé an rud seo go minic cheana nuair a bhí an ábhar seo á phlé sa Seanad. Tá mé an sásta go bhfuil seo curtha isteach sa Bhille seo mar tá daingniú ann go bhfuil jab ar leith le déanamh ag TG4. An rud is tábhachtaí ná go mbeidh tuiscint ag daoine go bhfuil i bhfad níos mó ag baint le TG4 seachas broadcasting alone agus go bhfuil morán comharsanachtaí timpeall na tíre ag braith ar TG4 chun fostaíochta a chruthú agus rudaí mar sin.

Certainly, the creative energy of the Gaeltacht and the development of Gaeltacht jobs and businesses is very much dependent on TG4. It was never set up to make money in the first place, but when people criticise the support level for it, the Minister's Department should be another voice indicating that this is part of our culture and supporting Gaeltachtaí na tíre seo agus chomh tábhachtach agus atá sé go mbeadh fostaíocht agus cruthaíocht iontu agus go mbeadh dul chun cinn ó thaobh drámaíochta agus tionscalaíochta de and even independent broadcasting. That should all be there.

This is a major issue and it is about more than supporting broadcasting, as stated in the Bill. It is important to recognise that the reason this was raised and so willingly accepted by the Minister when it was before the Seanad was that it concerned support for Gaeilge. I was very pleased with that and I do not question the Minister's motives. I congratulate him on being so open. It is very important to put on the record the fact that when Deputies and Senators in both Houses and from all parties supported this measure, we were discussing an Irish cultural

gem which needs protection, is part of us and is important. It is far more important than simply providing a number of hours of broadcasting in the course of an evening.

**Senator Joe O'Reilly:** Ba mhaith liom aontú lena bhfuil ráite ag an Seanadóir Ó Tuathail. Tá seo iontach tábhachtach agus tá sár-jab déanta ag TG4 chun oidreachta na tíre agus an teanga a fhorbairt agus a choimeád beo. Aontaím go mór le seo. Tá TG4 tábhachtach do ghach duine sa tír. Ainneoin cén chaoi ina bhfuil cúrsaí airgid, tá sé tábhachtach go mbeadh tacaíocht ann an t-am go léir don stáisiún iontach seo atá ag tabhairt fostaíochta do dhaoine. Freisin, coimeádann TG4 oidhreacht na tíre agus an teanga beo agus tugann sé sult agus taitneamh do chuid mhaith dúinn. Is iontach an stáisiún é agus táimid go léir bródúil as.

**Senator Jim Walsh:** Aontaím go hiomlán leis an méid atá ráite ag an Seanadóir Ó Tuathail agus an Seanadóir O'Reilly. Mar adúirt an Seanadóir, tá sár-obair á dhéanamh ag TG4 chun na Gaeilge a chur chun cinn. D'fhéadfaimís craolachán náisiúnta a thabhairt ar chraolachán TG4 as ucht an obair atá á dhéanamh aige. Molaim an Aire as ucht an dul chun cinn agus an fheabhas a chuir sé ar an scéal seo.

**Deputy Eamon Ryan:** I thank the Senators for their comments and support for TG4, which I also want to give. The archiving amendment is important so it has flexibility and can continue to tell stories of our nation from archive as well as modern material. There are real issues concerning budget difficulties at the current time and we will have to work with TG4 to see how we can continue such funding or what structures we put in place to give it security in very difficult times. It will be a priority for me in my ongoing work with the Department.

**An Cathaoirleach:** Group 18 concerns the subject matter of amendment Nos. 192 to 196, inclusive, and 208, 209, 212 and 213.

**Deputy Eamon Ryan:** The amendments in group 18 require RTE and TG4 to address in any code of fair trading practice developed under section 112 of the Bill the issue of the duration and exclusivity of rights that they propose to acquire when commissioning programme material from independent producers. Amendment No. 192 reduces from 18 months to 15 months the timeframe for RTE and TG4 to develop their codes.

Amendment No. 196 requires RTE to co-operate with independent producers in the marketing of programmes commissioned by RTE outside Ireland.

Amendments Nos. 208, 209 and 212 address the issue raised by Deputies in the Dáil in respect of RTE's ability to take up and fund part completed programmes which it did not originally commission, within the context of the independent programme account in section 116. In essence these amendments revive the original wording used in section 4 of the Broadcasting Authority (Amendment) Act 1993.

**Senator Joe O'Reilly:** It is important to ensure that independent productions are not victims of financial shortage. They provide important employment and are an important indigenous industry in their own right. They offer an employment opportunity for our graduates and this has a spin-off effect for the country. They also provide excellent objective material and contribute to our social and cultural heritage. We should not make them the victims of a financial shortage. RTE support for independent production must remain at a premium. I understand there is a floor figure, but we should go beyond that in expenditure on independent productions, particularly with regard to indigenous material.

**Deputy Eamon Ryan:** I agree with the Senator's comments. RTE has signalled that intent and we hope to see it carried out in the budgets.

**An Cathaoirleach:** Group 19 deals with wireless telegraphy related legislation. The amendments are Nos. 227, 234 to 236, inclusive, 238, 240 to 242, inclusive, 281, 290 and 292 to 297, inclusive.

**Deputy Eamon Ryan:** The amendments in group 19 relate to wireless telegraphy matters. Amendment No. 281, as advised by Parliamentary Counsel, creates two collective citations which allow for the referencing in the Bill and in future legislation, in a single phrase, of (a) wireless telegraphy legislation and (b) broadcasting offences legislation. Amendments Nos. 227, 234 to 236, inclusive, 238 and 240 to 242, inclusive, then apply that collective referencing throughout the Bill.

Amendment No. 283 is intended to facilitate a joint request from ComReg and the Department of Transport to amend section 2 of the Wireless Telegraphy Act 1926, as amended by the Communications Regulation (Amendment) Act 2007, to clarify the respective roles of ComReg and the Minister for Transport with regard to the regulation of shore-based wireless telegraphy apparatus associated with marine safety. In essence, the amendment clarifies that any shore-based apparatus is to be licensed by ComReg.

Amendments Nos. 290 and 297 amend and restate section 9 of the Wireless Telegraphy Act 1926, which permits the Minister for Transport, as the appropriate authority, to regulate maritime radio licences and maritime radio operators engaged on ships registered in the State. These amendments expand the regulatory provision to cover all vessels operating in Irish waters, registered ships and vessels, and those vessels navigating or operating within Irish waters.

In addition, amendment No. 297 updates the penalties for breach of regulations made under section 9. These amendments are required to satisfy Ireland's international obligations to provide maritime safety navigational services, marine emergency search and rescue response and marine pollution prevention functions. Amendments Nos. 290 and 297 also address a request received from ComReg to amend section 8 of the Wireless Telegraphy Act 1926 in respect of the legal position on the return of apparatus for wireless telegraphy seized by ComReg in the course of its duties. Amendment No. 297 restates and revises sections 5 to 9 of the Wireless Telegraphy Act 1926, as amended. Parliamentary Counsel has advised that these sections should be restated rather than amended piecemeal for statute law revision purposes. The Broadcasting Bill has provided an early opportunity to amend these aspects of wireless telegraphy legislation.

**An Cathaoirleach:** Group 20 deals with digital terrestrial television. The amendments are Nos. 229, 230, 232, 244, 248, 249 and 252 to 254, inclusive.

**Deputy Eamon Ryan:** Amendment No. 230 in group 20 sets targets for RTE in respect of the timeline for the roll-out the public service DTT multiplexes. Amendment No. 253 empowers the Minister, by himself or in conjunction with others, to manage the analogue switch off process by promoting co-operation between key stakeholders in the switch off process, commissioning research regarding analogue switch off, promoting public awareness and providing appropriate help schemes for disadvantaged members of our society and, by order, may confer additional functions relating to analogue switch off on ComReg, RTE or the BCI.

**Senator Joe O'Reilly:** It is important to ensure the roll-out of digital terrestrial television, DTT. The potential provider, the Boxer company, has pulled out of the process. It would have paid money to RTE, which has already spent €40 million on DTT roll-out, with a potential further spend of €60 million. I urge the Minister to move to get the next company in line and to ensure the roll-out continues. This is important for RTE's finances and is an important project in its own right.

**Senator Joe O'Toole:** I take a different view. I have the same view on digital terrestrial broadcasting as I had on phone masts in 1990 — it is utterly unnecessary. We should have been doing all this by satellite since then and we would not have all these rows about masts all over the country. A satellite system would also have been cheaper. With regard to the €40 million spent, we should write it off as a bad idea with the voting machines. We should just buy a couple of satellite channels and operate the whole system with one press of a switch. At least then the people in the Black Valley in Kerry would get reception with the rest of the country, which they will never get through DTT. I do not intend to oppose the section, however.

**Deputy Eamon Ryan:** Senator O'Toole has made an interesting point. However, we do not have a satellite over which we have control. The reason we need the DTT multiplexes is to allow us switch off our analogue system but still retain control through our masts and transmission system for free to air and other programming. It is of strategic interest for the State to have such a transmission system and I am very keen it is introduced as soon as possible. There will be difficulty this summer as the British authorities start to switch off some of their analogue services and some of the spill-over we have will be lost. We need to replace this with a multi-channel offering, which we can do with DTT. However, this is not a matter over which I have direct control.

The BCI is responsible for the negotiations with the next consortium that is interested. I very much regret that the first contractual arrangements fell at a hurdle. I keep in regular contact with the BCI and hope to see progress on the alternative DTT platform and see it up and running. I am confident we will see progress and that it will provide a good public service. There is a certain urgency to the situation now and I look forward to the successful development of DTT here.

**An Cathaoirleach:** The subject matter of group 21 is the television licence. The amendments are Nos. 255 to 270, inclusive.

**Deputy Eamon Ryan:** The amendments in group 21 relate to the television licence regime. Amendment No. 261 caters for the identification of licences which may have been issued via the new TV licence website, which was successfully launched by An Post this year, rather than being issued at a particular post office branch.

Amendment No. 267 is proposed to clarify the timelines with respect to which a fixed payment notice may be served. Amendments Nos. 264 and 266 are rewordings by Parliamentary Counsel to ensure greater clarity around the fixed payment notice process set out in section 149. Amendment No. 268 is a new section which is being introduced to avoid ambiguity as to when the term of a television licence begins in instances where the reminder notification process under section 149 has been utilised. Subsection (3) is intended to offer another alternative to criminal proceedings, that is that the television licence fee may be pursued by An Post as a civil debt rather than prosecuted as a criminal offence.

**Senator Joe O'Reilly:** Fine Gael contends that the TV licence fee collection system is outdated and inefficient. It costs €12 million to collect €200 million, and that is too expensive. Many people now watch television programmes on their computers. Therefore, it is no longer valid simply to target television sets. There is also an issue that people who have a number of television sets have a liability for each. If they only declare two and have not paid a fee for another, could they be the victim of serious charges? Our suggestion to the Minister is that within the first year or 18 months of the Broadcasting Authority of Ireland's functioning, it would come up with alternative propositions on the funding of our public service broadcasting system, rather than the traditional licence system, which may be out of kilter with the new realities of how people access television programmes, the number of television sets in houses and even the collection methods, which are outmoded.

**Senator Joe O'Toole:** I agree the collection methods are outmoded. I ask the Minister, as I have many times, to take an example from most of Europe, which has the simple system of an audiovisual tax on every single house unless one opts out — anyone can opt out if he or she does not have a television or audiovisual equipment. The cost of collecting the licence fee constantly annoys me because it is inefficient. There should simply be an audiovisual tax. In countries such as France, property owners get a letter from the tax authorities at some stage during the course of the year and the letter states how much the audiovisual tax will be and gives the option of applying to opt out if required — one opts out rather than opting in. No one is left wondering whether there will be new excuses for not paying our television licence, or whatever the advertisement says.

I recently tried to work out the figures. I presume RTE is being paid some fee for carrying the advertising for the collection of television licence fees in order to keep RTE going. It is going around in a circle. This is not the most efficient way and the Minister should take a hand to it and sort it out. Every house should pay unless people opt out because they have no television.

**Deputy Eamon Ryan:** There are inefficiencies or costs involved but it is successfully bringing in €200 million per year to help fund public service broadcasting. The public service broadcaster itself, when asked in committee whether it would great rid of it, ultimately said that, while it would be critical of some of the costs involved, it would not get rid of it. The fee provides a real and important connection so that the public service broadcaster recognises it is being paid directly by those households which pay the licence fees. They have a call on the public service broadcaster to perform and deliver a range of services because of that payment by those who effectively own and control the channels. While the system will no doubt evolve and the technological developments that occur will lead to change, they are not yet at a stage where it is clear to us how we can make an effective change, given the evolving nature of the situation. Let us watch this space. We will have to change, but not at this time.

**An Cathaoirleach:** Group 22 concerns the broadcasting fund, which is the subject matter of amendments Nos. 271 to 277, inclusive.

**Deputy Eamon Ryan:** The amendments in group 22 amend the provisions of the broadcasting fund by increasing the percentage of net television licence income allocated to the broadcasting fund from 5% to 7%; providing that the broadcasting fund can fund new television or radio programmes which raise public awareness and understanding of global issues impacting on the State and countries other than the State; providing that the broadcasting fund can fund radio and television programmes which address the issue of media literacy; and providing that the

Broadcasting Authority of Ireland in developing funding schemes may have regard to the developmental needs of community broadcasters.

**Senator Joe O'Reilly:** I want to record my satisfaction with these amendments. I had made much reference to this issue and proposed amendments on Committee Stage in the Seanad, particularly to protect the independent radio production sector.

**An Cathaoirleach:** Group 23 concerns the amendment to the Copyright Act, which is the subject matter of amendment No. 291.

**Deputy Eamon Ryan:** Amendment No. 291 in group 23 provides for change in copyright law to allow commercial DTT platform providers the same opportunities as cable, IPTV and MMDS operators and on similar terms with a view to ensuring the speedy rollout of a digital terrestrial television service in Ireland in the context of the switch-off of analogue television services in Ireland in the near future.

**An Cathaoirleach:** Is Senator O'Toole moving an amendment at this stage?

**Senator Joe O'Toole:** I want to clarify whether we are discussing group 23 plus my amendment.

**An Cathaoirleach:** I believe we are discussing amendment No. 291.

**Senator Joe O'Toole:** We can discuss that first and then decide about the other amendment. I do not understand what is happening in the case of amendment No. 291. While I could be completely wrong and will listen carefully to the Minister's response, and I will hold my amendment until we know the position, it seems this goes somewhat against the spirit of the EU. I will put a simple question. In terms of our copyright laws and in terms of the EU's definition of cable, satellite and digital, and the separation between them, is this in line with the EU position? Has the EU been in contact with the Department about it? I was getting messages that the EU was less than happy with what we were doing in this regard.

In section 180(1)(b), the Minister is effectively defining digital terrestrial retransmission as cable transmission. However, the EU directive seems to differentiate these and sets out that they are separate. That is my understanding of the position and, while I do not purport to be an expert in this area, I am seriously worried. This would seem to have effects on the income of film producers and the various rights that attach to copyright in this State.

It would seem that this allows UK broadcasters to broadcast in Irish territory without requiring Irish rights in certain situations because they will have a transmission right and will not need the primary rights, which will cause unnecessary hardship. I do not know where this is going. For example, as matters stand, if a UK broadcaster wants to show an Irish-produced programme in Ireland, it would need to acquire a right from the Irish producer. Under this Bill, if we change the definition of "cable", this will not be the case.

What I say about the UK would apply to any EU state but we would generally mean English-language broadcasting coming from the UK. I know the Minister has the same concerns as the rest of us, judging by what he said. He was quite rightly protective of the Irish independent production sector and, if I recall, increased support for it on Committee Stage. There is an ongoing battle with UK broadcasters in trying to make a distinction between Irish rights and UK rights but this is like giving over the pitch to the UK. What we are doing here will blur the distinction even further.

[Senator Joe O'Toole.]

All sorts of issues arise. Does the constitutional issue of the right to private property arise? If somebody has copyright to something and we are now effectively giving them away, is there an issue involved? This seems to be going against the line the Minister would have articulated very strongly on Second Stage and Committee Stage with regard to the importance of the independent sector. We are trying here to redefine “cable” as “retransmission” when the EU directive on cable clearly sets out that they are two separate issues.

That is the issue and it is to deal with it that I drew up my amendment. Perhaps I am misinterpreting the position but, having spoken to a few people, this is what has come back to me. I await the Minister's response.

**Deputy Eamon Ryan:** This amendment involves the complex interface between commercial DTT issues, copyright law and broadcasting policy. Accordingly, it was developed in close co-operation with the Department of Enterprise, Trade and Employment to ensure compatibility with copyright matters. While the amendment was withdrawn on Committee Stage in the Dáil, it was reintroduced on Report Stage as it is considered necessary to provide a fair environment for commercial DTT.

Cable and MMDS television services are closed service offerings which are only accessible to the subscribers of the service. In the same way the commercial digital terrestrial television, DTT, service will also be a subscription-based service accessible only to its subscribers. The amendment amends section 2 of the Copyright and Related Rights Act 2000 to ensure the rules governing the acquisition of copyright by DTT providers are the same as those which apply to cable, MMDS, multichannel multipoint distribution service, and internet protocol television, IPTV. While there are changes to the definitions of the Copyright and Related Rights Act, the effective change is to the existing section 174 of the Act by including DTT retransmission along with MMDS and cable in the definition of cable programme services. DTT retransmission is put on the same footing as MMDS and cable.

Section 174 reflects EU Directive 93/83/EEC, the cable and satellite directive, which requires member states to have such rules for cable and MMDS. DTT did not exist as a technology in 1993 and section 174 of the Copyright and Related Rights Act provides mechanisms for cable operators to retransmit channels from others jurisdictions without directly clearing rights with the rights holders. The law differentiates between the retransmission service offered by the cable operator and the broadcasting or transmission service operated by broadcasters. The cable service is a closed, subscriber-based service and is not accessible free-to-air to the public. Under these circumstances, retransmission rights may be required to provide the right to retransmit the programmes in a controlled manner to the subscriber base.

A copyright collection agency is responsible for managing the acquisition of cable retransmission rights between the rights holders and the cable operator for cable services. The amendment seeks to extend the legislation to provide a similar mechanism for the management of retransmission rights for subscriber-based DTT networks. This will mean when channels from other jurisdictions are broadcast under commercial subscription DTT platforms, the same collection agency approach will apply. This will help to ensure the development of DTT in Ireland and allow for a level playing field *vis-à-vis* the cable-MMDS multichannel offerings.

Having withdrawn the amendment on Committee Stage in the Dáil, my Department, in co-operation with the Department of Enterprise, Trade and Employment and its legal advisers, gave detailed further consideration to the issues. This consideration included examining the situation in other European countries in which such a legal regime exists. As Senators may be

aware, certain Irish broadcasters expressed concern about the amendment tabled on Committee Stage. The concerns have been listened to and there is a significant change in the corresponding amendment tabled on Report Stage, that is, the stipulation that the services must be encrypted. This will draw a distinction between channels from other member states which may be retransmitted free-to-air and which may be encrypted because they are paid services. Where a channel from another member state is retransmitted free-to-air on DTT in Ireland, it cannot avail of the benefit of the amendment but where it is encrypted, it can do so. This draws the necessary distinction between broadcast rights for Irish free-to-air broadcasts and non-Irish free transmissions to meet the concerns raised. While I appreciate the Senator's concerns, I do not propose to accept his amendment to amendment No. 291.

**Senator Joe O'Toole:** I do not understand part of the Minister's reply. The Minister stated that digital terrestrial retransmission is included in cable. Does this apply for encrypted services? Is that correct?

**Deputy Eamon Ryan:** That is correct. This service or any such programming will not be free-to-air. It is a subscription-based service which must be paid for and it is encrypted to ensure it is not accessible other than to those who have paid for it. The rights are paid for and collected in a similar manner to that which exists for similar closed systems.

**Senator Joe O'Toole:** I realise I am in breach of the rules but this will save us going through the matter again. Is the Minister saying for definite that the copyright people will be paid in a different way and that they will have sold their rights in some way, shape or form? Let us consider the position of a producer, director or owner of a film which happened to be broadcast in Ireland through a free broadcasting service. If the film is transmitted through the encrypted channel and people are paying for the service, then some of the money will flow back to the original people. Is this correct?

**Deputy Eamon Ryan:** Obviously, we seek to abide by and fulfil the necessary copyright regulations but it is a matter of how that is organised. In this case we seek to do it in a way similar to that with which cable, MMDS and IPTV services were dealt.

**An Cathaoirleach:** That completes the debate on the groupings of amendments. Is the amendment being pressed?

**Senator Joe O'Toole:** I wish to put one more question. The Minister has answered most of the questions and I understand some of the points he made. Is the Minister's approach to copyright satisfactory in terms of EU directives on cable broadcasting?

**Deputy Eamon Ryan:** We received various correspondence from the EU, some of which questioned the nature of the regulations made. However, we are confident there is a precedent for this measure in other European jurisdictions and that it is within the European legal framework. We examined the matter in detail because it was a contentious issue. We would not have proposed it if we did not believe it was important for the delivery of DTT services in the country nor would we have done so if we did not believe it was within the proper European and national legal framework.

Amendment No. 1 not moved.

Question put and agreed to.

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

**Minister for Communications, Energy and Natural Resources (Deputy Eamon Ryan):** I thank the Members. The Bill started in the Seanad with a good debate and amendments from Senators O’Reilly, O’Toole and others. It has been a rather long but fruitful process and one hopes it will lead to real benefits. It is an important area and the quality of our broadcasting is crucial to our democracy and to the republic. Sometimes it is difficult for politicians to intervene or to have a say on certain broadcasting matters but this is one of the few chances we have had to do so. I look forward to when the new Broadcasting Authority of Ireland translates our thoughts into real action and higher standards within Irish broadcasting. I also thank my officials for their endless work on this Bill. They have been exemplary.

**Senator Joe O’Reilly:** I thank the Minister for his very refreshing, real and focused engagement with us on the issues raised, including the debate on the amendments tabled during the debate. We proposed a large number of amendments on Committee Stage and I acknowledge the Minister’s role in facilitating us and the fact that several of those amendments, albeit in slightly modified form, have made their way into the final legislation.

I join the Minister in paying tribute to the officials who worked closely with him on the Bill. We held a good debate exemplified by the fact that we stayed so long this evening, just as we did on Committee Stage in the Seanad. It was good that the Bill was initiated in the House. It is seminal legislation in a very critical area and in an all-embracing part of our lives. It merited the level of discussion and teasing out we allocated. Anything else would have been negligent and I am pleased we maintained the integrity of the Seanad in the way in which we engaged with this important legislation.

**Senator Joe O’Toole:** I wish to add to the remarks made. In particular, I single out for mention the officials present and the other officials involved. This is very complex legislation in terms of the way in which it deals with very technical, social, political, financial and cultural matters. I hope we have found the balance. The Minister has listened to all the points of view and fairly met our arguments. He did not concede to all our points but accepted some of them and made amendments and changes. It is important to put as much on the record. That is the way legislation should work and the people should see that some Members put forward honest argument and a viewpoint, a response was then given and a positive movement made in that direction. The passage of the Bill has been classically well-handled by the Minister.

I am not happy with all the points I made but I am pleased that significant progress has been made and I believe the legislation can work in everyone’s interests. I hope the people we put in place on the various boards and authorities will take the legislation in the spirit in which it has been put together and that it creates a new vision and creative outlet for the Irish industries to which it is relevant. I thank the Minister for being so accommodating and generous in his responses and I thank his officials.

**Senator Dominic Hannigan:** I congratulate the Minister on the passing of this Bill and compliment his staff on the work they have put into it as it is clearly a complex and detailed document. We have all benefited from the Minister’s presence in the House. I was here on a number of occasions when he was present and I pay tribute to his dedication and commitment to the Bill, which has my good wishes and those of my party.

**Senator Jim Walsh:** This is very comprehensive legislation which was welcomed initially in this House. It was well debated and teased out in this House even though the fact that 300 amendments were subsequently passed in the Lower House seems to belie the comprehensive approach or in-depth debate held here. We should perhaps have a look at that.

The officials have done tremendous work in bringing forward what is very comprehensive legislation which impacts on the quality of life of many people who depend on the broadcasting community for much of their information and their entertainment. The Minister has displayed once again his grasp of the complex brief he holds. He is always impressive in this House and that has been acknowledged privately by others who observe his proficiency of approach to his brief and his in-depth knowledge of the various complex issues.

Question put and agreed to.

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

**Senator Jim Walsh:** Tomorrow at 10.30 a.m.

### **Adjournment Matter.**

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### **Youth Affairs.**

**Senator Cecilia Keaveney:** I thank the Cathaoirleach for allowing me to raise this matter and I thank the Minister of State, Deputy Moloney, for his attendance.

As Vice Chair of the youth and sport committee in the Council of Europe with special responsibility for youth, I am very interested in the whole issue of youth participation in politics and policies aimed at youth. This morning on the Order of Business I commended the Houses of the Oireachtas family day, when people were brought in and shown what this place is like so that they are not strangers to where all the decisions are taken. I also commend the Oireachtas education programme which is an outreach programme. I know that many politicians will say they were doing that anyway but seeing many of the programmes being delivered in the classrooms, I am confident that this work is very important.

Youth council elections are taken very seriously and those appointed take their roles very seriously. The annual report from Dáil na nÓg is presented in a youth-orientated manner and I intend to read it as I am very interested in it. However, I suggest the people involved in Dáil na nÓg should have an opportunity to present what they are doing. One idea I had was that the opportunity could be provided during the Oireachtas family day when people see what this House looks like. Representatives of Dáil na nÓg could be allowed to come in and make a presentation here in the Chamber on the subject of their reports and the subjects that are important to them.

On Monday I opened a seminar in Strasbourg on youth participation which was attended by people from all the 47 states of the Council of Europe. I was very moved by the fact that somebody asked about the links between national parliaments and the Council of Europe and the European Parliament. It made me think about my role as Vice Chair of the committee of youth and sport. I realised that probably nobody knows I opened the conference on youth affairs in Strasbourg on Monday last, yet they thought the issue of youth participation was very important. Nobody seems to know that we put through a very important report on teaching

[Senator Cecilia Keaveney.]

history in areas of recent conflict. These are issues that are pertinent to young people and to how policy is driven.

We have taken significant steps to involve our youth. We are still being told that there is a deficit between us and the youth in terms of an interest in voting and policy-making. I wonder if more initiatives could be taken. I suggest that a DVD be made of Dáil na nÓg in action so that we can be part of what happens there.

The youth councils of the Council of Europe have equal voices in decision-making so when a budget comes through — this could be a very dangerous concept — the Council of Europe sport and youth directorate has co-management of the funding. As it was explained last Monday, co-management of the funding means that decisions about how funds are spent are co-managed. This is the good news side, but there is also a bad news side. For instance, the decision to cut one's cloth to suit the measure is necessary. I do not advocate going that far but at present we are nowhere near the point where the youth believe that we hear what they say. They are now talking to each other but it is important that we move that on to being heard here. The 47 members of the Council of Europe must find a way to interact with each other, through websites or whatever, to ensure best practice in youth affairs.

**Minister of State at the Department of Health and Children (Deputy John Moloney):** I thank Senator Keaveney for raising this matter. I wish to explain the involvement of Dáil na nÓg and that of the Department.

Dáil na nÓg is the annual national parliament for young people aged 12 to 18 years. The Office of the Minister for Children and Youth Affairs is responsible for funding and overseeing Dáil na nÓg. Since 2003, a consortium comprising the National Youth Council of Ireland, NYCI, Foróige and Youth Work Ireland has organised Dáil na nÓg in cooperation with the office of the Minister. Successive independent evaluations note that Dáil na nÓg has gone from strength to strength, with more challenging and contentious debate each year. I take the Senator's point that there is little point in all that happening if there are no linkages back to these Houses. I recognise the point she made that speaking at an international forum in Europe and not being able to say specifically what is happening here in terms of that connection would be a loss. I concede that and it is important I take the Senator's advice on that.

By way of background, 200 teenage delegates attend annually and discuss the issues that have been selected for debate, finally agreeing on three recommendations they might follow through on, under two themes to be progressed over the course of the following year. The top recommendations voted in 2009 — I say this by way of showing the connect to the policies and the realities of this House — which it is important to develop further, are that the cervical cancer vaccine should be made available free of charge for all 12 to 18 year old girls — that is their top priority, and that a structured course should be implemented for senior cycle students incorporating positive mental health awareness and development of an on-line support service. I attended the recent launch by the Minister of State, Deputy Andrews, and was pleased to note that for the second year in a row Dáil na nÓg selected the debate on mental health. That shows the relevance of what happens here and in Dáil na nÓg but also the irrelevance in that there is such little connection.

One representative from each Comhairle na nÓg is elected to the Dáil na nÓg council, which follows up on the recommendations from the Dáil and tries to make changes for young people in those areas. The council has a term of office of one year. The council meets once a month

in the Office of the Minister for Children and Youth Affairs and is supported in its work by the office.

The role of the Dáil na nÓg Council is to identify key areas of work from the top three recommendations agreed at Dáil na nÓg; conduct research into the issues identified; meet relevant Ministers, TDs, Government officials, policy makers and other stakeholders to seek their support in making changes for young people on the issues identified; feed back to their Comhairle na nÓg on the work of the council; and represent Dáil na nÓg at conferences and other events.

In the course of its work, the Dáil na nÓg Council engages with policy-makers who are in a position to provide advice or support. In 2008, examining the theme of mental health, the policy makers from the council met with the following: Deputy Barry Andrews, Minister for Children and Youth Affairs; Senator Mary White, Vice Chairman of the Oireachtas sub-committee on suicide; Mr. Geoff Day, Director, the National Office for Suicide Prevention; young social innovators; Headstrong, a mental health promotion non-governmental organisation; the Children's Rights Alliance; and the Mental Health Commission.

Dáil na nÓg representatives also made presentations on their work to the Oireachtas Joint Committee on Health and Children and at the year end a final round table meeting with Ministers and policy makers was held. As Minister of State with responsibility for mental health I attended that meeting. The purpose of the meeting was for Dáil na nÓg councillors to outline the work and research undertaken on their chosen issue and seek support from policy makers in responding to the recommendations. I was delighted to be in a position to work with the council on making progress on their recommendations and they have been central to the development of a new mental health promotion campaign which I hope to launch later this year. The 2009 council is currently actively engaged in researching its proposals emanating from this year's Dáil na nÓg and I hope those Members present in the House will meet with them and support its work.

Most important, I would welcome Members' support in promoting and encouraging the ongoing development of the Comhairle na nÓg structures for youth participation at local authority level. Decisions made at this level have great significance in the every day lives of young people and it is vitally important that there is an openness and support for youth participation in local authorities. That will improve policy and services for all young people.

I would make the point to Senator Keaveney that regarding the Council of Europe sub-committee on youth affairs, the following is the position. Responsibility for youth affairs transferred from the Department of Education and Science to the Office of the Minister for Children and Youth Affairs with effect from January 2009. This move is a clear signal from Government that a focus on young people and their needs is a particular priority for us. The integration of youth affairs opens up greater opportunities for a more integrated, cohesive and effective approach to addressing the needs of children and young people. The youth affairs unit of my Department will continue to have an active role at European level. In cooperation with youth work partners there will be a continued focus on youth work and youth activities both at EU and Council of Europe level. The European Commission's communication early this year on an EU strategy, Youth — Investing and Empowering, and the Council of Europe's youth policy, AGENDA 2020, will form the context and focus of future work and developments in this area. Interacting and working with our European partners and colleagues both in the context of the European Union and the Council of Europe is important in sharing experience and good practice in regard to youth work and other youth activities.

[Deputy John Moloney.]

The Office of the Minister for Children and Youth Affairs was represented at official level at the Eighth Council of Europe Conference of Ministers responsible for youth that took place in October 2008 and we were happy to lend our support to the declaration on the future of the Council of Europe youth policy, Agenda 2020. The policy's focus on human rights and democracy, youth co-existence in various societies and young people's social inclusion is of particular relevance and importance to both Ireland and Europe. There have also been recent contacts between the office and the Council and it is hoped that these can form the basis for future cooperation. I am also happy to encourage discussion and debate in matters relating to youth in all relevant and appropriate fora. I thank Senator Keaveney for raising the issue and hope it will be followed through.

**Senator Cecilia Keaveney:** The clear message I am getting is that it is very unusual for politicians to appear at these Council of Europe meetings in terms of the administrative side. They are fascinated by the fact that we take time to engage with them. I raise this matter on the Adjournment to highlight the good work being done and we must find some mechanism nationally to not only link the youth with us but to link us with activity that is going on internationally. We are doing good work at every level but sometimes people do not know about it.

The Seanad adjourned at 8.20 p.m. until 10.30 a.m. on Wednesday, 1 July 2009.