

SEANAD ÉIREANN

Dé Céadaoin, 1 Nollaig 2010.
Wednesday, 1 December 2010.

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Paidir.

Prayer.

Business of Seanad

An Cathaoirleach: I have received notice from Senator Fidelma Healy Eames that, on the motion for the Adjournment of the House today, she proposes to raise the following matter:

The need for the Minister for Community, Equality and Gaeltacht Affairs to outline the reason for the delay in ratification of the UN Convention on the Rights of People with Disabilities and the timeframe for delivery of same.

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

The need for the Minister for the Environment, Heritage and Local Government to give an update on the provision of a new sewage treatment plant and network to serve Kinvara, County Galway.

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

The need for the Minister for Tourism, Culture and Sport to clarify the way in which Departments' national lottery moneys are being spent.

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

The need for the Minister for Education and Skills to provide additional funding to replace old equipment at Holy Trinity national school, Leopardstown, Dublin 18.

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

The need for the Minister for Tourism, Culture and Sport to request an investigation at international level into recent bribery allegations.

I regard the matters raised by Senators Healy Eames, Cannon and Buttimer as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. Senator Corrigan may give notice on another day of the matter she wishes to raise. I regret that I have had to rule out of order the matter raised by Senator Keaveney as the Minister has no official responsibility in the matter.

Senator Cecilia Keaveney: On a point of order——

An Cathaoirleach: I call the Leader on the Order of Business.

Senator Cecilia Keaveney: May I seek some advice?

An Cathaoirleach: Is this a point of order?

Senator Cecilia Keaveney: Yes. I seek advice on how I may raise this matter in an appropriate way. There is corruption in a certain sport at international level. Because the countries involved include Ireland the Minister should comment on the issue.

An Cathaoirleach: The Senator might raise it directly with the Minister.

Senator Cecilia Keaveney: That is what I am trying to do.

An Cathaoirleach: The Minister has no responsibility in the matter.

Senator Cecilia Keaveney: It concerns corruption at international level. Does the Minister have anything to say about it?

An Cathaoirleach: My information from the Department is that the Minister has no responsibility in the matter. Therefore, I cannot accept the matter raised by the Senator.

Senator Cecilia Keaveney: While I respect the Cathaoirleach's decision, if we have no right to comment on corruption in a particular sport at international level when Ireland is one of the parties involved, something is seriously wrong.

Senator Frances Fitzgerald: Let us have a debate on the matter in the House.

Senator David Norris: This is another daft decision.

Senator Cecilia Keaveney: Another daft decision is right.

An Cathaoirleach: If it would help, we could discuss the matter privately in my office. I shall see what we can do, if anything.

Order of Business

Senator Donie Cassidy: The Order of Business is No. 1, Prevention of Corruption (Amendment) Bill 2008 — Committee and Remaining Stages, to be taken at the conclusion of the Order of Business; No. 2, Communications Regulation (Postal Services) Bill 2010 — Committee and Remaining Stages, to be taken at 2.30 p.m. and adjourn at 5 p.m., if not previously concluded; and No. 34, Private Members' motion No. 17 on the recommendations and findings of the Ombudsman's special report on the lost at sea scheme, to be taken at 5 p.m. and conclude not later than 7 p.m. There will be a sos from 1.30 p.m. to 2.30 p.m.

Senator Frances Fitzgerald: We will have an opportunity tomorrow to comment further on the financial situation and the deal which has been done. A number of very important points were made yesterday on the Order of Business in that regard.

I send a very clear message that those who carry mortar and bomb making materials around the country have no support either from this House or the people.

Senators: Hear, hear.

Senator Frances Fitzgerald: Members of the Garda and the Army were out in dreadful conditions in the early hours of the morning trying to deal with the materials the people in question

were carrying around the country. As has been clearly shown, they have no support. We want to give the Garda and the Army every possible support to deal with the dissidents who are endangering the lives of others, including gardaí and members of the Defence Forces.

I want to comment on what the Minister for the Environment, Heritage and Local Government, Deputy Gormley, said yesterday in a childish and self-pitying way. Given the privileged position he occupies, to use the grossly offensive language he used against the most marginalised group in the country, those suffering mental health difficulties, including words such as “asylum”——

Senator Dan Boyle: This is ridiculous. It was used against him.

Senator Frances Fitzgerald: This is not to be politically correct.

Senator Dan Boyle: It was referred to him.

Senator Frances Fitzgerald: There is a campaign, See Change, to seek to change outdated attitudes. I appeal to all not to use such language, from which we want to move away. It is hard enough for people with mental health difficulties to deal with what faces them without listening to this language from a Minister in a most privileged position.

Senator Mark Dearey: The Minister did not introduce the term. The Opposition raised it.

Senator Frances Fitzgerald: He needs to be less childish in the way he deals with the responsibility of a Minister.

Senator Ivor Callely: Let us have fair procedures.

Senator Frances Fitzgerald: On a different health topic, this is World AIDS Day. *The Irish Times* has produced an excellent graphic detailing the scale of the problem with HIV and AIDS in this country. The HIV rate has doubled since 1999, despite the fact it peaked globally in that year. At an appropriate point we need to have a debate on this topic. Huge information and education issues continue to arise in this regard.

Senator Joe O’Toole: While it is a good reflection on what has happened in the time which has passed, I remember some 20 years ago seconding a motion tabled by my colleague, Senator Norris, on the importance of dealing with on AIDS. There was a big question at the time as to whether politicians should even be discussing the issue. This was the first House to discuss it. At the time many Members were embarrassed and disconcerted at the fact the motion was being brought forward. It is important to recognise this and the fact that this House led the way on the issue, as it did on many other issues. In general, it is issues which should drive the work done in this House.

On one of the points made by Senator Fitzgerald, whether I agree with her, there is a bigger issue involved. It is one that will continually arise in the next two months in politics, namely, that of Members having a go at each other across the House. The Minister for the Environment, Heritage and Local Government, Deputy Gormley, invited this yesterday. I completely agree with the points made by Senator Fitzgerald about the language used, which was wrong, although I can see from where the Minister was coming. This is happening all of the time; when we should be looking at issues, we will be looking at other Members. It will be about what one Government did to another and six months later another Government will state it can do nothing because of what the previous Government did, while the previous Government will ask where has the change got us. I ask colleagues on all sides to at all times focus on issues and what they have done or others have not done about an issue.

[Senator Joe O'Toole.]

Although I did not have time to listen to the Minister of State's speech on Private Members' business yesterday, I suspect it was well over half an hour long.

Senator David Norris: It certainly was.

Senator Joe O'Toole: This is no reflection on the Minister of State who made good points but we either put a time limit on the speeches of Ministers or we do not count it as Private Members' time in terms of the two hours allocated.

Senator Donie Cassidy: There is a time limit.

Senator Joe O'Toole: We should do one or the other. Ministers are used to time limits, just like everybody else. It should be, say, a 15 minute slot, or else the time taken by a Minister should be added to the two hours allocated for Private Members' time.

I gently correct the Leader, as there is a slight contradiction in what was proposed. He said Committee and Remaining Stages of the Communications Regulation (Postal Services) Bill 2010 would be taken this afternoon. The House will recall that at the leaders' meeting it was agreed time would be allowed for Report Stage. The Leader has indicated the debate may not conclude at 5 p.m. It has been said that if Committee Stage does not conclude by 5 p.m., it will be resumed. However, if it finishes before 5 p.m., will the Leader confirm that we will come back to take Report Stage at a later date? There are issues of huge importance to the people, including in the Leader's area, in which postal deliveries in rural areas is a major issue.

Senator Phil Prendergast: I question the relevance of any legislation put through by a Government which has called time on itself. We have very important legislation to deal with and amendments have been tabled to many Bills, particularly the Nurses and Midwives Bill, which require careful consideration and should receive our full attention without, as Senator O'Toole said, Members having a go at each other. The serious business of the House is legislation. In that regard, a Government which has pulled the plug should shelve any legislation of importance to the future of any organisation.

Deputy Higgins recently spoke about the need to introduce a rights based approach to mental health policy where services would be structured to meet people's needs rather than dictated to by budgetary circumstances. At just 5.3% of the overall budget, the mental health budget is paltry, although there is some good news in that there has been a rowing back on the decision to cut the budget by 5% in the upcoming budget, particularly as it affects Rehab.

A serious issue has been raised in the House on many occasions and at the Joint Committee on Health and Children regarding section 55 and its application to the facilities of St. Luke's and St. Michael's in Clonmel. A report commissioned by the Government and prepared by Dr. Shanker has never been released. It exonerated the staff in respect of any wrongdoing in the management and treatment of patients, particularly in dealing with fractures. I call on the Minister to immediately release the report.

There was an announcement last year of the closure of 49 acute beds in the psychiatric unit attached to South Tipperary General Hospital, a decision which was made without consultation. As a result, the Minister appointed Dr. Hillary to prepare a report which I understand has been on her desk since the end of October. She has received a request from the consultants for a copy of the report, but, as yet, she has not released it. I submitted a freedom of information request last February, but, to date, I have not received a response. I do not know whether I will have to refer the matter to the Ombudsman. Will the Minister come to the House to explain why these reports have not been released on a decision that adversely affects

people suffering from mental health illnesses? On 10 November the Minister of State, Deputy Moloney, undertook in the House to come back to me within a fortnight with the answers to my questions, but he has not yet done so. In the House Ministers pay lip service to Members' requests and say they will do something. I know I am like a dog with a bone on this, but it is a very serious issue which has serious implications for the people I represent. When he says something, does the Minister of State intend to follow through on it? Is there a good reason I cannot receive a response to freedom of information requests? Why can the Shanker and Hillary reports not be given to the consultants and released publicly? We seek clarity and transparency.

Senator Dan Boyle: In the time this and the other House will be considering the budget and the finance Bill many other items of legislation will be considered and there will be many other debates. Many Bills will be completed, including the Nurses and Midwives Bill, the Local Government (Dublin Mayor and Regional Authority) Bill, the climate change Bill and a Bill on corporate donations. I look forward to all of these issues being dealt with in the time remaining to the 23rd Seanad and the 30th Dáil.

Senator Jerry Buttimer: Does that mean we are staying until the spring?

An Cathaoirleach: There should be no interruptions.

Senator Dan Boyle: The Senator might as well camp here.

Senator Jerry Buttimer: We have been waiting for almost three years.

Senator Frances Fitzgerald: Perhaps the Green Party will change its mind again.

Senator Dan Boyle: Senator Buttimer will not have an opportunity to knock on any doors in January. He might as well get used to it.

Senator Frances Fitzgerald: Was that an announcement?

Senator Jerry Buttimer: Is the Government staying until St. Patrick's Day?

An Cathaoirleach: Does the Senator have any respect for the Chair?

Senator Jerry Buttimer: I have no respect for the Government.

An Cathaoirleach: I will ask the Senator to leave the House if he does not obey the Chair.

Senator Jerry Buttimer: The Government——

An Cathaoirleach: No interruptions are allowed. Members are entitled to make their contributions without interference from anyone. The minute other Senators interfere, I will ask them to leave the Chamber and if they do not obey, I will suspend the sitting.

Senator Dan Boyle: It would be nice to do it just once.

An Cathaoirleach: It will be done very quickly.

Senator Dan Boyle: I challenge the Opposition to let me do it once in the next six weeks.

An Cathaoirleach: Questions to the Leader, please.

Senator Dan Boyle: On the mental health issue, there is a need for an ongoing debate. I find the remarks of Senator Fitzgerald to be utterly condescending.

Senator Frances Fitzgerald: Does the Senator?

Senator Dan Boyle: My party worked very hard to ensure the mental health budget was protected this year. We have legislation on involuntary procedures. Solitary confinement and the use of straitjackets are utterly abhorrent to what we stand for.

Senator Frances Fitzgerald: On a point of order, the mental health budget has been cut disastrously, as the Senator knows.

An Cathaoirleach: That is not a point of order.

Senator Frances Fitzgerald: It is.

Senator Dan Boyle: To hear cheap political points being made——

Senator Frances Fitzgerald: On a point of order——

An Cathaoirleach: On procedure, please.

Senator Frances Fitzgerald: It is not a cheap political point.

Senator Dan Boyle: Cheap political points are being made——

Senator Frances Fitzgerald: On a point of order——

An Cathaoirleach: What is the point of order?

Senator Frances Fitzgerald: It is not a cheap political point.

Senator Dan Boyle: The Senator's remarks were utterly condescending.

An Cathaoirleach: The point of order should be on procedure.

Senator Frances Fitzgerald: The mental health budget has been cut during the Government's stewardship, as Senator Boyle well knows.

An Cathaoirleach: I ask the Senator to resume her seat.

Senator Frances Fitzgerald: It has been cut dramatically.

Senator Donie Cassidy: Only one microphone at a time.

Senator Dan Boyle: I am hoping——

Senator Frances Fitzgerald: The Senator should not tell me the mental health budget has not been cut when it has.

Senator Dan Boyle: I hope that in the time remaining to the House we will hear——

Senator Jerry Buttimer: On a point of order, is it appropriate for the Leader to interfere with members of staff in the House?

An Cathaoirleach: That is not a point of order.

Senator Jerry Buttimer: I am asking a question. Is it appropriate for the Leader to interfere with members of staff in the House?

An Cathaoirleach: We were not interfering with anyone.

Senator Jerry Buttimer: The Leader explicitly said to a member of staff, “Only one microphone at a time.” That is what he said. Is that appropriate?

An Cathaoirleach: It is not a matter for the Leader.

Senator Jerry Buttimer: I thank the Chair. The Leader should apologise to the member of staff concerned.

An Cathaoirleach: Please, Senator.

Senator Jerry Buttimer: The Leader has no right to object to the work done in the House.

An Cathaoirleach: I am suspending the sitting for five minutes.

Sitting suspended at 10.53 a.m. and resumed at 10.58 p.m.

Senator Dan Boyle: I was expressing the hope we would be able to bring forward for debate the capacity Bill which I am led to believe is almost complete and the review of the Mental Health Act. Contingent on this is the Private Members’ Bill on the Order Paper in the name of my party colleagues on the use of involuntary procedures such as electroconvulsive therapy. On these grounds, I hope we will have time for a more measured debate on mental health issues, about which I accept most Members of the House have valid concerns.

Senator Paudie Coffey: I seek clarification from the Leader. The Deputy Leader has just indicated that the Government intends to prioritise and finalise the Local Government (Mayor and Regional Authority of Dublin) Bill 2010 and also legislation relating to political donations and climate change. The Leader will be aware that in the Lower House, Fine Gael has offered to facilitate the Oireachtas by making all of its Members available for five-day sittings, if necessary, to discuss budgetary proposals and the EU-IMF bailout. In my view, both these issues are priorities for the country at present. I would like the Leader to provide clarity on this matter. From where is the time going to be found to pass all the legislation to which reference has been by the end of January, when the Green Party, as indicated last week, intends to pull out of Government? We are being given mixed messages by the Government and that is causing confusion.

11 o'clock

Senator Dan Boyle: The confusion is the Senator’s problem.

Senator Fidelma Healy Eames: What Senator Coffey says is true.

(Interruptions).

Senator Paudie Coffey: I ask that the Leader provide time for a debate on small to medium enterprises, SMEs. This sector provides employment for thousands of people, supports local economies and is export-led in nature. Manufacturing is a major element of the SME sector. I reiterate what I said on previous occasions, namely, that we cannot give up on manufacturing. I accept that we are trying to improve our competitiveness and there are signs that this is happening. In that context, I would like the Leader to make time available for a full debate on manufacturing and SMEs and on how the State can provide support to these businesses. At

[Senator Paudie Coffey.]

present, SMEs are suffering because they are not getting access to credit, which is their life-blood. If the SMEs begin to disappear, thousands of jobs will also disappear. There has been little discussion about these enterprises during the current crisis. We must focus on SMEs and provide them with greater support.

Senator Terry Leyden: I wish to bring to the attention of the House and the Minister for the Environment, Heritage and Local Government the fact that the register of electors for 2011 will be published on 1 February next and will come into force on 15 February. It would not, therefore, be either practical or advisable to deprive young people who register by 1 February of their vote. When the register is published, the election can be fought.

Senator Phil Prendergast: In that event, will the election be held on a Saturday?

Senator Terry Leyden: This is horrible weather in which to hold an election. I would not put a dog out in it.

An Cathaoirleach: A question to the Leader.

Senator Paudie Coffey: We would put those in government out.

Senator Fidelma Healy Eames: It is they who are the dogs.

Senator Terry Leyden: I suggest that the election be held in the middle of May. I am sure the Cathaoirleach will be indulgent and allow me to refer to a special event, organised by the Lions Clubs International, at which Shane O'Brien from Oran, County Roscommon, was made European young ambassador for 2010.

Senator Joe O'Toole: Come on, Senator. This is just absolutely——

An Cathaoirleach: Senator Leyden should put a question to the Leader.

Senator Terry Leyden: I am referring to a young person who has done something with his life. Senator O'Toole should not monopolise the Order of Business, neither should he deprive the young man to whom I refer of a little recognition.

Senator Joe O'Toole: This award relates to music.

An Cathaoirleach: This matter is not relevant to the Order of Business.

Senator Terry Leyden: This is a young man who has done something good for Ireland.

An Cathaoirleach: I have been obliged to suspend the sitting on one occasion. The Senator should ask a question.

Senator Terry Leyden: The young man in question was made European young ambassador for 2010 and I am of the view that I am entitled to honour him today in this House.

An Cathaoirleach: That is fine. However, I am entitled to chair the proceedings.

Senator Terry Leyden: I do not want to hear any claptrap from those opposite. Senator O'Toole does not want to hear what anyone else has to say.

An Cathaoirleach: I am entitled to chair the proceedings of the House.

Senator Terry Leyden: That is correct. However, I will not be directed by a Senator on the opposite side of the Chamber.

An Cathaoirleach: I ask that every Member of the House respect the Chair.

Senator Terry Leyden: I accept that.

An Cathaoirleach: There is a long-standing practice to the effect that the Chair and the House should be respected. In my opinion, many Members are making a show of themselves by interrupting others who wish to contribute. The Order of Business involves putting questions to the Leader.

Senator Terry Leyden: I am of the view that it was appropriate for me to make a point about a very special individual.

An Cathaoirleach: I allowed the Senator to do so and now the matter is done with.

Senator Terry Leyden: I thank the Cathaoirleach. I do not like it when Members on the other side of the House ask him to deprive me of the opportunity to make my points.

Senator David Norris: I note that exception was taken to the use of the word “asylum”. An asylum is a place of refuge and we should remind ourselves that we are in such a place. We are very privileged to be Members of this House and we are insulated, especially from the weather which obtains outside at present. We should consider those who do not have our privileges and who are weak and vulnerable. I refer to the elderly, the homeless and the poor. It is imperative we think about the plight of these people.

I am concerned about the views expressed by some members of Fine Gael to the effect that the party intends to liquidate our utilities — beginning with Bord Gáis Éireann — when in government. We have given away the Corrib gas field. I would be interested in hearing Fine Gael’s arguments in respect of this matter.

The matter of the Leader interfering with the processes of the House was raised. Did he play any role in respect of the extraordinary decision taken yesterday in the context of Standing Order 30? Will the Leader indicate if Government influence brought to bear? The decision to which I refer was very strange. What happened yesterday was similar to what occurred when I tried to raise a matter under the Standing Order 30 some years ago. At that time, I was informed that the matter in question was not one of national importance. While I was raising it, however, the then Taoiseach, the late Mr. Charles Haughey, was on his feet in the Lower House declaring a national emergency.

I wish to comment on the agreement that has been reached between financial institutions of various kinds and the Government. This is a serious matter and I appeal to the Leader to ensure the details of this arrangement are laid before the House and that Members will be given an opportunity vote on them. I am of the view that a constitutional matter is involved and last night I took legal opinion in respect of it. I am informed that the Government cannot alienate its power to decide issues. I have also been informed that:

The Government seems to be saying that it is covered by some EU Regulation and is necessitated by the obligations of our membership. However, even if it is necessitated by the obligations of membership of the EU, it couldn’t be necessitated by the obligation to sign up to a bailout so that doesn’t protect the government at all.

[Senator David Norris.]

It would be a very serious matter in respect of which a person would take a constitutional action. I am considering doing so but I must weigh in the balance the fact that this might be misconstrued as an attempt to protect my own ultimate political ambitions.

I make an appeal to Deputy Rabbitte, who stated in the Lower House and in various newspaper articles——

An Cathaoirleach: The Senator's time is exhausted.

Senator David Norris: ——that in his view there is an argument to be advanced in respect of this matter under Article 29 of the Constitution. The Deputy may be the appropriate person to take the constitutional action to which I refer——

An Cathaoirleach: The Senator should respect the Chair by concluding his comments.

Senator David Norris: ——and I hope he does so.

An Cathaoirleach: Decisions relating to Standing Order 30 are made by the Chair, not the Leader. I made the decision in respect of the matter raised yesterday.

Senator David Norris: Is the Cathaoirleach quite sure that is the case?

Senator Ivor Callely: Will the Leader outline the current status of and progress on the issue of Seanad reform? Will any such reform take on board submissions to the relevant Oireachtas joint committees, especially where, in the context of fair procedures, issues of grave and significant importance have been raised? This issue is particularly relevant in circumstances where a person's character can be mocked in an unjustifiable manner.

Senator David Norris: I had understood that the Cathaoirleach ruled on this issue yesterday and that it was decided that the matter is not one which is susceptible to debate in the House. I am, therefore, astonished that Senator Callely feels free to raise it again, especially as the Cathaoirleach indicated yesterday that the matter is not appropriate to discuss it in the House. Perhaps my memory is wrong but that is how I understood matters to stand.

An Cathaoirleach: I ruled on the matter yesterday.

Senator David Norris: In that event, will the Cathaoirleach indicate if it is appropriate that this matter should be raised again in this manner and in this House by the Senator in question?

An Cathaoirleach: I ruled on the matter yesterday when it was brought to my attention by the Senator prior to the Order of Business.

Senator Ivor Callely: For the record and in light of the issue raised by Senator Norris, is the Cathaoirleach to confirm whether my question is in order?

An Cathaoirleach: That is in respect of the Joint Committee on the Constitution before which the matter was raised.

Senator Ivor Callely: I am inquiring with regard to the question I just posed. Will the Cathaoirleach indicate whether my question is in order?

An Cathaoirleach: I ruled this matter out of order yesterday.

Senator Ivor Callely: No, I am inquiring whether the question I just posed in respect of Seanad reform is in order in light of the point raised by Senator Norris.

An Cathaoirleach: The Senator has put a question to the Leader and it is a matter for the latter to reply, if he so wishes.

Senator Ivor Callely: That is correct. However, another Member has inquired with regard to whether the question I posed is in order. For the record and for my own benefit——

An Cathaoirleach: It is in order to put a question to the Leader.

Senator Ivor Callely: ——I believe I am entitled to know whether, particularly in light of the point made by Senator Norris, my question is in order.

Senator Fidelma Healy Eames: I do not know what entitlements the Senator would have.

Senator Ivor Callely: Will the Cathaoirleach rule on the point raised by Senator Norris?

An Cathaoirleach: I issued a ruling yesterday on the matter raised by Senator Norris under Standing Order 30.

Senator Ivor Callely: No, Senator Norris was asking about my raising this matter again.

An Cathaoirleach: Senator Callely is entitled to put a question to the Leader. He did so but I do not know what will be the Leader's reply.

Senator Ivor Callely: For the record and in light of what Senator Norris said, I thank the Cathaoirleach for his ruling which indicates that I am in order. I accept the acknowledgement offered by Senator Norris in the form of a nod of his head that he accepts that I am in order. Did someone else make a comment?

An Cathaoirleach: No. The Senator should put a question to the Leader, particularly as his time is exhausted.

Senator Ivor Callely: Will the Leader indicate how many temporary radio licences have been sought and the number that were granted by the Broadcasting Authority of Ireland, BAI? I take the opportunity to congratulate the BAI on Christmas FM, which is back on air, Ireland's first radio station dedicated to the religious and secular festival of Christmas. Christmas FM is a charitable venture run voluntarily by professionals——

An Cathaoirleach: Time now, Senator Callely has made his point.

Senator Ivor Callely: ——and all proceeds are in aid of Barnardos.

Senator Paul Coghlan: I assure the Cathaoirleach I do not wish to raise the tempo at all. It was incredible to hear Senator Boyle this morning state that both Houses will deal with the Dublin mayoral Bill. I have a question for the Leader arising out of it.

An Cathaoirleach: A question to the Leader.

Senator Paul Coghlan: The Leader may comment on the assertion that the legislation, the proposed Dublin mayoral Bill, will be dealt with by both Houses before dissolution.

Senator Fidelma Healy Eames: Waste of time.

Senator Paul Coghlan: There was some comment about the utilities. Fine Gael, as I understand it, has no intention of disposing of the gas network or the electricity supply network, and that will not arise. That is merely by way of clarification.

In advance of the debate tomorrow, I have a further question to the Leader. Will a document be made available to Members on the proposed memorandum of understanding? I understood it might not be finalised. Is there some hint that there is a large section in it dealing with competition? There is some confusion about the totality of what it might contain.

In a general sense we have learned here this morning how important language is, and I am not going to risk anything. Verbal discipline is most important for all politicians. Politicians, of course, are notoriously not good at it but we need to be given the situation we are in and what Government, not only this one but its successor, must continue to deal with. I urge on all a degree of verbal discipline and restraint. It might do us good in the season we are in.

Senator David Norris: On a point of order, it is important that the matter be clarified. Apparently, a ruling has been given which may be misguided and could create a precedent that would be dangerous for this House. On the point I raised — I do not intend to insult or denigrate Senator Callely in any way — there is a technical matter. First, the issue into which he wandered, having appropriately raised the question of Seanad reform, was matters relating to his own court case, which is not finalised and on which, as was pointed out yesterday, there is conflict of interest which needs to be declared, and he was not raising a general interest. It would be important that the Cathaoirleach clarify that matter so that an unfortunate precedent is not created for this House. I make this point as a serious point of order and without malice.

An Cathaoirleach: To clarify, as I understood it, Senator Callely raised a matter on Seanad reform with which I did not have a problem good, bad or indifferent. He is entitled to do that.

On fair procedures yesterday, the Joint Committee on the Constitution has not issued any report on Article 15 of the Constitution. In fact, the deadline for submissions on review of the parliamentary power of inquiry under Article 15 of the Constitution is not until 3 December. If and when the committee places a report before the Seanad on this issue, it would be appropriate then to seek a debate on this issue.

Also, in the course of Senator Callely's contribution yesterday, he made a reference to investigations or inquiries being taken in private. As Senator Callely will be well aware, the High Court has reserved judgment on an issue of investigation by the Committee on Members' Interests of Seanad Éireann on Senator Callely's good self and the raising of this matter has a potential overlap with the current case before the courts, and I consequently ruled it out of order yesterday. That is the position.

I am leaving it and moving on to Senator Keaveney.

Senator Ivor Callely: A Chathaoirligh——

An Cathaoirleach: I am not taking anymore on it from any Member. Members have contributed on the Order of Business and I am taking Senator Keaveney's contribution next.

Senator Ivor Callely: ——I am being denied an opportunity to raise a point.

An Cathaoirleach: I am not taking it now. There is the Order of Business tomorrow, if Senator Callely so wishes.

Senator Ivor Callely: I am just——

An Cathaoirleach: No. I am moving on.

Senator Ivor Callely: For the record, I am being denied the opportunity of raising a point——

An Cathaoirleach: I am not taking Senator Callely. I call Senator Keaveney.

Senator Ivor Callely: ——in light of what has been said.

An Cathaoirleach: I ask Senator Callely to resume his seat.

Senator Ivor Callely: Sorry, I am seeking clarification. Am I being denied the opportunity to raise a point?

An Cathaoirleach: No. I am not denying anyone.

Senator Ivor Callely: So I am being allowed raise it.

An Cathaoirleach: I ruled. Did Senator Callely listen to what I said?

Senator Ivana Bacik: On a point of order, we are wasting a great deal of time on the Order of Business on one individual's issue, which is not appropriate for the Order of Business——

Senator Fidelma Healy Eames: Hear, hear.

An Cathaoirleach: I ask Senator Bacik to resume her seat. I call Senator Keaveney.

Senator Ivana Bacik: ——and which is before the courts.

Senator Cecilia Keaveney: I am concerned at the lack of progress on dealing with real issues in this House. As was alluded to earlier, we spent much of the time on the Order of Business yesterday and it left less than an hour for the serious issue of all-island sex offenders register. We ran out of time when only the main spokespersons had got to speak——

Senator Ivana Bacik: Barely got to speak.

Senator Cecilia Keaveney: ——or barely got to speak, and I do not think it will be any different today. It is an issue I have been raising constantly to try to get on the agenda and while it got on, we got to speak for approximately two minutes, in which time no one can speak in any level of depth.

I have three issues today. How do we get the business here as concise as possible so we get to deal with real issues? How do we get the media interested in what we do, other than a little bit on "Oireachtas Report"? It seems that unless one gets the Adjournment and one can get it on to the local radio stations, or one gets on the Order of Business——

An Cathaoirleach: A question to the Leader.

Senator Cecilia Keaveney: I am asking the Leader how do we make ourselves more relevant.

An Cathaoirleach: The Leader will reply to that.

Senator Cecilia Keaveney: Of the two other issues, one is that we have real snow sitting out on the ground outside and on the roofs of the Houses, and on our television pictures at home in Donegal. I ask the Leader for a debate and to bring the Minister for Communications, Energy and Natural Resources in here.

An Cathaoirleach: I ruled on that yesterday on an Adjournment, please.

Senator Cecilia Keaveney: It was ruled out that I could raise it as an Adjournment, but I had an Adjournment down three times.

An Cathaoirleach: Senator Keaveney——

Senator Cecilia Keaveney: I had three Adjournments down on this issue and they were accepted because I used the words “the North” in them. If I put “the North” back into it, let us have a discussion about how analogue and digital switch-over for the island of Ireland works.

An Cathaoirleach: The Leader will reply to that.

Senator Cecilia Keaveney: I must play the game in terms of how I get issues raised here.

The other issue I would like to debate is not FIFA, but corruption in sport. It is about allegations in Ireland——

An Cathaoirleach: I ruled on that.

Senator Cecilia Keaveney: There are allegations of corruption in sport in Ireland. I would like a debate here on whether we need an international agency——

An Cathaoirleach: Senator Keaveney’s time is up.

Senator Cecilia Keaveney: ——to oversee corruption, match fixing and other associated issues.

An Cathaoirleach: Senator Keaveney’s time is up. I ask Members to respect the Chair when their time is up.

Senator Ivana Bacik: I support Senator Keaveney in calling for a debate on the way we order business in this House. It is most inappropriate that one Member should dominate the Order of Business raising an issue——

An Cathaoirleach: Questions to the Leader——

Senator Ivana Bacik: ——which is currently before the courts.

An Cathaoirleach: ——not across the floor.

Senator Ivana Bacik: I ask the Leader for a further debate on prison conditions. We had an excellent debate on this House on foot of requests from myself and Senator Cummins on prison overcrowding. Unfortunately, there is another damning report, this time from the prison chaplains, about conditions in our prisons. It emphasises to us the need to keep this under constant review and to keep putting a spotlight on it because the conditions in the prisons remain appalling and inhumane.

I want to alert Members to the fact that I will be facilitating a seminar tomorrow with the Irish Penal Reform Trust in Room A of LH2000 at 12 o’clock. We are looking at penal reform in the context of the budget and how we can both save money and develop a more progressive penal policy with less reliance on prison.

I also ask the Leader for a debate on the Student Support Bill 2008 or for clarification as to when the Bill is likely to come before the Houses. This is a Bill on which there is consensus towards which the Union of Students in Ireland, USI, has been working, and many have been looking for it to be passed. Senator Prendergast has rightly pointed out that the Government is well past its sell-by date but there are a small amount of legislation, such as the climate

change Bill and the Student Support Bill 2008, on which there is consensus and there would be support, and which need to be brought before this House as a matter of urgency. I ask the Leader for a timeframe on that.

Finally, I am sure all Members of the House would like to join me in expressing great sadness at the report that an elderly individual died as a result of hyperthermia in north Cork, having slipped in a field on going out to check on his cattle. It highlights the serious problems people face all around the country as a result of the bad weather conditions.

Senator Mark Dearey: Some time ago I asked the Leader if the Minister for Justice and Law Reform could provide us with an assessment of the so-called dissident threat on this island. Last night's interception of a viable mortar on the northbound carriageway of the M1 outside Dundalk brings to attention again the activity of these people as they essentially attempt to challenge and undermine the basic precepts of the Good Friday Agreement. This is nothing less than an attack on the Good Friday Agreement, which underlines the legitimacy of seeking a united Ireland but also recognises the legitimate majority wish of the people of Northern Ireland to remain part of the UK. This attack is about assailing, assaulting and breaking down that fine balance and the statutorily recognised wish on both sides of the Border. This is an extremely serious situation and I ask that the Minister come to the House to give us his assessment. Recently, a Member of the Opposition described the banks as having done more damage to the Irish economy than the IRA. This may be true on a national basis but along the Border our economy has been damaged consistently over the course of the Troubles and there is a real danger that this damage may be inflicted again on the local economy. It cannot be overestimated how serious a threat this is and how bad it is for me to hear the name of my town, Dundalk, in the same sentence as "viable mortars". It undermines the confidence of the place. No right-thinking person in Dundalk supports this or could possibly conclude that this has ever been of any benefit to the area. It involves a tiny minority of people who enjoy no support except within their own ideological bubble. This House has to uphold the Good Friday Agreement which has been in place since May 1998. There is a danger that as time passes its validity and strength could be corroded. These people are recruiting. There is a younger generation which needs to hear from this House an assertion that the Good Friday Agreement is the future for relations between the North and South.

Senator Jerry Buttimer: Will the Leader ask the Minister for Justice and Law Reform to come to the House as a matter of urgency to deal with the matter mentioned by Senator Dearey and others this morning? It is important that we have a debate on the activities of dissident terrorists who are a threat to every single person in the country. I want to express my gratitude to the members of the Army and Garda who last night defended our State.

Senator Mark Dearey: Hear, hear.

Senator Jerry Buttimer: These are not Irish people worthy of support. I appeal through the Leader that this House stand up for the sovereign will of the people, which is to be an Irish nation proud of who we are. These people are terrorists and they should not be supported in any shape or form.

I also call for a debate on the Leader's programme for January. This morning, Senator Boyle sent out mixed messages. Will the Government be dissolved in January and will an election be called or will we continue until March or April? It is very important that we know this because the Green Party is half in and half out of Government.

Senator Fidelma Healy Eames: Hear, hear.

Senator Jerry Buttimer: Senator Fitzgerald was right in what she stated this morning. The Minister, Deputy Gormley, used the word “asylum” in the other House last night and not in the context of refuge. His language was wrong. It conveyed the wrong message and sent the wrong signals to the people. He is sitting at Cabinet and is one of a chosen few in a privileged position. If he wants to be in Government he should be in Government but if he wants to have self pity and be concerned about self-preservation then he should go out and face the people like he said he would.

Senator Dominic Hannigan: I also listened to Senator Boyle’s contribution this morning with interest. I am an optimist but there is a fine line between optimism and fantasy and delusion. If Senator Boyle thinks he will get all of that legislation through and still go to the country in January he has another thought coming. I suggest he examines the legislation on which we can all agree. As my colleague, Senator Bacik, stated we can agree on the Student Support Bill and the climate change Bill. At this stage, we must prioritise legislation. The House does not have too much longer left in its life and we need to move on and get through what we can.

On a separate note, I was disappointed listening to the contributions of some of my colleagues on both sides of the House. I do not know whether it is the smell of sulphur in their nostrils but the behaviour of some Members was childish and unbecoming of them. I ask them to consider their contributions in the time we have left in the House. I ask the leaders of all parties to have a quiet word in their ear so we can retain the standards of the House.

Senator Maurice Cummins: I join with Members in complimenting the Garda and the Army for their efforts last night in intercepting a mortar bomb going towards the North.

Senator Paul Coghlan: Hear, hear.

Senator Maurice Cummins: On numerous occasions, I have warned in this House about the threat of dissident republicans and last night was another example. We must root out these people. They have no mandate in this country and they are a threat to democracy and to the institutions of this State.

In 2006, the then Minister, Michael McDowell, unveiled a new fingerprinting system to link up with British and other European police forces to detect immigrants illegally claiming social welfare. It was due to be operated by civil servants as part of an integrated system linked to ports and airports which would detect people using different identities to travel, particularly between Britain and here, to claim benefits. Civilian staff were hired by the Garda and expected to use the system. However, the 50 staff in question at the Garda National Immigration Bureau refused to operate the system, stating it was a job for gardaí. They sought more money and a greater allowance for the work. With more than €20 million spent on the system, it remains inoperable since 2006. The Croke Park agreement was established to end this type of practice and increase flexibility and productivity in the public service. Where is the progress when we see practices such as these continue in the public service? We need to get real about reform if we wish to drag ourselves out of the mire in which we are at present. I call on the Minister for Justice and Law Reform to come to the House and explain why he has allowed this situation to continue for so long. His predecessor, Mr. McDowell, stated the system would help strengthen the effectiveness of the immigration system and more rapidly detect and deal with identity abuse. Four years later, we have had no progress. It is not acceptable to have this happening at present when we need every penny we can get into the system and when we need to curb abuse occurring in the social welfare system.

Senator Labhrás Ó Murchú: The deliberations of this House generally do not get great exposure in the media and I have always felt one of the main reasons for this is that we tend

to do our business and deal with issues in a very serious manner. Very often, this does not attract attention except when we go into controversial areas. I have always felt this was a pity because there is much debate in this House which if it received exposure would help the public debate in the media at the same time. Senator Hannigan is right in what he stated this morning. There is a danger in the last months of the House that we might sully the very image which we had in the past. We should be particularly careful in this regard.

I do not believe the Minister, Deputy John Gormley, intended to be offensive; perhaps retrospectively one could state this. I think what he was demonstrating was the huge pressures on anybody in public life at present. It is not the most comfortable place to be and this applies to every politician in every party in the country. It would do us much good if we were to continue in the way we did in the early years in the House, particularly for the remaining months. On a few occasions, recommendations have been made on the Order of Business that we set aside time to put forward whatever policies we wish to put forward and be prepared to listen to each other. At the end of the day, the general public will not be pleased with us if we waste the time we have, particularly during this crisis. I do not think anybody here intends to be offensive to each other but at the same time if it continues in the manner we have had in recent mornings most of us will become somewhat disillusioned. It is not edifying or constructive and it is not for what we entered public life.

Senator Nicky McFadden: I would like clarification on a point. I wanted to raise an issue on domestic violence and women, and on the fact that today is international AIDS day. A correlation of this is the minimum price of alcohol and the amount of destruction and the number of public offences caused by very cheap alcohol. I also want to discuss the desecration of women and the number of women abused when they are pregnant for the first time. However, I am afraid that if I ask for such a debate I will not receive an answer because I do not know how the schedule will be ordered.

The other issue I wish to raise concerns a situation I encountered while I was out canvassing recently. I called on a family and found them in darkness in their house because they could not afford to pay their ESB bill. They had not fed their children for two days. We are in a cocoon in the House and yet we find people here are self-serving and just talk about themselves. I find this insulting to people and the conditions in which they live in the broader community. The family I visited are people who are paying their mortgage and consequently going without food and electricity. I urge the Leader to make this House relevant so that we connect with the people in society who suffer most.

Senator Fidelma Healy Eames: I am saddened by the story Senator McFadden has just shared with the House, but that is the reality we face today. We need to look at the real issues affecting people's lives. In that regard, the 5.8% interest rate negotiated by the Government for the people will make matters worse. It has protected the elite and status quo in Europe. An interest rate of 5.8% is untenable. This will necessitate €8.5 billion interest repayable by Irish people in 2014. Fine Gael is right to look to renegotiate that deal. I recommend we tear it up because we cannot afford it. Why does the Government want to commit more families to darkness and starvation? The Government's actions now say it is not acting for the Irish people. The deal acts against the people.

I have three questions for the Leader. Why did the Government not use its negotiating power to force the ECB to account for its role in allowing French and German banks recklessly lend to Irish banks? That was the source of the trouble. I think the Government negotiators were desperately poor negotiators. The question should also have been asked with regard to the ECB's role in saying the blanket guarantee should be given on that fateful night. The Government had it in its hands to hammer home a great deal for Ireland, but it blew it. Finally,

[Senator Fidelma Healy Eames.]

why was a new beet industry not a precondition of the negotiations? The European Union has stated that our beet industry was wrongfully closed. The Government has done a damn bad job for Ireland and I am disgusted. We must change this. It is very undemocratic that the Government would not open the issue to debate and a vote in both Houses.

An Cathaoirleach: The Senator's time has concluded and she has made her points. I call the Leader to reply.

Senator Fidelma Healy Eames: We should debate and fix it in the House.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Prendergast, Boyle, Dearey, Buttimer, Hannigan and Cummins congratulated the Garda and the members of the Defence Forces on their vigilance and on the interception of the explosive device being carried in a car. There is no place for such activity in our country. As Senator Dearey said, it is of the utmost importance that we uphold all aspects of the Good Friday Agreement. After 12 years, it has changed the island of Ireland. I join in the congratulations to the Garda and the Defence Forces. We are fortunate to have such vigilant forces to defend us against the small group that is trying to hold the country to ransom and return us to the dark old days.

I support the comments made by Senators Fitzgerald and O'Toole on World AIDS Day. Ireland has done and will continue to do its fair share. Senator O'Toole also raised the issue of the Communications Regulation (Postal Services) Bill. We are all aware there is a significant number of amendments to the Bill. Committee Stage will continue until 5 p.m. and will resume on another day if not concluded. I have no difficulty in that regard.

Senator Prendergast asked about the Nurses and Midwives Bill and whether it would be completed before the elections. She also asked about the report produced by Dr. Hillary and expressed her concerns with regard to freedom of information. I will pass on her strong views to the Minister, particularly her views with regard to freedom of information.

Senator Phil Prendergast: I also asked about the Student Support Bill.

Senator Donie Cassidy: Senator Boyle and others asked about the mental health Bill due to come before the House. I have no difficulty with that. We will have a meeting on forthcoming legislation tomorrow and following that I hope to have up to date information on what legislation will come before the House before Christmas, taking into consideration the various events over the past ten days. I will update the House next Tuesday on the Order of Business with regard to what business will be on the agenda up to Christmas. I hope to get the agreement of the Leaders to sit at 12 noon next Tuesday because it is budget day and to take our sos at budget time so all colleagues can attend the Dáil for the budget.

Senator Coffey asked about the Dublin mayoral Bill and asked what the position was with regard to the Government's support for small community enterprises and SMEs in general. We should make strong points on this issue in our all-day debate tomorrow, particularly with regard to matters that pertain to the EU agreement. We must ask what funding will be allocated towards support for job creation and for growth. If we do not have growth, we are in a steady race to the bottom. All of us with experience of small family sized businesses that have been providing employment for a long time know that support for the 800,000 employed by SMEs and for small and community enterprise projects must be the priority of whatever Government is in office. I know Senator Coffey is genuine and sincere in the points he made. If we do not receive clarification on this issue in our debate tomorrow, I will seek to have time allocated again or will appeal to the Leaders to use Private Members' time to tease out how we can

create growth immediately. Rhetoric is no good. Nothing matters except the creation of growth in the economy.

If we achieve growth, changes can be made and hardship such as that outlined by Senator McFadden can be relieved. Nobody wants to be part of a Government or Oireachtas or local authority that allows people remain in that terrible plight. Officers in the HSE could certainly help the family she mentioned and I will talk to Senator McFadden after the Order of Business to see whether I can help her relieve the plight of that family in her constituency. It is appalling situations such as this should happen in our country at this time. My heart goes out to that family.

Senator Leyden reminded the House that the new register of electors will be in place from 15 February. It is of the utmost importance that young people will have a vote in the next general election and we should ensure that the election is after 15 February so they have the opportunity of exercising their vote. I join Senator Leyden in congratulating Shane O'Brien on being made young ambassador of the year. That is a wonderful achievement.

Senator Norris raised the matter of the Fine Gael policy to sell State assets. That is a matter for the incoming Front Bench or Government, whichever it will be.

Senator David Norris: It will be both at the same time.

Senator Donie Cassidy: It is a matter for Fine Gael and perhaps Senator Norris should discuss it with the Fine Gael leader who can update him better than I can.

Senator Callely raised the issue of Seanad reform.

Senator David Norris: Will the Leader address other serious points I raised? I raised some serious points about the proceedings in the House and the question of the economy. I would be grateful if the Leader dealt with those rather than dealing with an aside.

An Cathaoirleach: The Leader has not finished yet. The Senator should wait until the Leader is finished.

Senator Donie Cassidy: We have a successful format here where colleagues can discuss issues with their leaders. Whips can also discuss with leaders the difficulties and proposals of Members. Then we can discuss those issues at the Committee on Procedure and Privileges.

Senator David Norris: I would scarcely discuss the Leader's behaviour with Senator O'Toole. He is not a leader and I am a Whip.

An Cathaoirleach: Senator Norris should not interrupt.

Senator David Norris: The invitation is patent nonsense.

An Cathaoirleach: The Leader is replying to the Order of Business.

Senator Donie Cassidy: Senator Norris held a responsible position when he was a leader. I have no doubt he will be the future leader of his group when Senator O'Toole resigns.

Senator David Norris: As we do not have a leader, I am unlikely to fill that position. The Leader is obviously unaware of the philosophical concept of Occam's razor.

An Cathaoirleach: Allow the Leader to continue.

Senator Donie Cassidy: All groups submitted their proposals on Seanad reform to the Minister and it now on his desk. I presume that if an individual wants to make a proposal regarding Seanad reform before the White Paper is published, the Minister will consider it.

Senator Callely asked me to find out the number of temporary licences granted to local radio stations. He also spoke about Christmas FM and the holy season of Christmas. I will revert to the Senator directly on the matter.

Senator Coghlan spoke about the debate planned for tomorrow. I will ensure whatever documents are available will be placed at the entrance to the Chamber for the debate.

Senator Frances Fitzgerald: Miriam O'Callaghan appeared to have them last night.

Senator Donie Cassidy: Once the Order of Business concludes I will speak with the leaders about the timeframe for the debate. I have left the entire day aside for it and if more time is required, we will resume the debate next week.

Senator Paul Coghlan: I also asked about the Local Government (Dublin Mayor and Regional Authority) Bill 2010.

Senator Donie Cassidy: Senator Keaveney called for a debate on analogue and digital television signals. I have no difficulty in arranging time for that matter. She also called for a debate on corruption in sport. I will see what I can do to facilitate such a debate.

Senator Bacik sought a debate on prisons, an issue which we debated last week, and outlined her strong views on the matter. Yesterday I made a commitment to Senator Mullen regarding the prison chaplains who had expressed forthright views on the prison system and I fully support their plight. I will do all I can to see what the Upper House can do on this urgent matter. Senator Bacik also asked the timeframe for the Student Support Bill 2008. I think it is only a matter of weeks.

Senator Ivana Bacik: This Government has only weeks left.

Senator Donie Cassidy: Senator Cummins spoke about the Garda National Immigration Bureau and the length of time it takes to deal with social welfare fraud. I will pass his views on to the Minister for Justice and Law Reform for a response.

Senators Hannigan and Ó Murchú spoke about maintaining standards and the quality of debate in the Upper House. I am sure we all would agree with their comments. In fairness to my colleagues, most of them are exemplary in respect of their contributions to debates. From time to time, one or two Members become overly anxious about what they think is a promotion to the Lower House. Having been a Member of both Houses, I assure Senators it is an honour and privilege to serve in either. The level of debate in this House is a shining example for any parliament anywhere in the world. We deliberate and carry out the affairs of this House in the interests of the people.

Senators McFadden and Healy Eames spoke about domestic violence and the minimum price of alcohol. They are pushing an open door with me in regard to abuse and the minimum price of alcohol and I have no difficulty in facilitating a debate at the earliest opportunity.

Senator David Norris: Senator Cassidy appeared confused when I mentioned the principle of Occam's razor. For his information, the principle prohibits the hypothetical discussion of the non-existent.

An Cathaoirleach: On No. 2, the Communications Regulation (Postal Services) Bill 2010, will the Leader indicate whether he proposes that we will only take Committee Stage?

Senator Donie Cassidy: We will take Committee Stage until 5 p.m.

An Cathaoirleach: Not Report Stage.

Senator Donie Cassidy: Yes.

Order of Business agreed to.

Prevention of Corruption (Amendment) Bill 2008: Committee Stage

An Leas-Chathaoirleach: I welcome the Minister for Justice and Law Reform, Deputy Dermot Ahern, and wish him well following his recent announcement.

SECTION 1

Question proposed: "That section 1 stand part of the Bill."

Senator Ivana Bacik: I echo the Chair's words in wishing the Minister well. On section 1 which refers to the 2001 (amendment) Act, I wish to ask him whether any consideration was given to consolidating the Prevention of Corruption Acts in this legislation which, clearly, we welcome, as we did in the Dáil when it was introduced two years ago. Therefore, it has had a long genesis and passage through that House. I do not why its passage has taken so long because there was no opposition to it and certainly there were no substantive amendments tabled either by us or Fine Gael in the Dáil. The Minister's were the only substantive amendments tabled.

Was any consideration given to codifying the legislation dealing with the prevention of corruption? The Council of Europe Group of States Against Corruption, GRECO, in its report of 2009 on Ireland noted a number of prosecutions taken under the Prevention of Corruption Acts and so forth. It stated reform of the legislation could bring greater clarity to the relevant provisions and benefit the wider public and those operating the legislation. It is unfortunate that we are still dealing with the 1906 Act, the 2001 Act and now this new legislation. The final provision of the Bill states they will be cited together as the Prevention of Corruption Acts. There is, therefore, an opportunity to codify all of the related anti-corruption legislation under one cover. The Minister has addressed other recommendations made in the GRECO report in different provisions of the Bill and it seems appropriate under section 1 to raise this general point that emerges from the report. It would make sense to benefit the general public and those dealing with the legislation. Given the enormous level of public concern about corruption and so on, it would have been a good idea to take the opportunity to codify the law, particularly given that it has taken so long to get the Bill to this House.

Minister for Justice and Law Reform (Dermot Ahern): At the Law Society annual dinner in July I announced that I had asked my officials to move on codification of the law on corruption. I repeated this announcement on Second Stage last week or the week before. The Bill was in gestation at the time and well advanced. The sooner it is completed the better. My officials will begin a complete codification of the law on corruption.

Senator Ivana Bacik: I was aware of the Minister's comments, but the time seemed opportune time commence codification when the Bill was being prepared, particularly given the length of time it had taken to get it to this House. However, I am glad to hear codification is on the agenda.

Question put and agreed to.

Section 2 agreed to.

SECTION 3

Question proposed: “That section 3 stand part of the Bill.”

Senator Ivana Bacik: Perhaps the Minister might confirm that this section will answer GRECO’s concerns about a particular matter. When it reported in 2009, there was no jurisdiction over an Irish national who committed an offence abroad where he or she did not have the status of a public official. I understand this section addresses that issue, but I would like the Minister to confirm this.

Deputy Dermot Ahern: To be brief, it does.

Question put and agreed to.

SECTION 4

An Leas-Chathaoirleach: As amendment No. 5 is related to amendment No. 1, they can be discussed together, by agreement. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 1:

In page 5, line 21, after “opinion” to insert “or suspicion”.

The purpose of this amendment is clear. It is simply to provide protection for whistleblowers who report their suspicion as well as their opinion. In the proposed new sections 8A(1) and 8A(5)(a) to be inserted in the 2001 Act the Minister provides that there will only be protection for a whistleblower who gives an opinion. We suggest a broader protection to provide protection in reporting a suspicion. I believe the Minister claimed in the Dáil that it was not necessary to include the word “suspicion”, but it might be preferable for the sake of certainty to add the extra term.

In respect of protection for whistleblowers in section 4, the Labour Party very much welcomes this provision, but it envisaged broader protection for them to replace the Government’s preferred sectoral approach, whereby whistleblower protection would be provided in many items of legislation, with generic legislation to protect all whistleblowers in the public, private and non-profit sectors. As the Minister is aware, we brought forward a whistleblowers protection Bill in January this year which would have provided such general protection. As the Minister will also be aware, Transparency International recommended this year that such generic legislation would be preferable. The Standards in Public Office Commission also stated this year that the introduction of comprehensive public interest disclosure and whistleblower protection laws would send a clear signal that wrongdoing was not to be tolerated. Instead whistleblower protection provisions are inserted in myriad items of legislation by the Government. The sectoral approach is very different.

The Department’s paper on white collar crime was published in October. I attended the seminar in the Criminal Courts of Justice when the Minister spoke on it. The point is made in the paper that whistleblower protection provisions are contained in a number of Acts such as the Competition Act 2002, the Garda Síochána Act 2005, the Consumer Protection Act 2007, the Chemicals Act 2008, the Charities Act 2009, the National Asset Management Agency Act 2009, the Safety, Health and Welfare at Work 2005 and so on. It seems a more preferable approach — the one recommended by experts such as Transparency International — would be to enact a generic or general protection provision for whistleblowers in one item of legislation,

as the Labour Party proposed. That would mean one Department taking responsibility for the protection of whistleblowers. Instead various Departments are taking responsibility for their protection, which raises issues about consistency. This is a much bigger issue than this Bill, but section 4 raises the question again as to why the Government has not opted to provide more general protection that would offer greater consistency and certainty for whistleblowers. Having said that, we welcome the section, but a better approach would be to go for a generic provision, not a sectoral method, to provide protection.

Senator David Norris: If my distinguished colleague, Senator Bacik, requires a seconder, I will be very happy to second the amendment and, in particular, to rely on her expertise as she is, after all, a professor of law. I particularly applaud her for tabling this amendment because it raises the question of consistency. If such phrases are used throughout this and other legislation, obviously there should be consistency, although I would have thought an opinion might be taken to include suspicion, although it might be one element in forming an opinion.

People are very imprecise in their use of language. Even on the airwaves this morning I was astonished to hear someone on RTE describe a phrase contained in some Oxbridge review of the influence of Irish literature on the English language and refer to something that was obviously from *Finnegans Wake* as a notable quotation from *Ulysses*.

It would be very surprising indeed to find it in it and I challenge them to do so. Precision of language is important, even on the airwaves.

I join in the comments made by the Leas-Chathaoirleach and Senator Bacik about the Minister's future plans. I regret he will be leaving politics at the next election because he has been very clear, forthright and fearless. I have not always agreed with him and I noted that he listed some of the achievements. I would have added to that the partial success of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 and I thank him for that. I wish him and his family well in the future.

In regard to the general context of this which was opened up by Senator Bacik, it is very welcome that there is protection for whistleblowers because we certainly need it. I would like to give two examples in this regard. I was given information by someone about the actions of one of the largest banks in the International Financial Services Centre which was flagrantly and regularly breaching liquidity ratios in the most extraordinary fashion. I laid the information before this House and got an equivocal answer from the Minister. The matter was eventually, more or less, cleared up but it was swept under the carpet, there were no sanctions and nothing really happened. Nothing was reported, even though I issued a script to the media which I very rarely do, until it was taken up by the *Allegemeine Zeitung*. Then a one page article appeared in *The Irish Times* which managed to use the script I produced without once mentioning Seanad Éireann. I thought that was quite astonishing. The worst aspect of it was that man had to leave his job. He is now unemployed and under serious pressure.

There is the other case of the gentleman who had a responsible position in the Irish Red Cross who pointed out in the blog that substantial moneys, which had been donated, were lying unused in a bank account somewhere down the country, and for this, he was got rid of. I find that absolutely appalling. I very much hope this legislation will act to protect a person in that regard.

Again, I agree with what Senator Bacik said that rather than operate on a kind of section by section basis, a full whistleblowers Bill, something of the kind suggested by the Labour Party, would be worth contemplating by the next Government. It is obviously far too late to

[Senator David Norris.]

consider anything like this now but as a stop-gap measure, I welcome the existence of this clause in this legislation.

Senator Eugene Regan: I support the amendments. I assume an opinion includes a suspicion. The term “opinion” is not defined, although I know it is taken as it is generally understood, that is, a considered position. It is perhaps unnecessary given the protection of the accused is set out in section 4 which refers to any information furnished which is known to be false or misleading. It also states, “A person who makes a communication under subsection (1), which the person knows to be false, that a person has committed or is committing an offence under the *Prevention of Corruption Acts 1889 to 2010* shall be guilty of an offence.” That is quite a deterrent for anyone even to raise a suspicion. A suspicion is perhaps less onerous than an opinion. There are protections in order that one would not voice a suspicion frivolously. I support the amendments.

Deputy Dermot Ahern: I thank Senator Norris for his words. I was not here for the Order of Business and if anyone said any nice words about me, I thank them.

I am advised that an opinion can be formed on a belief which would encompass actual knowledge of suspicion. Given that an opinion can be formed on a suspicion, the addition of the word “suspicion” is not required and this has been considered by the Parliamentary Counsel. It was debated in the other House as well. Accordingly, as it is considered that the addition of the words in the amendments would not broaden the existing meaning of the provision nor would the amendments assist in further clarifying the test which would determine whether the protection under this measure for a person making a report in good faith would apply, I am not disposed to accept these amendments.

On the broader issue as to whether we have composite legislation on whistleblowing covering all aspects of life or whether we have specific provisions dealing with particular issues, the Government had a considerable debate on this a number of years ago. I was in the Cabinet when it had this debate and the strong advice of the then Attorney General, which was confirmed by the subsequent one, was that it would be preferable and probably more sustainable from a legal point of view if specific provisions were included in different legislation dealing with a myriad of aspects of Irish life. It was believed that if the composite legislation was challenged and found to be deficient, it would have ramifications across the system. It was also believed that it would be far better if a provision was specifically tailored to meet the issue in particular areas and that if a challenge was mounted, the provision would be more robust because it would have been included by legislators to deal with the issue.

Senator Bacik listed a myriad of legislation. I will give a longer list because it shows that it would be difficult to address all the issues in a composite Bill. Those issues range from the Protections for Persons Reporting Child Abuse Act 1998, the Competition Act 2002, the Safety, Health and Welfare at Work Act 2005 and the Garda Síochána Act 2005 under which whistleblowing would be completely different from that under the Competition Act 2002 or the Health, Safety and Welfare at Work Act 2005. I also mention the Communications Regulation (Amendment) Act 2007, the Consumer Protection Act 2007, the Medical Practitioners Act 2007, the Chemicals Act 2008, the Labour Services (Amendment) Act 2009, the National Asset Management Agency Act 2009, the Charities Act 2009 and the Inland Fisheries Act 2010.

A number of Bills being prepared contain specific whistleblowers protection, including the Employment Agency Regulation Bill 2009, the Employment Law Compliance Bill 2008 and the Local Government (Dublin Mayor and Regional Authority) Bill 2010.

Senator Rónán Mullen: The Minister will be accused of filibustering if he is not careful.

Deputy Dermot Ahern: Senator Mullen is a dab hand at that. Every aspect is dealt with there. It might have been simpler to have generic legislation but the strong view of the then Attorney General and the current one — I recall the debate at Cabinet in that regard — was that this was a better way to proceed.

Senator Ivana Bacik: I was glad to hear the Minister state that he consulted the Parliamentary Counsel on this. There is a significant difference between the terms “opinion” and “suspicion”. In criminal law, opinion evidence means something very specific and relates to expertise and a certain level of knowledge whereas suspicion requires a much lesser degree of knowledge or expertise.

When talking about whistleblower protection, we need to ensure the perception is that people will be protected if they disclose matters in good faith, in particular where they believe corruption is going on in their organisation or they believe there is fraud by an employer or colleagues in an organisation. The difficulty is that if it appears people are only protected if they have gone to the trouble of forming an opinion or have particular expertise, it may put them off from disclosing.

I am grateful to Senator Norris for reminding us of the enormous sacrifice whistleblowers have had to make in the past. Yet they have served an enormous public value by blowing the whistle on corrupt practices in organisations. We must ensure not only that legal protection is afforded to such people but that there is a perception that whistleblowers will be protected. That will encourage people to come forward.

The Department’s paper on organised and white collar crime indicates that in the US, financial incentives are now being introduced for whistleblowers to encourage people to blow the whistle, emphasising the public value of whistleblowing. Transparency International suggested that in our legislation, just and equitable rewards should be made to whistleblowers subject to reprisals. There should be a perception as well as legal protection afforded to people, even where they do not have a degree of expertise or the idea may be that such people have not a fully informed opinion. That is why we proposed the amendment dealing with suspicion.

On the more general point about generic legislation versus sectoral legislation, in 2006 the Government came to the decision described by the Minister. On the Attorney General’s advice it was decided that individual statutes may be a more appropriate way to afford protection to whistleblowers. I am grateful to the Minister for providing what is almost a full list of those statutes. The counterargument is that where there is specific legislation affording whistleblower protection of the sort described, gaps can emerge. Just because we have protection in the Chemicals Act or Charities Act, for example, this does not mean there are no areas in which there is no protection. The great advantage of a general protection law is that it does not allow for those sorts of gaps.

In Britain the Public Interest Disclosure Act 1998 provides a cross-sectoral basis for whistleblower protection and contains general provisions enabling protection for disclosures made to employers, regulators, police and even members of parliament. That is the sort of general protection we might consider introducing here, with general provisions made to ensure protection from reprisals, whistleblowers who are victimised or dismissed can claim compensation and so forth. I do not see why we cannot have a general provision in the same way.

I accept that this is a slightly bigger issue than what we are dealing with here. I welcome this protection, as far as it goes, although there are difficulties with maintaining this position on sectoral protection only.

Senator Eugene Regan: The Minister has explained what an opinion means or can mean, indicating that it can include suspicion. We are establishing a criminal offence in respect of a

[Senator Eugene Regan.]

whistleblower. Any case that would be considered by a court would be looking specifically at what an opinion means, reasons for forming an opinion etc. It would be very helpful if in the definition section, the definition which the Minister has given of an opinion for the purposes of the criminal offence would be set out. If that is what an opinion is to mean in this criminal law sense, we should set it out in the definition section.

Senator Cecilia Keaveney: I wish to raise with the Minister the issue of opinion and suspicion. Although we are dealing with national legislation, international elements of corruption have been evident recently. The “Panorama” programme on Monday considered allegations against FIFA officials and issues of match-fixing. Court cases have also been taken against people in Germany. I know this legislation is targeted specifically to the national scene but I would like the Minister’s opinion on whether our national legislation is strong enough to cope with international attacks in sport. I hate the phrase “whistleblower” but if people want to come forward, I understand the need to protect and encourage people in doing so.

An Leas-Chathaoirleach: This is more relevant to the section.

Senator Cecilia Keaveney: It takes in issues of suspicion as well. If there is a suspicion that there is ongoing national or international organised crime, do we have a strong enough national capability to deal with it? Does the Minister agree that we should have an international group, akin to the World Anti-Doping Agency which considers drugs issues, specifically to consider the sporting area?

Deputy Dermot Ahern: Senator Keaveney raises a very interesting issue and she gave me a book, which I have yet to read, relating to corruption in sport.

Senator Cecilia Keaveney: The Minister may have more time for it now.

Deputy Dermot Ahern: Yes. I saw part of the television programme, which was quite damning. This legislation looks to build on existing law and implement the commitment we have on the convention on bribery of foreign public officials in international business transactions. That is what the Bill is about but we have gone further. Senator Bacik would accept that although we are dealing with whistleblowing in specific pieces of legislation, the Bill deals with whistleblowing and corruption generally across the system. It could be regarded as providing an ability for people to give information on alleged corruption in any facet of life.

With regard to the amendment, we discussed the section with the Parliamentary Counsel in view of what was said in the other House. The strong view was that the word “opinion” encompasses knowledge or suspicion. In response to Senator Regan and the suggestion that there should be a definition of “opinion”, the view is that the word is widely recognised and understood by the courts of the land. To insert a definition of “opinion” would lead to a great difficulty in encompassing everything that might be regarded as an opinion. It might be best left to the Judiciary to determine what an opinion is or involves in a particular instance of adjudication.

Senator Ivana Bacik: Without labouring the point, if the words “or suspicion” were included, there would be no need to define an opinion as it would be very clear that it was not a view formed with a great deal of information but also a view formed with a lesser degree of information. It would be appropriate to include “suspicion”, given that section 8A(1)(a) of the principal Act would make it clear persons are not protected where they have been reckless as to whether suspicion or an opinion was false, misleading, frivolous or vexatious. There is a protection against false allegations but there is also a protection against allegations which are

simply frivolous or vexatious. Adding “suspicion” does not widen the issue too much but would send a message that whistleblowing is encouraged and whistleblowers reporting suspicions of corruption in good faith are doing a public service in doing so.

Senator Eugene Regan: I disagree with the Minister on the definition as I do not believe that in the manner this is framed, an opinion can include suspicion. If we read this as including suspicion, section 4 would read:

A person who, apart from this section, would be so liable shall not be liable in damages in respect of the communication, whether in writing or otherwise, by the person to an appropriate person of his or her suspicion that an offence under the *Prevention of Corruption Acts 1889 to 2010* has been or is being committed unless—

(a) in communicating his or her suspicion to that appropriate person did so—

(i) knowing it to be false,

How can a suspicion be false?

How can a suspicion be misleading, frivolous, vexatious or reckless as to whether it was false, misleading, frivolous or vexatious? The whole section appears to be constructed around a specific meaning of the word “opinion”. This means a suspicion requires facts upon which one would reasonably form an opinion based on these facts. Therefore, when a whistleblower has a suspicion, he or she has an obligation to check and double check the suspicion before forming an opinion because failure to do so renders him or her liable to criminal sanction. There is a contradiction in the manner in which the provision is framed, especially if, as the Minister argues, an opinion includes suspicion. If it is to include suspicion, the word “suspicion” must be clarified either in the section or in the definitions.

Senator Ivana Bacik: I concur with Senator Regan. In subsection (5) a reference is made to an employee “having formed an opinion”. This requires that the person has done a certain amount of work in coming to an opinion, which is rather different from having come to a suspicion.

On whistleblower protection, it occurred to me that one specific act of whistleblowing by a midwife in a maternity hospital prevented a great deal of further harm being done in the Minister’s constituency. The young woman in question blew the whistle after years of malpractice by a particular consultant who had unnecessarily removed women’s reproductive organs over a period of years. As the Minister is aware, this is a matter of public knowledge which was the subject of RTE documentaries and dramas and a public inquiry into the practices in question. The Minister read out a list in his Department which details Acts and Bills containing protections for whistleblowers. The legislation listed does not provide protection for a young midwife, nurse or doctor who may blow the whistle on malpractice in the health sector or a particular hospital.

The act of whistleblowing on the part of the young midwife to whom I refer has done more public service than any other act of whistleblowing and people will remember it as having done the most good. The individual has never been publicly identified, including in Judge Harding Clark’s report on the case. While we do not know what happened to her, the general wisdom is that it was made very difficult for her to continue working in the hospital in question. I have not found protection for whistleblowers in the health service in the Minister’s list.

Senator David Norris: While I continue to support Senator Bacik and hope we can come to a speedy resolution of the amendment, I retain my view that suspicion is an element in the

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formation of an opinion. I am aware of the extremely serious case to which the Senator referred which involved a very brave woman. It is astonishing that no one spoke out previously at the hospital in question given the appalling practices and completely unnecessary operations, including symphysiotomy, which were carried out there.

Senator Ivana Bacik: They were afraid to speak out.

Senator David Norris: I understand the young woman observed developments for some time and formed an opinion as a result of a suspicion. This argument does not support Senator Bacik's case in quite the degree she believes because——

Senator Ivana Bacik: If I may clarify the issue for the Senator, I was referring to general protection for whistleblowers and pointing out that whistleblowers in the health service and hospitals may fall between the gaps of the specific statutes to which the Minister referred. That is the problem with the sectoral approach. I was not referring to the opinion-suspicion issue.

Senator David Norris: Most whistleblowers are very serious people. They do not decide they do not like the look of a fellow, wonder if he has been up to something odd and make a report against him. All those with whom I have dealt are serious people who progressed from suspicion to opinion, as is appropriate. At the same time, I am pleased to support the amendments, although the Minister appears to be completely unwilling to take them on board.

Senator Rónán Mullen: I have been very engaged by the previous speakers' comments. Having considered Senator Bacik's argument, I am starting to lean against her proposition to introduce the word "suspicion" given what can happen when people are irresponsible in the formation of a certain opinion. Be that as it may, while I may have misunderstood Senator Regan, having thought about his argument, I am not sure the inclusion of the words "false, misleading, frivolous or vexatious", which are the subject of several amendments in my name, necessarily implies that the Government's definition of the word "opinion" does not encompass suspicion. What is at issue is the question of deceit and the possibility that a person may pretend to communicate an opinion or suspicion in good faith knowing that what he or she is saying is false, misleading, frivolous or vexatious. On reflection, I am not sure Senator Regan is correct although I am engaging with him rather than offering a definitive opinion.

Senator David Norris: I am delighted Senator Mullen has thoroughly undermined his amendment. He invoked deceit and referred to people misleading and so forth.

An Leas-Chathaoirleach: We are not discussing Senator Mullen's amendment.

Senator Rónán Mullen: I will offer a rationale for my amendment in due course.

Senator David Norris: I will be interested to hear the Senator's rationale, if he possesses one, which I doubt. I do not intend that as a personal comment.

Deputy Dermot Ahern: I cannot put the matter further than to state that, having discussed this issue with the Parliamentary Counsel, the word "opinion" encompasses actual knowledge or suspicion. I appear to be getting some support for that view from Senator Norris and, to a lesser extent, Senator Mullen.

I may have formed the wrong impression of Senator Bacik's contribution and stand open to correction on the matter. Is she suggesting we provide that someone should be able to recklessly make an opinion or suspicion?

Senator Ivana Bacik: No.

Deputy Dermot Ahern: I understood the Senator was making such a suggestion. We need to be very careful because a balance must be struck between the right and duty of a whistleblower to come forward and the need to ensure people do not make accusations which traduce the good name of another individual.

Senator David Norris: That matter is addressed in the next amendment, which I was rebuked for discussing.

Deputy Dermot Ahern: It is for this reason the question of whether the word “opinion” encompasses everything would ultimately be determined by the court on the basis of the level of knowledge of the person concerned.

Senator Regan may correct me if I am wrong but is he suggesting that one cannot have a false or misleading suspicion? I believe suspicions can be false or misleading. For this reason, I do not get the Senator’s point. If one starts defining the word “opinion”, which I have not seen defined in any other legislation——

Senator David Norris: The Minister is on dangerous ground.

Deputy Dermot Ahern: I hazard a guess that it would be beyond the wit of the Oireachtas to define the word “opinion” in a manner sufficient to allow it to be legally parsed and analysed in a court case. Ultimately, the matter should be left to the courts to decide.

Senator David Norris: Of its very nature, an opinion is open to being incorrect or false. That must be the case.

Deputy Dermot Ahern: Yes.

Senator Eugene Regan: The Minister purports to define the word “opinion” as including suspicion while at the same time arguing——

Deputy Dermot Ahern: No, I stated that in the opinion of the Parliamentary Counsel the word “opinion” encompasses suspicion.

Senator Eugene Regan: I remind the Minister that I have the floor. He purports to define the word “opinion”. All I am suggesting is that the word should be defined in the legislation. By using only the word “opinion” and not making it clear that it includes suspicion, one places the onus on the whistleblower to be sure of his or her ground before voicing a concern.

Let us consider the history of sexual abuse in our institutions. The Minister referred to someone making accusations that damage the good name of individuals. That is exactly what was said to children and other people who raised concerns and suspicions about these types of activities. It is a fundamental issue.

Senator David Norris: Well done. That is a very good point.

Senator Eugene Regan: The onus should not be on the individual with the suspicion because he or she is usually the weaker person who does not have the means to check out the facts but has a genuine concern and suspicion that something wrong is being done. It is for others in authority to check the matter out and it is important that those suspicions be taken up and acted upon. However, such an action is closed off by the way this is framed. The onus is placed on and a criminal sanction framed in the Bill for the whistleblower. Be careful of one’s ground before voicing one’s suspicion

Senator Ivana Bacik: Senator Regan has put it very well by saying the Minister's wording places the onus on the whistleblower to be sure of his or her ground before making allegations. He pointed out, rightly, that it was the culture of non-disclosure of sexual abuse in institutions that led to so much suffering for so many children for so long. In Ireland more generally there has been a culture of non-disclosure. We must be clear about the context, not only in regard to institutional sexual abuse or medical malpractice cases such as I raised, in planning corruption or malpractice in banks and financial institutions——

Senator Eugene Regan: Political corruption.

Senator Ivana Bacik: Political corruption. In all these areas there has been a culture of non-disclosure and in the past an absence of any sense of protection for whistleblowers. The Minister is right. We must have a balance and the good name of people must be protected. The balance went far too much the other way, however, and against giving any protection to a whistleblower who discloses in good faith. The amendment I propose, with the support of Senator Regan, would clarify for potential whistleblowers that they would be protected even if they did not have the full knowledge they thought they had. I think of all those people who disclosed planning corruption who were very sure they had seen envelopes change hands or that fraud had taken place but could not be absolutely certain because that is the nature of the kind of practice they were disclosing. It is done in secret. We must be careful not to create a perception that the onus on the whistleblower is so heavy that he or she must be absolutely certain before making any disclosure.

I support the Minister's wording in section 8A(1)(a) which states that a whistleblower is not protected if he or she has been reckless as to whether an allegation was false, misleading, frivolous or vexatious. That preserves a balance. I do not agree with Senator Mullen's amendment which would remove those words.

Senator David Norris: I thought I had persuaded the Senator.

Senator Ivana Bacik: When I read the wording again, I was sure——

Senator Rónán Mullen: I might persuade both Senators.

Senator Ivana Bacik: To include "suspicion" as well as "opinion" would make it clear that the whistleblower does not have to be absolutely certain before making a disclosure but neither can he or she make misleading or frivolous allegations. I say to the Minister, with respect, that to include "or suspicion" would create a better and more encouraging perception for whistleblowers and potential whistleblowers.

Senator David Norris: I have been persuaded by Senator Regan's argument, supported by Senator Bacik, and now give my unqualified support to the amendment. A very important series of related points has been raised. First, there has been a shift in the balance of responsibility. Second, some of the persons involved may be young people or people who are not entirely formed as to maturity and who may be easily intimidated. Cases of sexual abuse were mentioned which is a very sensitive area. I am now completely persuaded by this argument.

That is the great value of the kind of debate we have in this House. It is possible, honourably, to alter the balance of one's opinion. I am sure the Minister is capable of doing that too. I suggest to my colleagues who tabled this amendment that it is very important. I congratulate Senator Bacik on tabling it but I suggest she might consider withdrawing it to allow the Minister to consider the matter in greater depth with his advisers and the Senator resubmit it on Report Stage in the hope that the Minister will be persuaded and will refer the debate in this Chamber

to the advisers in order that they may study it. We are all united in our wish to promote and sustain the welfare of vulnerable people who make these allegations in good faith.

Deputy Dermot Ahern: I can look at this again between now and Report Stage but I reiterate we considered this issue. As far as we on this side of the House are concerned, we do not flip-flop and we listen to arguments.

Senator Rónán Mullen: That is making a swansong.

Deputy Dermot Ahern: We do not flip-flop within a short timescale.

Senator Eugene Regan: It is just a nuance of the argument of Senator Norris.

Deputy Dermot Ahern: On the basis that——

Senator David Norris: If the Minister is giving a guarantee he will look at this matter, he must look at it with an open mind. It is not a flip-flop.

An Leas-Chathaoirleach: The Minister, without interruptions.

Senator David Norris: It is a development.

Senator Rónán Mullen: If the Minister could at least form a suspicion, as distinct from an opinion, he might——

Deputy Dermot Ahern: Perhaps, upon mature reflection.

Senator Eugene Regan: It is a sign of intelligence to be able to change one's mind.

An Leas-Chathaoirleach: The Minister, without interruptions.

Deputy Dermot Ahern: Our premise is that “opinion” includes suspicion, actual knowledge or a belief. I would not suggest what is being suggested, namely, that in some way the use of the word “opinion” suggests the person in question must be absolutely certain about the issue he or she is reporting. I do not accept that at all. It is up to the authorities——

Senator David Norris: It is a grey area.

Deputy Dermot Ahern: No, there is a suggestion that in some way——

Senator Eugene Regan: No one suggested that.

Deputy Dermot Ahern: ——there is a greater onus on the person because of the use of the word “opinion” rather than “suspicion”. That leaves aside the fact that as far as we on this side of the House are concerned, the word “opinion” includes “suspicion”. I will look at this again and consider whether it is possible to define “opinion”. I do not believe one can but we will ask the Office of the Attorney General. I do not believe that adding the word “suspicion” will advance or broaden this in any way. If one were to include the word “suspicion”, one would probably have to look to other similar words to see whether they, too, should be included. Where would one end up? The use of the word “opinion” is recognised in courts by the Judiciary and it is fully understood what it is intended to mean in particular instances. I do not see how this argument can advance. It may very well even suggest there is a differentiation between opinion and suspicion whereas, as far as we are concerned, there is not.

An Leas-Chathaoirleach: Is amendment No. 1 being pressed?

Senator Ivana Bacik: I would not press it if I thought the Minister would take the debate seriously and would consider the issue between now and Report Stage. He said he——

Deputy Dermot Ahern: I take the debate seriously.

Senator Ivana Bacik: I accept the Minister said that but I note from the Order Paper that Report Stage is to take place immediately after Committee Stage.

Deputy Dermot Ahern: I did not know that.

Senator Ivana Bacik: I do not suggest the Minister knew that. I am informing the House of it. I do not believe Senator Norris was aware of this either.

Senator David Norris: The way the business of this House is ordered is absolutely disgraceful. This is another example of the idiocies perpetrated by the Leader.

Deputy Dermot Ahern: I did not know that.

Senator Ivana Bacik: I do not suggest the Minister knew it.

Senator David Norris: It is an absolute shame.

Senator Ivana Bacik: I would be happy to withdraw the amendment if I thought there would be a gap between Committee and Report Stages in order that the Minister might be in a position to consider it. There has been a full debate on the amendment. The matter was put in the other House but the debate there was not so full.

Progress reported; Committee to sit again.

Business of Seanad

Senator Ivana Bacik: Is the acting leader in a position to say whether we can take a gap between the two Stages?

Senator Rónán Mullen: What would constitute a sufficiently expansive gap?

Senator David Norris: This House must insist upon a gap. This is outrageous and a real abnegation of democracy.

An Leas-Chathaoirleach: I can act only within the order before the House which states we must take all Stages now. Is amendment No. 1 being pressed?

Senator Ivana Bacik: I will press it if we are to take all Stages now but will press it on Report Stage if that is to follow shortly.

Senator David Norris: If it proves impossible for Senator Bacik to have her amendment considered within this timeframe, this Bill is probably constitutionally suspect.

An Leas-Chathaoirleach: Senator Bacik will not be able to submit——

Senator David Norris: That is an outrage. I demand that we listen to the Acting Leader and that we ask him to ensure the democratic processes are fulfilled.

An Leas-Chathaoirleach: I call the Acting Leader.

Senator Denis O'Donovan: If it is helpful, I do not have a problem in creating a gap between Committee and Report Stages. I was late for the Order of Business and did not realise that both Stages had been ordered. The Bill is relatively short.

An Leas-Chathaoirleach: Is the Acting Leader making an amendment to the Order of Business?

Senator Denis O'Donovan: I do not have a problem with that. There is a suggestion that the House would——

Senator David Norris: I thank the Acting Leader. A significant point has been won by this side.

Senator Denis O'Donovan: I believe the Minister agrees that there should be a time gap.

Senator David Norris: Hear, hear.

Senator Ivana Bacik: I am grateful to the Acting Leader for that but I would like to know what type of gap he intends before I agree to it.

Senator David Norris: Mind the gap.

Senator Ivana Bacik: To be fair, we would need to take Report Stage on a different day if the Minister wishes to take advice. We would need to put it on a different day, to be fair.

Senator Eugene Regan: On a point of order, we agree to take the next Stage next week. There is no big issue.

Senator Denis O'Donovan: While it is an important issue, it will not take up a full day.

Senator Ivana Bacik: It will be very quick but I would be grateful if the matter could be dealt with next week on Report Stage.

Senator David Norris: I express my gratitude to the acting leader. This is an important moment for the House.

Senator Denis O'Donovan: I might lose my position as acting leader.

Minister for Justice and Law Reform (Deputy Dermot Ahern): Now that peace has reigned, as I indicated I had no problem going into next week, I would not want any of that to suggest we may come back with an agreement on the amendment because, as I said, we considered this previously. We will consider it again and ask that the opinions, rather than the suspicions, of the other side of the House be taken into account.

Senator Denis O'Donovan: I propose that Report Stage be taken next week.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Prevention of Corruption (Amendment) Bill 2008: Committee Stage (Resumed).

SECTION 2

Debate resumed on amendment No. 1:

In page 5, line 21, after “opinion” to insert “or suspicion”.

— (Senator Ivana Bacik).

Senator Ivana Bacik: Given the circumstances, I withdraw the amendment.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendments Nos. 2 and 4 are related and may be taken together, by agreement. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 2:

In page 5, line 23, to delete “has been or is being” and substitute “may have been or may be being”.

Amendments Nos. 2 and 4 relate to a similar concern in respect of the whistleblower protection in section 4. Again, we felt the onus is being placed, under the Minister’s wording, on the whistleblower to be clear that he or she had formed an opinion that an offence under the Prevention of Corruption Act has been or is being committed. Using the Minister’s wording, the onus is placed on the whistleblower to form an opinion that an offence has been or is being committed. In our view, that is too heavy an onus on a potential whistleblower. It seems as if it requires the whistleblower to know what sort of offences are envisaged under the Prevention of Corruption Act before he or she would report any opinion to anyone in authority about his or her view.

Our amendment would give greater protection to whistleblowers and create a more encouraging climate for potential whistleblowers. Instead of stating the whistleblower must have formed the opinion that an offence has been or is being committed, it would be somewhat more nuanced and would state that an offence “may have been or may be being” committed.

We cannot presume that every potential whistleblower, including, as Senators Norris and Regan said, very young people who may be very vulnerable and easily intimidated, would know the law on corruption offences — in fact, we cannot presume anyone knows what the Prevention of Corruption Act states in terms of offences. Therefore, it would be a more appropriate approach to state they must have formed an opinion or suspicion in good faith that an offence “may have been or may be being” committed. This does not change the substance of the section but it creates a little more space for a whistleblower to form an opinion in good faith and to be clear he or she will be protected if he or she reports or discloses that suspicion to somebody in authority.

Amendment No. 4 refers to subsection (3), where “a person has committed or is committing an offence”. The amendment seeks to introduce the term “may have committed or may be” committing an offence. To put it in plain language, if a potential whistleblower thinks somebody may be committing an offence of corruption, the person can report that in good faith. It does not require that the person believes an offence of corruption has been or is being committed. It is a nuanced amendment, which we believe creates a more welcoming and encouraging climate for potential whistleblowers, whom we want to encourage to make disclosure in good faith of suspicions and opinions about corruption.

Senator David Norris: I support the amendment, which strengthens the protection of whistleblowers. As Senator Bacik said, it is a nuanced view. One could say that having an opinion that “it” has been committed does not require “it” to have been committed. At the same time, this will offer reassurance to people who have a suspicion or an opinion that something may have gone wrong, where the person is not in a position to state objective facts with clarity but believes something sinister is or may be occurring.

As we have got to a situation where there will be time for reflection, I urge the Minister to take the amendment back for reconsideration rather than rejecting it. It is all of a piece with

the earlier amendment, as Senator Bacik argued very effectively. This would be a practical way of dealing with this important matter, if it is reserved for further discussion.

Senator Eugene Regan: I agree with these amendments, which are on the same lines as the previous amendments we have discussed. The manner in which the section is framed is too onerous on the whistleblower and the amendments are well grounded.

Senator Rónán Mullen: This amendment is closely related to the previous amendment proposed. It might be of use to think of this in terms of a situation where a person has second-hand rather than first-hand knowledge. Are we discussing the facilitation of potential whistleblowers who do not have a direct handle on the evidence of wrong-doing but who are, say, approached by a person they trust within an organisation who tells them something has happened, and who then feel an obligation to report what they heard? Such evidence might be regarded as hearsay in the view of the courts but would and should, in the whistleblower's view, facilitate an investigation into what the person has heard. Is that useful in terms of considering the distinction between what is contained in the legislation and what Senator Bacik has proposed?

Minister for Justice and Law Reform (Deputy Dermot Ahern): I am minded to accept the amendments, although some of the documents before me would suggest they are not necessary. As I said, opinion encompasses belief and suspicion; it does not connote certainty. Therefore, there is no need to change “may” to “may have been or may be being”. The whistleblower is not required to prove that corruption has been or is being committed. He or she is not required to be certain. He or she is clearly protected when communicating an opinion, which includes suspicion, that corruption has been or is being committed. The only requirement is that the whistleblower avoids knowingly or recklessly being false, misleading, frivolous or vexatious. It is really a balance between, on the one hand, encouraging whistleblowers and, on the other hand, protecting people against whom an allegation has been made.

I am inclined to accept the amendments today. There is a time constraint because we want to get the Bill passed and, if I accept the amendments, we have to go back to the Dáil. We want the Bill passed by 14 December because there is an OECD deadline. I will accept the amendments, and on Report Stage we will have to find time to go back to the Dáil. They do make sense.

Senator David Norris: Bravo. Well done to the Minister. That is brilliant.

Senator Ivana Bacik: Senator Norris has put it very well. I am very grateful to the Minister for being so open to accepting the amendments and for indicating he will do so. They will strengthen and improve the quality of section 4 of the Bill and will encourage a greater culture of disclosure in good faith by whistleblowers. That is an important change of mind and I am grateful to the Minister for accepting the amendments, which will send a very welcome signal to potential whistleblowers that they will be given adequate and appropriate protection where they disclose in good faith their belief or opinion that an offence may have been or may be being committed. I thank the Minister.

Deputy Dermot Ahern: As I have accepted the amendments, for logistical reasons we would have to have Report Stage today.

Senator Ivana Bacik: I am happy with that.

Senator Eugene Regan: Are we talking about these amendments and Senator Bacik's previous amendments?

Deputy Dermot Ahern: We will have to deal with them all today due to logistical reasons in regard to bringing the Bill back into the Dáil.

Senator David Norris: As the person who fought that battle on the issue, if Senator Bacik, whose amendment this is, is satisfied, I will certainly accept it, as I am sure she will.

Acting Chairman (Senator Maurice Cummins): The House will decide that at the end of Committee Stage. We cannot decide on it now. That is the procedure.

Amendment agreed to.

Acting Chairman (Senator Maurice Cummins): Amendments Nos. 3 and 6 are related and will be discussed together.

Senator Rónán Mullen: I move amendment No. 3:

In page 5, lines 26 to 29, to delete all words from and including “misleading,” in line 26 down to and including “vexatious,” in line 29.

In many ways, what we have been discussing recently and what I am proposing concern different paths up the mountain. We want to achieve a culture of transparency in which people will not feel there will be a chilling effect in reporting their belief there has been corruption. The same motivation underlies Senator Bacik’s amendments and mine.

We must recall the critical role played by whistleblowers in fighting corruption. Price-waterhouseCoopers estimates that some 40% of all cases of corruption and fraud are exposed by whistleblowers. Individuals such as Eugene McErlean at AIB and Sherron Watkins at Enron have in the course of their work reported concerns or evidence of wrongdoing or harm to others. It is important to remember they are motivated to do the right thing in the common good. That is what we are talking about in this debate. It is to fulfil international obligations that the Government has brought forward this legislation. It is important to remember that the role of whistleblowers has been recognised by the United Nations, the Council of Europe and the OECD. It is because these organisations place whistleblowing at the heart of a national strategy to prevent the abuse of power that we have this Bill. We need to be very careful, therefore, about what we include in and leave out of it.

I have not addressed the sectoral approach taken by the Government to whistleblowing, as addressed by other Senators. The approach is folly. We will be left with very diverse and confusing standards of protection for whistleblowers and significant gaps in legislation. Irrespective of whether one is talking about child abuse, corruption, fraud or mismanagement, it should be possible to identify certain principles that apply to all of these areas. It should be possible to identify whether allegations are made in good faith and establish a mechanism for people to report to an authority beyond their employer because of fear or possible intimidation by that employer or employees. One can pretend that the drafting of general legislation would cause problems, but I do not believe it would. The same principles generally apply to whistleblowing across the board. I refer to what whistleblowers need in order to do what they must do and the wider need of society to prevent the making of many vexatious, irresponsible, worrisome or unfounded claims. I am concerned the Bill will not protect individuals such as Eugene McErlean or a single whistleblower in our banks reporting fraud, overcharging or reckless dealing. It is remarkable, given what we have discussed incessantly in the past few months, that these issues remained unaddressed in this legislation. That is very noticeable and odd, to say the least.

The Bill will not hold unscrupulous employers to account for covering up wrongdoing of many shades other than what is prescribed in it. When one considers the penalty imposed on individuals such as Mr. Noel Wardick, a former director at the Irish Red Cross who drew attention to serious issues of mismanagement and a failure to discharge funds properly, one realises it is remarkable that we are not taking the opportunity this legislation presents to establish more general principles pertaining to whistleblowing. It is vital that we do so, bearing in mind that the Irish Red Cross almost has a statutory function and significant national responsibilities at certain times and in certain ways. It is a classic example of a case in which somebody feels the need to report beyond his or her employer and the Garda in order that the best interest of his or her organisation and the public would be served.

The amendments propose to delete the words “misleading”, “frivolous” and “vexatious” such that the section would provide that a person would not be liable for damages, save where, in communicating his or her opinion to the appropriate authority, he or she knows his or her opinion to be false. Let me reassure the Minister and others in case there is any doubt. It is not that I have any sympathy for someone who knows what he or she is saying is in any way misleading, frivolous or vexatious. One must consider the two amendments together. We are not just talking about the person escaping liability in the courts but also about the circumstances in which a person might escape penalisation by his or her employer. I am worried that the legislation, as drafted, will lead to a chilling effect on potential whistleblowers. They may consider it may be said what they are doing is misleading or vexatious. I am uncomfortable with the subjectivity associated with these concepts. The test should be one of falsity. Transparency International has advised that it is highly unusual and worrying for a provision such as this to be inserted in such legislation. It believes the Bill, as presented, will silence potential whistleblowers.

The Bill provides that damages may be sought against an employee if what he or she reports is deemed to be reckless in the sense of being false, misleading, frivolous or vexatious. This type of provision is not included in any other whistleblower legislation, in Ireland or overseas. One must ask why anyone would come forward if he or she believed he or she could be penalised by his or her employer. That is the point that causes me particular concern. I refer to the raising of a concern that one’s employer deems to be reckless, vexatious, frivolous or misleading. Even where an employee makes a genuine mistake in reporting, would it not be easy to brand the report as frivolous or reckless? Such mistakes are possible and may even be inevitable, but a whistleblower should not be punished according to such a subjective and unfair standard.

What constitutes reckless behaviour? Would a person mistakenly reporting a concern of corruption to a non-designated body such as the Standards in Public Office Commission or the Office of the Comptroller and Auditor General be deemed to be reckless? The standard runs contrary to the common law principle of good faith, which implies a person believes the substance of the report to be true and does not act maliciously.

1 o'clock Would that not be a better standard to apply? The good faith principle is at the heart of the United Kingdom’s whistleblower legislation and has been tested in British courts for the past decade. The new test of recklessness and frivolity will serve only to dissuade those who have genuine concerns from reporting for fear of being branded as reckless. That is my concern. It is not that I want to provide comfort for those who in any way know or believe what they are saying is frivolous, vexatious or misleading.

One must be careful about the overall context and import of this legislation. My fear is that it could have a chilling effect on those who genuinely have a matter to report. Why not simply require that what they report must not be false? If one considers the imposition of criminal liability, one will note it just applies to circumstances in which one knows one’s statement is

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false. If that is the threshold at which the law intervenes, should it not be the threshold applied across the board when offering protection from civil litigation and penalisation by an employer?

Senator David Norris: I listened with interest to what Senator Mullen had to say. I believed initially these amendments were absurd, dangerous and self-contradictory and the Senator has not persuaded me that they are not.

He has completely undermined his own case, particularly in the context of the words he used. Earlier I urged the Minister to reflect on this matter and was successful in getting him to do so. I urge the Senator to reflect on it also.

There might be a tiny margin for arguing about whether something is reckless. However, it is not possible to state anyone who makes an allegation and knows it to be vexatious, misleading or frivolous should be protected. I have always stood up for principles and whistleblowers. I have even blown the odd whistle myself. However, it would be outrageous to protect someone who knows that the allegations he or she is making are vexatious and who makes them merely to upset the person who is the subject of them. That is arrant nonsense and I am 100% opposed to it.

It is wrong to invoke the names of Mr. Eugene McErlean who worked for AIB and Mr. Noel Wardick, a former director of the Irish Red Cross. I have raised issues on behalf of these individuals and it is seriously damaging to their reputations to suggest they require such protection. The allegations made by the two gentlemen to whom I refer made were certainly not misleading, frivolous or vexatious.

Senator Rónán Mullen: That is not the point I was making.

Senator David Norris: If the legislation has a chilling effect in preventing people from knowingly making vexatious, misleading or frivolous allegations, so much the better. That is what legislation should do.

There is a minor argument which can be made in respect of the second amendment, but I urge Senator Mullen to withdraw both of them.

Senator Rónán Mullen: Transparency International has pointed out——

Senator David Norris: I do not care about that matter. Mentioning the name of an organisation does not mean anything. The Senator has not sustained his argument.

Senator Rónán Mullen: I took the trouble to——

Acting Chairman (Senator Maurice Cummins): There should be no interaction between Members.

Senator David Norris: I would be extremely surprised if Transparency International wanted to incite people and protect those who knowingly make misleading, frivolous or vexatious allegations.

Senator Rónán Mullen: The Senator is intent on disagreeing with the amendments and did not listen to what I said.

Acting Chairman (Senator Maurice Cummins): The two Members should address their remarks through the Chair. There should be no interaction between them. Let us deal with our business in a proper way. Has Senator Norris concluded?

Senator David Norris: Yes, I believe I have made the point. The language is clear. Protection is not afforded to people who make allegations which they know to be misleading, vexatious or frivolous for corrupt reasons. The import of Senator Mullen's amendments would be to open a blackmailer's charter. If Transparency International stands over the amendments tabled by the Senator, it has made a mistake. I am certain the Senator has tabled the amendments in good faith. However, I do not understand the logic behind them and he certainly has not persuaded me by his arguments.

Senator Rónán Mullen: Transparency International wants another test to be applied.

Acting Chairman (Senator Maurice Cummins): The Senator will have the right to reply when everyone else has contributed.

Senator Ivana Bacik: I appreciate what Senator Mullen is seeking to do with these amendments which is similar to what I was trying to do, namely, ensure adequate protection for whistleblowers who disclose in good faith. However, I am not sure that removing the relevant words and making the test one of knowing something to be false and excluding the test for recklessness would be the best way to proceed. The amendment the Minister accepted will enhance the protection for whistleblowers to a sufficient degree and ensure a balance is struck. While I appreciate the aim of the amendments, the balance to which I refer must be established. It is important a message is sent to potential whistleblowers that they will be encouraged to disclose information in good faith. We must also ensure we do not——

Senator David Norris: Would the Senator afford protection to persons who knowingly make vexatious allegations?

Senator Ivana Bacik: No.

Senator David Norris: That is my point.

Senator Ivana Bacik: I agree that there is a difficulty in respect of recklessness. In our criminal code it is clear a different form of *mens rea* applies. On the other hand, we are referring to civil liability, particularly in the context of section 4(1)(a). A balance has been struck.

Senator Rónán Mullen: I wish to clarify two points. In the context of what Senator Bacik stated, I am not proposing that we remove the test relating to recklessness. I am, however, proposing that the test relating to knowledge and recklessness be confined to the issue of falsity.

Senator Norris's contribution was both entertaining and dramatic. However, he fails to comprehend the import of what I am saying about removing the words "misleading", "frivolous" and "vexatious". I am not suggesting we should protect those who knowingly make misleading, frivolous or vexatious claims or reports. I am concerned instead with establishing a context in which people will not feel unduly burdened, particularly in the context of their potentially being penalised by their employers, when it comes to making such claims or reports. An employer could, for example, decide, on a subjective basis, that what a whistleblower did was misleading. I suggest we adhere to the principle established under the criminal law, namely, that a person who does something which he or she knows to be false will get into trouble. That would pretty much cover matters. By including the words to which I refer, it adds in some way to the chilling effect.

The psychological context in which whistleblowing occurs provides the key to understanding what I am saying. With respect, I believe Senator Norris did not pay adequate attention to my arguments in this regard. I am proposing that we replace what is contained in the Bill with something along the lines of the British model. In such circumstances, the legislation would

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refer to making claims in good faith and not being malicious. The Senator did not appear to comprehend that aspect of my argument either. I am not seeking to establish a blackmailer's charter or give comfort to those who make misleading, frivolous or vexatious claims. I thought that should have been very clear to the Senator. However, I believe he chose heat over light — or perhaps drama over substance — in the context of the approach he chose to take to my amendments.

I reiterate that the test of falsity should be maintained. If a person knows that what he or she is saying is false or if he or she is reckless as to whether something is false, that should be sufficient to prevent irresponsible or dishonest whistleblowing. We should opt for a test of good faith and presume an absence of malice.

Deputy Dermot Ahern: While I accept that Senator Mullen tabled three amendments in good faith, the net effect of what he is suggesting — which he readily admitted — would be that the test would be restricted to one of falsity. In deleting the words to which the amendments refer, he would, in effect, be providing protection for persons who knowingly or recklessly make communications or offer opinions that are misleading, frivolous or vexatious. I could not accept this.

When the Bill was originally published, the test of whether a whistleblower would receive protection was simply based on whether he or she had acted reasonably and in good faith in forming an opinion and communicating it to the appropriate person. I proposed an amendment which was accepted on Committee Stage in the Dáil in respect of this test. As a result, the Bill now provides that a whistleblower will be protected unless, when communicating an opinion, he or she does so knowing or being reckless as to whether that opinion is false, misleading or frivolous or if he or she furnishes information in this regard that he or she knows to be false or misleading.

I also tabled an amendment on Report Stage in the Dáil in respect of allegations of whistleblowing which are false. As a result, the test as to whether a person is guilty of an offence rests on whether he or she actually knew an allegation was false as opposed to whether he or she ought to have known it was untrue. I am satisfied, therefore, that the section, as it now stands, strikes the correct balance.

Senator Mullen referred to the treatment, from a civil point of view, of employees. I refer him to section 6 which inserts a new Schedule 1 in the principal Act and which states:

In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that section 8A(5) has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.

Again, protection is provided for employees who must obviously make complaints in good faith. While Senator Norris may have been overly colourful in what he said, I agree with his opinion on this matter. Deleting the words in question would have an adverse effect in that it would provide protection for someone who knowingly or recklessly makes vexatious, frivolous or misleading allegations.

Senator Rónán Mullen: I thank the Minister for his response, which I note is also in good faith. We have a civil disagreement here about the overall impact this Bill would have. The House is in danger of forgetting the psychological context in which whistleblowing must take place and the environment we need to create. We are coming from behind here. Let us remem-

ber what there has been in this country on issues such as sex abuse and fraud and mismanagement in State institutions and in institutions such as banks. That is key to understanding.

It is helpful what the Minister said about the presumption issue, that the employee will be presumed to have acted in good faith. That is certainly useful and I thank the Minister for drawing my attention to it.

I speak as someone who was subjected to certain frivolous and vexatious claims about myself that had to be adjudicated on by a committee of this House over the summer and I do not take lightly the irresponsibility of those who make misleading, frivolous or vexatious claims. I have given the reason I believe these words, while in one sense logical, may be unhelpful in their overall context to the cause of encouraging whistleblowers to do their work.

If the Minister is so sure it is necessary to include the words, “misleading, frivolous or vexatious” in order that a person who either knows or is reckless as to whether what he or she has stated or reported is misleading, frivolous or vexatious will be liable to damages, why does he not also make them liable to prosecution? Why does the Bill state in section 4(3): “A person who makes a communication under subsection (1), which the person knows to be false”, and if it is so serious, why does the Minister not also include that the person knew it to be misleading, frivolous or vexatious? Why the inconsistency? I would welcome the Minister’s reason in that regard.

The Bill states that an employer shall not penalise or threaten penalisation against an employee except where he or she knew the allegation to be false. Will the presumption that the employee acted in good faith be sufficient to prevent an employer from forming a subjective opinion that the employee knew the allegation to be, or was reckless as to whether it was, misleading, frivolous or vexatious? Is there sufficient protection in that section the Minister quoted, given that this area is one which allows for some degree of subjectivity in the formation of judgment? I would be especially grateful for an answer as to why there is a distinction between the safeguard against civil liability and the safeguard against criminal liability.

Deputy Dermot Ahern: There is no conflict in this regard. The start of the section states that a person who, apart from this section, would be so liable shall not be liable in damages in respect of a communication unless he or she makes it knowing it to be false, misleading, etc. or is reckless as to whether it is such. That, ultimately, is an offence. It is very narrowly drawn because it is a criminal offence. It must be. There is no conflict between civil and criminal liability in that respect.

I would not necessarily accept Senator Mullen’s point that we are coming from behind. In a recent Transparency International report, Ireland scored highly in terms of corruption perception index. The report points out that Ireland’s score, on its most recent corruption perception index published at the end of October, remained at eight out of ten and that Ireland sits in 14th place on the table of 178 countries. This indicates low levels of corruption and places Ireland in the same band as Sweden, Canada, the Netherlands, Australia, Switzerland, Norway, Iceland and Luxembourg, and ahead of countries in the next band — Austria, Germany, the UK and the United States. I would not accept we are coming from behind in this regard.

Senator Rónán Mullen: On the distinction between the civil and criminal standard, is the Minister stating that the words “misleading, frivolous or vexatious” do not add anything? Would he object, for example, if subsection (3) were to provide that a person who makes a communication under subsection (1), which he or she knows to be false, misleading, frivolous or vexatious, to the effect that another has committed or is committing an offence under the Prevention of Corruption Acts, shall be guilty of an offence? Would the Minister have a problem if those other words were also in the criminal provision in subsection (3)?

Deputy Dermot Ahern: This must be narrowly focused on falsity. It could well be difficult to prove something is frivolous in a criminal context and that is why that subsection is focused specifically on falsity whereas the other includes a wider gambit of situations. As I stated regarding a criminal offence, it would apply to the situation where the person knows it to be false.

Senator Rónán Mullen: Does that mean the Minister is giving a lower level of immunity to the whistleblower? If the Minister is saying the reason he is not including it in the criminal part is that it would be more difficult to prove what a person said was misleading, frivolous or vexatious, does it not follow that the Minister is exposing such a person to something that would be easier to prove in a civil context and that he is putting such a person at a greater disadvantage? Should we target whistleblowers only for that which they could be prosecuted under the criminal law? If the Minister exposes them to civil liability, is he exposing them to accusations that are easier to prove and is he, therefore, lessening the potential protection for them?

Deputy Dermot Ahern: I do not accept that. Proving misleading, frivolous or vexatious in a criminal context is much more difficult than proving a falsehood, and that is why there is that distinction. It is correct that there is a distinction but it is because of the requirement under the criminal code to prove an offence beyond all reasonable doubt, which may be difficult in the context of a person making a misleading, frivolous or vexatious accusation. At the end of the day, this comes down to the words “knowing” and “reckless”. While there might be a different standard in some of these words, ultimately a person must pay the price for making an allegation and knowing it to be false or being reckless in making it.

Amendment, by leave, withdrawn.

Senator Ivana Bacik: I move amendment No. 4:

In page 5, line 41, to delete “has committed or is” and substitute “may have committed or may be”.

The Minister indicated he will accept the amendment along with amendment No. 2.

An Cathaoirleach: Is the amendment being accepted?

Deputy Dermot Ahern: Yes.

Amendment agreed to.

Amendments Nos. 5 and 6 not moved.

Senator Rónán Mullen: I move amendment No. 7:

In page 8, between lines 23 and 24, to insert the following:

- “(b) an official of the Standards in Public Office Commission,
- (c) an official of the An Garda Síochána Ombudsman Commission,
- (d) an official of the An Garda Síochána Inspectorate,
- (e) an official of the Office of the Director of Corporate Enforcement,
- (f) an official of the Central Bank and Financial Services Authority of Ireland,

- (g) an official of the office of the Comptroller and Auditor General,
- (h) an official of the Competition Authority,
- (i) a solicitor registered with the Law Society of Ireland,
- (j) a chair of the relevant Oireachtas Committee on Members' Interests.”.

Very simply, in many ways much of what I stated earlier also applies to this so this will be a short contribution. Having regard to the cases I cited earlier, I mentioned the case of Noel Wardick, the former director of the Irish Red Cross, who found that in order to serve his organisation and the public interest what he had to report was something to be reported beyond his employers and the Garda Síochána. Limiting the definition of the appropriate person to receive such a report to only the employer or the Garda Síochána fails to meet the requirement of whistleblowing.

It is worth drawing attention to the role of other agencies in receiving reports of corruption. The Comptroller and Auditor General springs to mind as do the Standards in Public Office Commission and the Office of the Director of Corporate Enforcement. Best practice in whistleblowing worldwide shows the importance of allowing people to report to more than their employer or the police. It would be unfortunate if this legislation were to create confusion over whether the Standards in Public Office Commission could receive calls relating to corruption in public office or whether the Comptroller and Auditor General could receive reports relating to the abuse of public resources. It would also help in promoting whistleblowing if a disclosure to a solicitor was protected, as happens in the UK.

On this basis, I ask the Minister to consider widening the scope of eligible organisations. In my amendment I list the Standards in Public Office Commission, the Garda Síochána Ombudsman Commission, the Garda Síochána Inspectorate, the Office of the Director of Corporate Enforcement, the Central Bank of Ireland, the Office of the Comptroller and Auditor General, the Competition Authority, a solicitor registered with the Law Society of Ireland and the Chairman of the relevant Oireachtas committee on Members' interests. I would be grateful to hear the Minister's views on this.

Deputy Dermot Ahern: The Bill provides that the appropriate person is a member of the Garda Síochána, an employer or an employer's nominee and, if the whistleblower is abroad, Irish diplomats and foreign law enforcement officers. Given that the whistleblower provisions of the Bill relate to specific criminal offences and protection in the workplace we believe this is the appropriate provision. To expand the list of appropriate persons to include bodies which have no role in the prosecution of corruption offences would, in effect, only insert an additional mediator between the whistleblower and the Garda who ultimately would have to investigate the criminal offence. Similarly, to interpose an additional person between the whistleblower and his or her employer would also add little value. It is the employer who is in a position to protect the whistleblower against workplace penalisation and if he or she fails to do so the whistleblower has the ability to go to a rights commissioner or the Labour Court under the Bill.

A member of the public who suspects a Garda is engaged in corruption has recourse to the Garda Ombudsman Commission. The Garda Síochána Act 2005 allows for suspected misbehaviour, essentially any disciplinary matter or criminal offence, by a member of the Garda Síochána to be reported to the Ombudsman Commission. Where a member or civilian staff member of the Garda Síochána has concerns regarding suspected corruption on the part of one of his or her colleagues he or she has recourse to the confidential recipients under the Garda Síochána (Confidential Reporting of Corruption or Malpractice) Regulations 2007.

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The reason for providing for reports to diplomatic or consular officers is that the corruption offences are on an extraterritorial basis and jurisdiction relating to corruption occurring outside the State has been broadened considerably in the Bill. Trans-border corruption is one of the aspects of the Bill. Where previously extraterritorial jurisdiction was limited to cases involving Irish officeholders and officials, under the Bill jurisdiction will be extended to cover virtually all persons having a connection with the State including companies and corporate bodies. In this way, the Bill gives further effect to the OECD convention on bribery of foreign public officials in international business transactions.

An Cathaoirleach: Is the amendment being pressed?

Senator Rónán Mullen: I will press this amendment because given the psychological context we are trying to create I do not believe it is sufficient an argument to state this would have the effect of interposing certain organisations. To some extent, it is in the eye of the beholder as to who ought to be the receiver of the information. I can think of many situations where a whistleblower might wish to report to a third party prior to going to the Garda Síochána or would like to be assisted in some way by a third party in going to the Garda. A whistleblower may also wish to put the matter in the hands of a responsible body as he or she sees it. I do not see why we should not include such responsible bodies and make them eligible to receive reports of corruption. In situations where whistleblowers may be under considerable psychological pressure, widening the options for whistleblowers can do only good.

Deputy Dermot Ahern: I cannot put it any clearer. The basis upon which we are trying to restrict it to the Garda Síochána, or the employer for civil issues, is because we are trying not to have too many mediators in the process which could complicate it and perhaps lead to information not being passed on appropriately because of mistakes. It would be far better to leave the list of appropriate people as it is in the Bill. I ask the Senator to withdraw his amendment as I do not see how it could add to it. In fact, it could complicate issues.

Amendment put.

An Cathaoirleach: Will the Senators claiming a division please rise?

Senators Rónán Mullen, David Norris, Joe O'Toole and Shane Ross rose.

An Cathaoirleach: As fewer than five Members have risen I declare the amendment defeated. In accordance with standing orders the names of the Senators who stood will be recorded in the Journal of Proceedings of the Seanad.

Amendment declared lost.

Section 4, as amended, agreed to.

Sections 5 and 6 agreed to.

Title agreed to.

Bill reported with amendments.

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

Senator Donie Cassidy: Now.

Senator Eugene Regan: Not now. It was agreed there would be a break to allow for amendments.

Senator Donie Cassidy: We will take Report Stage at 7 p.m.

An Cathaoirleach: Is it agreed that we will take Report Stage at 7 p.m.?

Senator Ivana Bacik: I understand the break was agreed to enable the Minister to revisit an amendment that I had proposed.

Deputy Dermot Ahern: We have no more amendments to make.

Senator Ivana Bacik: I am withdrawing my amendment.

Deputy Dermot Ahern: I indicated that it was highly unlikely I would be able to accept it.

An Cathaoirleach: The proceedings are agreed.

Senator Ivana Bacik: On a point of order, I sought time for the Minister to consider my first amendment. As he subsequently accepted my amendments Nos. 2 and 4, I am happy to withdraw entirely amendments Nos. 1 and 5. As a result, I do not think we require to take Report Stage at 7 p.m.

An Cathaoirleach: Amendments Nos. 1 and 5 stand withdrawn. When is it proposed to take Report Stage?

Senator Eugene Regan: Can we take it now?

Senator Rónán Mullen: On a point of order, I wish to table an amendment on Report Stage in regard to a matter that has been previously discussed.

An Cathaoirleach: The Senator is entitled to do so.

Senator Donie Cassidy: I propose that Report Stage be taken at 7 p.m.

An Cathaoirleach: Is that agreed? Agreed.

Report Stage ordered for 7 p.m. on Wednesday, 1 December 2010.

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

Communications Regulation (Postal Services) Bill 2010: Committee Stage

An Leas-Chathaoirleach: I welcome the Minister, Deputy Ryan.

Sections 1 to 5, inclusive, agreed to.

SECTION 6

Senator Joe O'Reilly: I move amendment No. 1:

In page 9, subsection (1), between lines 15 and 16, to insert the following:

“ “distribution centre” means the main hub location where efficient automatic processing of mail takes place in large volumes sufficient for the operation of a national mail collection and delivery network;”.

[Senator Joe O'Reilly.]

The objective of this amendment is to ensure we will continue to have a clear definition of what is a distribution centre. The thinking behind the amendment is that we should establish the principle that there should be no distribution of mail below the level of such a centre. In other words, a private operator would not be able to seek to enter the marketplace and operate below the level of a mail centre. There are four automated centres in the country, the establishment of which cost the Exchequer €100 million and in which 2,000 people are employed. These primary hub locations must remain the centres of distribution. The objective of the amendment is to ensure a private operator would not be able to enter the market and cherry-pick below that level. In other words, an operator would not be able to agree a price for the distribution of mail from a smaller centre. To use the Athlone centre as an example, we want to ensure an operator would not be able to distribute mail from the central post office in Moate and have the most expensive part of the work done by postal workers there and in so doing avoid using the distribution centre through which all mail for the area must be processed. That is the reason I want to include the definition of “distribution centre” in the section.

There is an amendment in my name and that of Senator O'Toole to section 28. It seeks to copperfasten the concept embodied in amendment No. 1, namely, that we maintain the distribution centres and ensure that when private operators enter the marketplace, they would not be able to get An Post to make their deliveries at a special price from a location below the level of a distribution centre and thus prejudice the operation of such a centre and ultimately place An Post, the wider public service and the universal service obligation at risk. EU law requires us to introduce this legislation, but in so doing we must preserve the universal service obligation and the integrity, effectiveness and success of An Post. In other words, we must ensure An Post is fit to deliver a universal service and that business is not taken from it, which would make it impossible for it to continue delivering the service successfully. If private operators are allowed to cherry-pick centres from which it will be attractive to deliver mail because of high volumes and not to use the central post office system — comprising the four network centres — that will present a problem.

As I said on Second Stage, it is very important to preserve the universal service obligation. If one looks out the window today at the severe weather conditions, one will realise why it is very important there are postal service staff at isolated locations providing a very important social service in calling to people. I gather that on his radio programme on Radio 1 today Pat Kenny received many calls expressing gratitude to An Post for the social service it was providing in these weather conditions. That is worthy of mention. It would be wrong, therefore, if people had to collect mail at central locations. If it was not for the current system, persons in isolated areas could be lying dead for days in their homes without anyone knowing. Everyone has the same constitutional rights.

The amendment seeks to define “distribution centre” as the main hub location where efficient automatic processing of mail takes place in large volumes sufficient for the operation of a national mail collection and delivery network. That is where mail should be processed in the system, whether handled by the universal service provider or private operators. I also recommend the later related amendment to section 28 in my name and that of Senator O'Toole and others. I would recommend the inclusion of this definition in the legislation and ask the Minister to accept it as reasonable as it would provide the necessary reassurance.

Minister for Communications, Energy and Natural Resources (Eamon Ryan): While I thank the Senator for tabling it, I am afraid I do not propose to accept the amendment and will explain why. The term “distribution centre” is only used in section 6 which defines the terms “distribution” and “postal network”. The term “distribution centre” is not defined in the

directive and it is not proposed to define it in the Bill as it is unnecessary to do so. No decisions or actions are dependent on its definition. If we were to define “distribution centre”, it could potentially be restrictive, as it is not possible to predict future work arrangements of postal service providers. As the Senator said, we will discuss section 28, under which there is a mechanism, where agreement cannot be reached on how access can be provided by the universal postal service provider, for ComReg to resolve the issue by imposing certain terms and conditions but in so doing to take reasonableness into account. It will be difficult for us to predict how the new postal networks will be configured in the future. If we were too restrictive, therefore, it might tie the hands of An Post or other providers in a way which would not be beneficial. As a consequence, I do not propose to accept the amendment.

Senator Joe O’Reilly: There has been considerable investment in the existing centres — €100 million of State funds and personnel — and that is investment worth protecting. I appeal, therefore, to the Minister to consider this amendment on the basis that we should provide statutory protection for them. Access to the market should not be below the level of existing centre, in other words, a smaller unit. While the position may change, it should not change to such a degree as to weaken the existing centres or make it possible to gain access to the market below that level. I will come back to this issue when we discuss section 28. I again ask the Minister to consider accepting the amendment.

Amendment put and declared lost.

An Leas-Chathaoirleach: As amendment No. 2 is consequential on amendment No. 3, they may be discussed together. Is that agreed? Agreed.

Government amendment No. 2:

In page 9, subsection (1), line 42, to delete “, subject to *subsection (2)*,”.

Deputy Eamon Ryan: Section 6(2) which provides that the transport alone of postal packets does not constitute a postal service is being deleted, as it is not an explicit requirement of the directive. Furthermore, transport is only one element of postal services and included in the definition of the term “postal services” in the Bill. I hope on that basis amendments Nos. 2 and 3 can be accepted.

Senator Joe O’Toole: The Minister has made a valid point. It is not a service of delivery but of transport. It makes sense to accept the point he make in the two amendments.

Amendment agreed to.

Government amendment No. 3:

In page 10, lines 26 to 28, to delete subsection (2).

Amendment agreed to.

Section 6, as amended, agreed to.

Sections 7 to 13, inclusive, agreed to.

SECTION 14

Senator Joe O’Toole: I move amendment No. 4:

[Senator Joe O'Toole.]

In page 16, line 7, after “Directive” to insert “, unless otherwise determined by the Minister”.

This amendment concerns the involvement of the Minister in the consideration of directives. The reason for it relates to our experience in other places. I would like the Minister to think back over the discussions we have had in the past couple of years on issues such as the HSE and political accountability. The amendment concerns the division of responsibility and accountability and where the Minister sits in all of these arrangements. I am completely in favour of creating space, but in all situations there should be provision for oversight of the activities of anybody with responsibility. In a democracy, the only way to ensure oversight is by providing for political responsibility. I am not saying a Minister should micro-manage the work about which we are talking. What I am saying is that there are situations where directives might cut across Government policy or what the Minister might believe he or she stands for or might not be in the common good. Therefore, we should always include a fail-safe mechanism providing for the involvement of the Minister.

The relevant portion of the Bill states “The Commission shall be national regulatory authority for the purposes of the Directive.” I am happy for it to be the national authority but there should be some political accountability. Why am I saying this? I have given the Minister the example of the HSE, and every week someone in the House questions whether it is right to give away all responsibility.

There is also the example of taxi regulation. We all agreed with the general purpose of taxi regulation when it was established. We found ourselves in a position not too long after this where the Taxi Regulator insisted that taxi fares be increased although the people in the industry were opposed to it. They felt it was bad for the industry and it did not make sense when there was less marginal income for people to spend. They were unhappy with many aspects of the issue. There was no way we could intervene politically and I cannot tell how many times this could happen. We could not see how that could happen.

I will use the Minister's own area as an example and deal with electricity prices. In the interests of regulation and competition, the regulator has decided the ESB should not be in a position to reduce prices to compete with other suppliers. I am not arguing the reasons for doing this as I understand them but there may be cases where such action as the regulator has taken would not be acceptable. The point is we gave away this responsibility and there is no political accountability. There should be a fail-safe option. I am not pushing the wording in the amendment but in the interests of how we do business in a democracy, the Minister should have the power to intervene in cases where he or she feels the issue is going the wrong way.

This is a logical position and the point could be argued for the importance of independent regulation. I am not trying to undermine that and I am not asking that Ministers micro-manage regulation. Neither am I asking that regulators seek the approval of Ministers. This is step down the line from that idea, meaning a Minister could intervene in certain cases. I am keen to hear how other Members feel about this but the matter is important and should be looked at again.

Senator Martin Brady: I agree with most of the points made by Senator O'Toole. The purpose of the amendment, as the Minister is aware, is to ensure the public continues to get an efficient postal service and that sustainable jobs are not undermined. The Senator is quite right on the regulation issue and he spoke about the taxi industry as an example. There is no appeal mechanism within that industry. I ask the Minister to consider the matter and include the wording in the amendment of “unless otherwise determined by the Minister”.

Ministers now have very little responsibility in some of these areas and, when queried, many Ministers will indicate a matter should be dealt with through the regulator. I do not see much wrong with the amendment, and it would provide a necessary safeguard in that the Minister could be left to determine a matter. As an example, a regulator may seek to increase the price of stamps by 50% and nothing could be done about it because the decision is final. I would like some kind of safeguard whereby the Minister could adjudicate on the matter and which could be determined by him or her.

Senator Ned O'Sullivan: I support the comments of the Government spokesman, Senator Brady, on the issue, as well as those of Senator O'Toole. It is eminently sensible for the Minister to include an overarching authority in the legislation. Independent regulation is one thing but accountable regulation is another. I do not want to labour the point as the two spokespersons have expressed it adequately but the Minister should consider the matter seriously because it is in the public interest.

Senator Joe O'Reilly: I support Senator O'Toole's proposition. We are not seeking to thwart the process of independent regulation but there should be ministerial oversight in order that the ultimate responsibility and capacity to interfere should rest with the Minister through the Oireachtas. Senator O'Toole makes the point well that we are not seeking a position where the Minister would interfere daily with internal rules or regulation or the achievement of proper standards. The Minister should have the ultimate responsibility and prerogative to intervene when appropriate in the public interest. That is a reasonable proposition which is an important statement for the future. I ask the Minister to take that on board.

Senator Fidelma Healy Eames: I support the call for the Minister to have powers of oversight in this issue. With electricity prices we have seen how a regulator can have too much control for the sake of competition and attracting people from outside the country. Regulators are not elected and accountable to the people in the same way as a Minister. There should be some checks and balances built into the legislation to ensure decisions made by ComReg have appropriate oversight from the Dáil given that the regulator is not democratically accountable. To that end I suggest there should be an appropriate appeals mechanism built into the legislation to allow decisions made by the regulator to be challenged. I support the other Senators on the issue.

Deputy Eamon Ryan: I do not propose to accept the amendment. On technical grounds, if the amendment were accepted, it would mean the regulatory system could be changed not by primary legislation but, in effect, by secondary legislation or ministerial order, which would be inappropriate. It is too significant an issue and primary legislation would be required if ComReg were not the regulatory authority or if it were done in a different way. It could not be done by secondary legislation or otherwise. That would be the effect of accepting the amendment.

From a strategic perspective, accepting the argument that Senator O'Toole and others have made, certain political oversight of a regulatory system is required to ensure there are checks and balances should it go completely awry from a political perspective. That exists under the principal Act for ComReg from 2002 which allows the Minister to issue strategic policy directions to the regulator which would give the oversight sought by Senators. That must be carefully used as there is real benefit in having independent and non-elected regulatory systems. It has worked well in the electricity and communications area and there are sufficient checks to allow political engagement where necessary. By and large, much of this work is done better with an independent professional regulatory body with economic expertise which can make some of the judgment calls that can be difficult for a political system to do owing to burden of office.

Senator Joe O'Toole: The Minister makes valid points with which I do not disagree. I agree there are elements in the primary legislation and they have been brought to my attention. However, they do not meet what I am talking about. I agree completely with the Minister on the question of primary legislation and accept that the commission should be national regulatory authority. That is not my point.

The following is the best analogy I can provide. The Bill transposes into law a European directive and the Minister has a significant input in this process. If my amendment is clumsily worded and gives the impression that I am seeking to change the authority of the proposed Commission for Communications Regulation to be the national regulatory authority, that is not my intention and I would be willing to change the text. My amendment relates to circumstances in which the commission will act in a manner which the Minister considers goes beyond what is required. As of now, the commission will not act under the direction of the European Union. In introducing the directive the Union has provided that certain requirements be met in respect of competition law and so forth.

The issue is one of democracy. While I acknowledge the two points made by the Minister, I ask him to consider circumstances in which his successor in office will take a completely different perspective from him, while recognising that European directives must be enforced, the commission is the regulatory authority and all competition requirements must be met. In the event that a future Minister takes the view that something goes too far, is too painful or being done too quickly, this not covered in the primary legislation. While I do not seek a veto for the Minister, the circumstance I have described is not appropriate in a democracy. It is a subjugation of political responsibility in the sense that the commission will have authority which previously belonged to a political office. It is also an abrogation of responsibility by the Government.

I am seeking to find middle ground. I do not propose to give the Minister power to take any action which would be the function of primary legislation. I also recognise that the primary legislation gives the Minister certain powers and that the wording of my amendment may not be sufficiently precise. However, provision must be made to allow a Minister to intervene in this process in certain circumstances. I do not mind if this does not include giving a Minister a power of veto. However, it would be a great comfort to know that the view of the Government has been brought to the attention of the commission. If the commission were to choose to disregard ministerial advice, I would not like it, but I would be able to live with it.

This brings me back to the Ministers and Secretaries Act and the question of what precisely are the respective functions of Ministers and officials. If this legislation had been introduced 20 years ago, the matter would have been addressed in the Department rather than by a new commission. There is a good chance, in the light of current views on quangos and so forth, that this position will obtain again at some point in the future. If this matter were addressed internally, I do not believe an assistant secretary would deal with it without first running it past the Minister's desk. The provision is dangerous and runs counter to our function as parliamentarians and public representatives. We are pushing responsibilities down the line to someone else in a manner that undermines the democratic function. I cited the example of what approach would have been taken by an assistant secretary and a Minister in the past. To give a more modern example, if the Minister and I were chief executive and chairman, respectively, of a State body or board, the differences between both functions would be clearly understood. We would know what the Accounting Office would do and what, to use Civil Service language, the political master would do. The chairman speaks for the board and its responsibilities, whereas the chief executive speaks for the function and the executive which performs an implementation role.

For the reasons I have set out, it is not a good idea to remove authority and power from the Minister. It undermines the democratic process. I am not exercised about what wording is used. My concern relates to the principle of what is being done. While I do not disagree with the Minister's argument, I ask him to move towards a position that would accommodate my viewpoint, one that would not require him to micro-manage or undermine European legislation but would allow him to intervene in exceptional circumstances.

Deputy Eamon Ryan: While I accept the Senator's point, the Minister, under the principal legislation of 2002, may issue a policy direction and has, therefore, a sufficiently strong tool available should it prove necessary to use it. While this power is rarely used, it is important if there is a fundamental point of difference on a policy matter as opposed to a judgment call on a commercial issue. If a Minister disagrees fundamentally with a decision the regulator or an industry or market is taking on a policy matter, a facility is available to make an intervention which has real power, effect and influence. A Minister would use such a policy direction sparingly. To go further and give the Minister power to remove the entire regulatory function would be a quantum step that would require primary legislation. The legislative provision is available to give the Minister the level of influence or control that should always be available in the background. The proposed amendment would go one step further. If we were to decide to remove the regulatory function from ComReg or any other regulator, the best means of doing so would be through a change to primary legislation.

Senator Joe O'Toole: I thank the Minister for his comprehensive reply and do not doubt his commitment to his argument. I do not propose to press the amendment. However, I ask the Minister to give consideration to my argument. I will read the primary legislation before Report Stage to ascertain if it provides leeway to act in the manner he described.

Every morning the Cathaoirleach reads out a list of matters that Senators have raised for discussion on the Adjournment. Certain restrictions apply as regards what issues may be discussed, for example, a Minister must have responsibility for the matter raised. The acid test for me with regard to my amendment is that the Cathaoirleach must not be able to state the Minister does not have responsibility for a matter a Member raises in connection with a directive issued by the commission. That will answer my question because it establishes the benchmark. On that basis, I ask the Minister to give the amendment some consideration. If he concludes it is possible to provide for a degree of amelioration or softening of the text, I ask him to propose an amendment on Report Stage. In the interests of making progress, I withdraw the amendment.

Deputy Eamon Ryan: I too will read again the primary legislation between now and Report Stage. We will check that those valid controls are in place. I appreciate the Senator's point but, subject to reviewing the primary legislation, I will not accept the amendment at this time.

Amendment, by leave, withdrawn.

Section 14 agreed to.

SECTION 15

Senator Joe O'Toole: I move amendment No. 5:

In page 16, subsection (2), line 15, after "providers" to insert ", trade unions".

I am disappointed I had to table this amendment. I hope the reason will become clear as I make my case for it. The fact that I tabled the amendment means that certain matters are not

[Senator Joe O'Toole.]

being taken into consideration when legislation is framed. I do not necessarily point my finger at the advisers in the Minister's Department because this may arise among the draughtspeople or with the Attorney General. I cannot believe the Minister will disagree with me. This is a classic example of our doing things, asserting positions and establishing policy which everybody then forgets. This Government, the previous one and the one before that agreed that when we started to try to build a smart economy we would ask workers to bring their brains to work and we would listen to what they and their representatives had to say. Here, they have been excluded — that is the only word I can use. If no other names had been put down here I would not say they had been excluded but the procedures mentioned include “the opportunity for interested persons”. I ask the Minister not to stand up and say that “interested persons” includes the unions. If the list had stopped there I would not have tabled the amendment. I do not want to have an argument about “interested persons”. However, it continues with “representatives of the providers”. Ibec, the business community and employer representatives are included in that provision. Somebody decided to include those categories. I hope it was not the Minister. I have no problem with their inclusion because I think it is correct they should be there when such a list is made. They have an absolute interest in being present and should be consulted. The list also includes postal service users. What is my view on that? I absolutely agree that the end users must be considered.

Where are we? We talk about the bosses and the users. The workers are in the middle but it does not seem to jump out that we should talk to them too. If the Minister intends to refuse my amendment I ask him to tell me how we have arrived at this position. How can workers' representatives speak to the workers about dealing with Government and the community, being fair and honest and giving their best, and why they should be committed to their service? Why should we have the Croke Park agreement in which we try to create efficiencies and make people do things better, more efficiently and cheaply, and all the rest of it? We talk about all these outcomes that should take place.

I am really disappointed by this part of the legislation and that is why I argue about it. If I had argued this point 25 years ago I would have felt maybe I have to make this case, but to have to make it now is incredible. The Minister and I argued in favour of the Lisbon treaty in various places, with all sorts of people. I wish to read from the Charter of Rights which the Minister and I assured nay-sayers was there for them, to afford them great protection and therefore was worth their support. I refer to Article 12: “Everyone has the right to freedom of peaceful assembly and to association at all levels, particularly in political, trade union and civic matters, which implies the right of everyone to form and join trade unions for the protection of his or her interests”.

That is a European right. I wonder if those who framed the legislation read it. There is a wider question. Are the draughtspeople required to bring such matters into consideration? Is that part of the process? Political parties at union level contribute to expressing the political will of the citizens. We had this discussion last week when Members questioned whether people should march on the Saturday and I made this very point. Political parties clearly use their political processes, channels and conduits to express their view correctly. Other people, for example, citizens and trade unionists, use different ways. If I must argue the point — I hope I do not have to — I shall refer to Article 27 which has for its heading, “Workers right to information and consultation within the undertaking”. I shall read the article into the record. “Workers or their representatives must at appropriate levels be guaranteed information and consultation in good time in the cases and conditions provided for”. In all fairness should I have to argue this point? I do not believe the Minister and I disagree on these issues.

I read through the legislation which seems to me to be a case of back to the future. This is where we are going — to ignore workers and tell them what to do, to talk to the bosses and the end users. It is about giving them a service and forgetting about the people in the middle. It is terrible that the legislation is framed in this way in the first place and it will be worse if the Minister does not accept this amendment. I have a sinking feeling about how we came to be in this position and that I had to table this amendment at this time.

I am sorry for ranting which is not directed at the Minister but at everything. I ask him to look at the amendment and respond to it by telling workers we value their viewpoint and we want to listen to what they have to say. We want to tell them that when we put a comment box in the corner for their comments on their way out on a Friday evening, or whichever evening, those comments will be taken seriously, and that if they express a view to their trade union that union will be consulted on matters arising, as they do here.

Senator Joe O'Reilly: I strongly support this amendment. Yesterday I contacted the Bills Office to append my name in its support. Obviously, it goes without saying that trade unions and workers are important stakeholders in An Post and in the delivery of the postal services. We can be very proud of them, something I say in an unpatronising way. Our postal staff at local level and up the line, those with whom we come in daily contact, the postpeople, the men and women who deliver the post throughout the country, are an exemplary group. They do enormous service and act considerably beyond their defined duty, which is to deliver mail. As a representative of a rural constituency in Cavan-Monaghan, I have anecdotal evidence with which I could keep the House all evening, recalling tales of individual workers for An Post who have done jobs way beyond their call of duty. I know they are doing so this evening as they do every day of the week. I wish to say that to them, very unpatronisingly and this amendment gives me the opportunity to put on the record of the House my appreciation of them, as a representative of the community on which they impact so greatly. Their legitimate organised body, their spokespeople and their union should be part of any consultative process. I would like to think, charitably, that this has been a draughting omission of some sort and there was not a conscious decision to omit them. If there has been, that would be horrendous and unacceptable and would contravene every kind of right, whether rights accrued under the Lisbon treaty, constitutional rights or normal negotiation rights which to date are precedent. There are no grounds or criteria that would justify excluding postal workers, postal unions and the organised labour organisations.

Neither are there grounds that would justify excluding consumers, end users or beneficiaries of the service, the people on the ground who receive the postal services. They must be part of a consultative process and have every reason so to be. The people at post office level, postmasters and postmistresses throughout the country, must also be included. All people who have an involvement with the services should be part of a consultative process and should be consulted. I strongly support the amendment and have a real expectation that the Minister will accept it. It is not an issue a democratic assembly should be contemplating dividing on at this stage. It is a matter of simply amending the legislation or of receiving a commitment from the Minister to come back on Report Stage to so do.

Senator Ivana Bacik: I strongly support Senator O'Toole's amendment on including trade unions on the list of those who may make representations. Given section 15 is the provision which requires ComReg to consult publicly in performing its functions in regard to postal services, it seems extraordinary that the relevant unions are not explicitly included within the list of interested parties.

Senator O'Toole stated eloquently that we have a very well-established principle of consultation with employees as stakeholders. Senator O'Reilly also spoke eloquently about the nature

[Senator Ivana Bacik.]

of the universal postal service and the enormous contribution to that made by the committed postal workers over many decades. The fact they are not specifically referred to as interested parties in this provision makes no sense. It is correct that representatives of providers of postal services and representatives of consumers — the postal service users — should be consulted, and we are all agreed on that. There is an obvious third interested party which should also be specified, namely, the unions representing those who work within the postal service and make the universal postal service what it is.

We will come to section 16, which defines the universal postal service and to which we and others have tabled amendments. A large part of that definition is made up of the very committed women and men who have worked in the postal service and they deserve to be referred to specifically in terms of consultation with their representatives within the process.

Senator Martin Brady: I agree that trade unions should be included in the section. I was involved in the postal and telecommunications union and was president of one of the union branches. We had a scheme of worker participation which encouraged workers who were not trade union activists to participate in decision making, and there were suggestion schemes and so on. I am sure all that still exists. Since I left that business, the trade unions and management have a new label as partners, and they work well together to make decisions. There has not been a major strike in the postal service since 1979 when we were out for 14 weeks, as I well remember, and this gives some indication of the current position. Trade union involvement is seen positively by most employers because it is a stabilising factor and worker participation boosts the morale of workers in that they are involved in decision making in some small way.

I would like to think the omission was an oversight or that the Bill was written by some former regulator who was used to dealing with the hierarchy and forgot about the trade unions. I am sure the Minister will address this point. While it is not a big deal, it would be a mistake and could cause serious problems down the line with the trade union movement.

Post office users were referred to. At the time I worked in the business, there was a post office users council which members of the public could feed into. The council met every month and was headed by unions and management which worked together on various committees. This is to give the Minister a picture of how the process operated. If this reference was omitted, it would do a huge disservice to the unions which have played a major role in bringing the post office to its current efficiency level. I ask the Minister to consider the issue which I believe is caused by an oversight.

Senator Paudie Coffey: I add my support to the amendment and acknowledge Senator Brady's contribution from the Government side. In the interest of inclusiveness and good legislation, it is important we have proper recognition for all stakeholders, whether they be the service providers, those who work within the service or the service users. It seems an illogical omission, whether intentional or otherwise, but it can be corrected quite easily if the Minister accepts the amendment or agrees to bring forward an amendment that would include recognition for the postal workers.

I am not just arguing from the union side, and it is not just about workers expressing their rights as workers. The workers can bring a huge breadth of knowledge to the consultation process through their engagement with the citizens of this country, including their social knowledge. I argue that postal workers have as much social knowledge as any politician in either House because they meet the citizens of this country daily and recognise and understand the social needs of those people. It must be remembered that in the consultation process a large percentage of the end users, the people of the country, will not engage in the process at all.

The workers would be in a good position to outline many of the concerns the public might feel. It is an important amendment concerning inclusiveness towards stakeholders and I hope the Minister will see fit to accept it.

Senator Paschal Mooney: Historically, Ministers are reluctant to name organisations in legislation wherever there is a relevance that they should be so included. I was somewhat surprised that two organisations are named in this regard. Looking back, the responses of Ministers have shown a reluctance to name such organisations and inherent in that response is the possibility that they might leave out some body. Moreover, it gives some wriggle room if bodies are not named.

I approach my question in the context of Senator O'Toole's point that he would not have tabled the amendment had it referred only to "interested parties". Why was it that the draftsman and the Minister's departmental experts did not stop short and simply state "interested parties" or "interested persons", which covers a multitude? One can argue until the cows come home, Uncle Tom Cobley and all, that there could be 50,000 organisations among those that have been named under the generic term of "interested parties". I am curious to know why it was decided that just these two organisations would be mentioned and why the Minister did not stop short and decide not to name any organisation.

Senator Ned O'Sullivan: I concur with the statements of the Government spokesman, Senator Brady, and the other speakers on this issue. As the issue has been raised, it is essential the Minister would include the trade unions. Had it not been spotted and raised, it might have been a different matter, but it would be quite offensive at this stage if trade unions were not at least given the same status in the legislation as the providers and end users. I worked as a temporary postman for long periods during my student years, and I worked with people who had great pride in the service they delivered. It is a great insult to them to have their organisation excluded.

Senator Terry Leyden: I welcome the Minister. I was not a postman but I was Minister of State at the Department of Post and Telegraphs in 1982, although I never delivered a letter when I became Minister of State, which is neither here nor there.

Senator Paudie Coffey: He has delivered many of them as a Senator.

Senator Joe O'Reilly: He is one of An Post's best customers.

Senator Terry Leyden: We introduced the Postal and Telecommunications Services Bill in 1982 and I was in Opposition when it became reality. The Minister will probably be in the same position himself by the time we see this Bill go through and be finalised as we will be in Opposition.

I have a general question. Is there a deadline of 1 January for transposing this legislation? The Minister has much flexibility. I raised this matter with the Commissioner and he was very sympathetic towards the situation. It is in order for the union to make the point and in order that the amendment should be made, however the Minister can bring it about. It is vital that the voice of the union representatives is heard in regard to communications.

Who is delivering the post on this wintry, snowy day? Every delivery is being made today. The post was delivered in Castlecoote and throughout Ireland this morning in spite of the snow.

Senator Martin Brady: The Senator should name the postman.

Senator Terry Leyden: The postmen are represented by the CWU.

[Senator Terry Leyden.]

With regard to the transposition of regulations, we are in a unique position. Ireland is an island off an island off mainland Europe. Whatever position the Minister decides upon in the interests of the Irish people to guarantee the continuation of a universal postal service must be adopted. The European Union is not checking every line in this regard. It has no control over this legislation as far as I know. It is a question of transposing an EU regulation into Irish law.

This is only the start of this issue. I hope the Minister has more success than we had in regard to the banning of the eel fisheries which led to a closure for 90 years. This is painful in so far as my area is concerned. That represented very extreme transposition of EU regulations. In the circumstances that obtain, the Minister should accept the phrase “trade union” or “union representing the workers”.

Senator John Hanafin: In supporting my colleagues, it is important that I include the trade unions to give proper recognition to the people who actually know the business. They have 100 years of experience representing their members. We do not want to make the mistakes made in other countries. Owing to our unique position in Ireland, we should take cognisance of the fact that we have a lower population per square kilometre than in other European countries, amounting to approximately 58 people per square kilometre as opposed to 140, 160 or 200 people per square kilometre. This reflects on the economy of the postal service. We must be very careful, therefore, in dealing with this Bill to ensure we do not encounter the same difficulties that arose in other European countries. If we do, we will have circumstances similar to those that are obtained in respect of the Royal Mail in the United Kingdom. There is talk in the United Kingdom of selling off the business on the basis of it being unprofitable, but the reality is that all the businesses floated in the United Kingdom, including British Gas, were profitable. People will only invest in entities that are profitable. Where a business is losing money and it has a large pensions deficit, the public will not buy into it. We are heading in the same direction.

The spatial settlement system in this State is almost unique in Europe. In France, for instance, farmers normally live in their local village. Even when one enters a rural area, one is entering an area in which people and settlements are centralised. In Ireland, almost uniquely in Europe, people live on farms in remote locations, adding to the difficulty that exists. We will need to go through the legislation line by line to ensure, in the first instance, that those who enter the market will not cherry-pick the best business and allow An Post, a very stable and necessary business with a social function, to deteriorate. We must not allow that. This is why I believe every section of the Bill will be questioned today. The trade unions that know so much about the postal business must be included specifically.

Senator Fidelma Healy Eames: It is rare that I stand up and praise unions but on this occasion I must state the CWU has given us a very fair and level briefing on the Bill. Even if it never gave the briefing, I would agree with what it is saying. The universal service obligation must be protected absolutely. If the market is to be opened up, it should only be on the basis that every other provider meets the same universal service obligation requirement. Otherwise, one would not have a level playing field.

The main concern of the union in representing its members, the postmen, is that businesses will enter the market and cherry-pick. We could have a great service in towns and urban areas and an unreliable service or none at all in rural areas. This occurred with health care. This is why universal health service provision, as outlined in Fine Gael policy, represents the way forward. We must push for this for the postal service. The postal service has an amazing social function. The postman is sometimes the only caller people in the most rural and isolated areas

have in the day. We must protect the valuable service provided by the postman by way of delivering messages, communicating and offering a lifeline.

We do a lot for profit but this legislation could make An Post very unprofitable. It is just making €5 million per year but it employs 10,000 people. In Galway city and county alone, 500 postpersons are employed. The CWU and other trade unions have played a very valuable role in this regard. Their voice is highly regarded and their case is well put. We need to be careful about disregarding them.

Senator Jerry Buttimer: If we learn anything from the Minister's tenure in office, it should be that it is important to engage in consultation. I say lightly and with a smile that one of the strengths of the system over the past decade has been social partnership. Some on this side of the House would not agree with that. If we are to learn from social partnership, we should learn that one must bring people with one. This means engaging with them, participating with them and giving them a sense of belonging. I am concerned we will end up with a botched job. I am genuinely concerned because, as Senator Coffey said about social and community knowledge, we must have ownership of our postal service.

I am not afraid of competition or introducing it but I am afraid we will have a model that will be broken. We could end up with that. I do not have much confidence in the ability of this Government to do anything right at this stage. I do not fly a flag for any union but know from community involvement and reading representations given to me that we must travel in partnership. What is the guiding principle of the Minister in this regard? Why is he reluctant to have real engagement? One size does not fit all. We have a very good postal service and a committed workforce. Were this to change, there could be a very different output, which is not what is desired.

Deputy Eamon Ryan: I am in a difficult position in that I am in the presence of a former Minister of State, former union official, former temporary postman and former chairman of An Post — God Almighty.

Senator Joe O'Reilly: I am also a former temporary postman.

Senator Joe O'Toole: At least the Minister came to the right House for advice.

Deputy Eamon Ryan: There was no attempt at exclusion in the wording of the legislation. I listened to what Senators had to say. I will give a commitment to return to the Office of the Parliamentary Counsel to discover if it might be possible to include a wording which recognises that it is important to listen to the employees as well as the users and the companies involved. I will, if possible, try to obtain such a wording from the Parliamentary Counsel but it might not necessarily be that which is contained in the amendment. Subject to a wording being forthcoming, I hope to be able to meet the concerns of Senators on Report Stage.

Senator Joe O'Toole: I thank the Minister and accept his intentions and goodwill. I will withdraw the amendment and I look forward to seeing the new wording on Report Stage.

Senator Martin Brady: I welcome the commitment given by the Minister. I know he is an intelligent person, having worked with him on Dublin City Council. I thank him for taking this course of action because amendment No. 5 is probably one of the most important in the context of the entire Bill.

Senator Joe O'Reilly: On behalf of my party, I wish to acknowledge that the Minister is going back to the drawing board in respect of this matter. I take on board what he said. The

[Senator Joe O'Reilly.]

approach he has adopted is appreciated because there is no logic in dividing the House in respect of such a central issue.

Amendment, by leave, withdrawn.

Section 15 agreed to.

SECTION 16

An Cathaoirleach: Amendments Nos. 6, 7 and 10 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Joe O'Toole: I move amendment No. 6:

In page 16, subsection (1)(a), lines 27 to 29, to delete all words from and including "except" in line 27 down to and including "exceptional," in line 29.

I had a discussion with Senators O'Sullivan, Mullen, Norris and O'Reilly with regard to these amendments. It is obvious that when one looks out the window of the Chamber, one can see the type of exceptional circumstances to which section 16 refers. For that reason, I do not intend to move amendment No. 6. I accept that today is one of those days in respect of which one could not insist that post be delivered.

An Cathaoirleach: The Senator has already moved the amendment.

Senator Joe O'Toole: I will withdraw it then.

An Cathaoirleach: It is part of the group of amendments being discussed so it cannot be withdrawn at this point.

Senator Joe O'Toole: That is fine. Amendment No. 7 relates to a matter that goes to the heart of the rural postal service. Section 16 states that universal postal services means "that on every working day, except in such circumstances or geographical conditions as the Commission considers to be exceptional, there is at least ... one delivery to the home or premises of every person in the State [everyone agrees that this should be the case] or, as the Commission considers appropriate, under such conditions as it may determine from time to time, to appropriate installations". In other words, one delivery will be made to the home or premises of every person or to appropriate installations. Effectively, this means that post will not be delivered to the home or premises of every person in the State.

I wish to be clear with regard to what is intended in this amendment. In apartment complexes, all of the post boxes for the various dwellings might be located in the lobby area or on the outside, a couple of yards away from the front door. I do not have a difficulty with that. However, the way the section is worded appears to indicate that people may find in their post boxes notes directing them to collect their post at local sorting offices. Amendment No. 7, about which I feel strongly, is designed to ensure that the universal service obligation will be maintained. That obligation cannot be maintained in circumstances where a person might decide that instead of delivering a letter to a Mr. Leyden who lives at the top of Slieve Bawn, the latter can collect it at the post office in Strokestown or wherever. We do not want an arrangement of that type to apply.

I am seeking protection in respect of the universal service obligation. On the other hand, I have no intention of being ridiculous. Many apartment complexes and gated communities have blocks of post boxes located either inside or outside the front entrance. I am not objecting to

that. I am, however, objecting to the way the section is worded because it could mean anything. In particular, it could be interpreted to mean that post does not need to be delivered to a person's home or premises, which was always what was intended under the universal service obligation.

I am of the view that the wording in the section must be tightened up. I am sure the Minister will explain what is intended but under the relevant provision, as drafted, universal postal service means one delivery to the home or premises of every person in the State or to appropriate installations. That is far too vague and it represents a diminution of service. Under the section, there would certainly not be a universal postal service and the type of service we discussed earlier, which Senators and the Minister value, would definitely not be provided.

I propose that the section should simply read "one delivery to the home or premises of every person in the State" because that is what the universal service obligation entails. Unless someone is in a position to convince me otherwise, I am of the view that this is what was always intended in respect of the universal service obligation. I am certainly of the opinion that the European directive envisages a delivery to each person.

A man who delivers post in Donegal was interviewed on radio this morning. This matter relates to a community service which displays the State in action and engaging with the community. It also relates to the kind of service that was envisaged by Europe and that we need to protect. There has been much discussion about Europe in recent weeks. What is involved here relates to Europe protecting a service which national governments might be tempted to diminish. This is, therefore, something emanating from Europe which we would welcome. The section, as drafted, provides a lever to create space and reduce the impact of what was originally intended.

I ask that the Minister either accept amendment No. 7 or indicate how my concerns might be met in some other way.

Senator Martin Brady: I agree with the previous speaker. The section should read "one delivery to the home or premises of every person in the State". Will the Minister indicate what constitutes an appropriate installation?

There are certain circumstances in which a postman or postwoman may not be in a position to deliver mail each day. In the first instance, a postman or postwoman is not legally obliged to deliver mail if a dog which he or she considers to be dangerous is at large. In addition, if a packet does not fit through someone's letter-box or into their post box, they must be brought back to the post office. When I was involved with An Post, a postman or postwoman who could not deliver an item was obliged to return on the two subsequent days to try to deliver it before leaving a note for the addressee advising him or her to go to the post office to collect it.

It is not possible to guarantee that everything will be delivered, particularly in light of the examples I have outlined. A common sense approach is, therefore, needed. The phrase "as the Commission considers appropriate" is used in section 16. Why should the Commission for Communications Regulation consider what is and is not appropriate? Is it the case that if it is raining or snowing heavily or if it is extremely frosty, then post need not be delivered? That just does not make sense. How and when would the commission make decisions in this regard? Who in the commission will be responsible for such decisions? The relevant provision is nonsense and I do not know why it is included in the Bill.

Senator Joe O'Reilly: The general thrust and purpose of these amendments is — while accepting the diktats of Europe and the requirements of the relevant directive — to preserve the universal service obligation that applies in this country. In other words, our aim is to ensure that, with no exceptions, people's post will be delivered to them each day regardless of where

[Senator Joe O'Reilly.]

they live. That is what we are trying to achieve. We are concerned that the subsection with the wording, “or, as the Commission considers appropriate, under such conditions as it may determine from time to time, to appropriate installations”, could be used to the detriment of the universal service to require people in a given area, such as the residents in an isolated rural area, to travel to a central point to get their post. That is unacceptable. That should not be allowed. It would go against the spirit of the universal service obligation and would be against the rights of the people in those areas.

Gradually, as one diminishes a service, the diminution continues. If it becomes all right one year not to deliver to a person because he or she lives at the back of a mountain, the next year it will become all right not to deliver to people who live close by and so on until, eventually and by extension, people go to a central location for their post.

We spoke earlier about the considerable advantage of and social service provided by the postperson coming to the homes of people and going up boreens and meeting people. Sometimes they are a person's only visitor. This is not merely about letters. It is about a communications network and support system. Senator Coffey stated earlier that any postperson in the country is as knowledgeable about his or her community as many local politicians or social workers, and they provide multiple functions. It is important we preserve that.

My party believes this part of the Bill could be used wrongly. It is worth saying that neither an official in the House nor the Minister decided this morning to thwart the service by providing this in the Bill, but that could be the outcome. As we have drawn the Minister's attention to it in the interests of improving the legislation, we appeal to him to withdraw it and leave the matter as it is.

The Minister need have no fear that when exceptions arise and when human difficulty arises, these will not be long being identified and acted upon anyway. The reality is that on a given day where there is a large dog somewhere, there are shocking weather conditions or whatever, people will use their discretion. That level of discretion is fair enough but one does not want to give a hostage to fortune. This part of the Bill runs the risk of being a hostage to fortune if it is left as it is. It could allow commercial operators to pretend to provide a universal service but instead asking unfortunate people to go to a central area to collect their post. We do not want that. I think no one in the House would stand over that.

I want to put on the record of the House that I share the distinction with Senator O'Sullivan of being a former part-time postperson. The Minister has another expert.

Senator Dominic Hannigan: Although I have never been a postman, I have certainly delivered lots of leaflets to many houses and I understand the issue to some extent.

Senator Terry Leyden: Had Senator Hannigan a licence?

Senator Dominic Hannigan: In amendment No. 10, my party seeks to extend the definition of the working day to include Saturday if the commission so decides. That is to enable postal deliveries throughout the State on Saturday at some future date.

On the issue of the definition of “installation” raised by the other Senators, including Senator O'Toole, the Bill could benefit from clearer wording. I say that as someone with some experience in the matter. I live in an apartment block in Dunshaughlin where I get my post, not in the front door but down in the foyer, and I have no difficulty with that. I am aware of the situation in other countries. For instance, in Toronto in Canada, as the Minister will be aware, the post is not delivered to one's front door or the front door of one's apartment but to a central point on the street where every house on that street has its own mailbox. While it

makes it more efficient for the postal delivery worker, it makes it difficult at times for local residents to collect their post because they must leave their house, go down the street, open their box and take out their post. On days of inclement weather such as this, it is not easy to do. We need to be clear about the type of installations the Minister has in mind. Does he mean something which could be quite remote from the home and, if so, is there a limit in his mind as to how far away it could be, for instance, 10 m or 100 m down the road? We could benefit from some clarity. I have no issue with such deliveries if it is an apartment or if it is just outside the front door——

Senator Joe O'Reilly: That is not workable.

Senator Dominic Hannigan: ——but we need to be clear about how far the Minister sees this going.

Senator Paudie Coffey: These are important amendments which go to the core of some of my concerns. A universal postal service should mean what it says. It is stated in section 16(1)(a) that it is conditional on the interpretation or understanding of the commission.

On the reference to geographical conditions, we would all understand there being a difficulty with deliveries or collections due to weather conditions or whatever, but that should not be stated in the legislation. That should be left to the discretion of the service providers, assuming that is the intention of including the wording in the Bill. My interpretation of the phrase “geographical conditions” would be the geography of the country, the hilly boreens and mountainous areas where people live. I am concerned if this wording remains in the legislation that it could be interpreted by a commission based in Dublin to the detriment of those rural dwellers who live in remote geographical areas. If the wording in the Bill is left unamended, it leaves the door open for the service to be cherry-picked by future service providers. Only large urban areas and, I suppose, areas with many dwellers will be cherry-picked. We must remember that more than two thirds of Ireland consists of rural areas. There are many difficult routes in remote areas that postmen navigate to get to residents. If this legislation goes through as drafted, it will deprive those rural dwellers of a basic entitlement to universal service. That is my concern.

The Minister should remember that many rural and farming enterprises are located down boreens or country roads. If the service to them is diminished in any way, it will be to the detriment of many of those businesses. People who operate businesses depend on the postal service which, we must acknowledge, is one of the successes of the State's systems. People can depend on their postman calling every day and they can depend on their post being collected at the recognised collection points.

Good points are being made by Senators in the debate. I have serious concerns about the area of interpretation and giving the power to the commission to decide on geographical conditions and appropriate installations. Such terminology is too vague and leaves the door too open. Rural areas will not be serviced well if this goes through. For example, a year and a half ago I was contacted by constituents in rural east Waterford when An Post made a unilateral decision to close one of the oldest post boxes in the country. When the people of that area discovered it was closed, there was uproar. I am glad to say that when representations were made, common sense prevailed and the post box was reinstated. That is how much it meant to those rural constituents because here was a regular post box in a rural area with a recognised collection.

We are going down a dangerous road if we leave it up to a commission based in Dublin to decide what postal services will remain open and what geographical circumstances will allow the service to be operated daily. I ask the Minister to think closely with his officials about the

[Senator Paudie Coffey.]

wording of this, as we cannot afford to pass legislation that will deprive large areas of the countryside and citizens of a service on which they have come to depend.

Senator Terry Leyden: The points being made are very good. The Minister has declared that he is in favour of a universal postal service and that this is his motivation. The aim of everything being said is to strengthen this position. Frankly, he would have been better off if he had introduced the Bill six months ago because I see eight candidates in the Chamber and he has seen nothing yet. Representatives of the Communications Workers Union are in Buswells Hotel at present, with every other candidate. I can tell the Minister for a fact that this will be the major issue in the final days of the Dáil because it is absolutely crucial. I can also assure him that every postman in knocking on every door will know who voted for the Bill.

I have experience of working in the Department and enormous progress has been made in An Post, particularly with regard to its distribution centres. They are absolutely phenomenal. I worked at the Department when the centre in Sheriff Street was in operation, when the Minister was a child. In Sheriff Street a bar was open all day and all night. Senator Quinn knows this because he was chairman when I was at the Department.

An Cathaoirleach: What amendment are we on? We are not dealing with bars now but postal services.

Senator Terry Leyden: I will finish my point. I said to some employees that it was very strange that they had a bar where they worked and was told that there were two where I worked.

An Cathaoirleach: I ask the Senator to stick to the amendment. We will be here until the election after next if he keeps going like this.

Senator Terry Leyden: In that regard, the wording is careless and reckless. The Bill reads, “on every working day, except in such circumstances or geographical conditions as the Commission considers to be exceptional”. I would prefer if the reference was to the Minister. I have no faith in any commission which does not have political responsibilities or is not under political control.

Senator Nicky McFadden: Hear, hear.

Senator Terry Leyden: This provides a way out; one could state the Aran Islands are a long way off and that as there is no boat service, deliveries cannot be made and they will be excluded from the contract. Those who will cream off this business will go for major towns and cities and to hell with rural areas. That is why the union is very concerned and why I ask the Minister and his officials to look at the drafting of the section.

The section also reads, “one delivery to the home or premises of every person in the State or, as the Commission considers appropriate”. The commission may decide it is not appropriate to deliver five days a week.

Senator Paudie Coffey: Correct.

Senator Terry Leyden: It may decide it is not really necessary to deliver in rural areas at all because they cannot be reached. It may decide to charge 75 cent per stamp for any letter to be delivered outside Dublin, Waterford, Cork or Kerry.

Senator Paudie Coffey: The Senator is speaking sense.

Senator Terry Leyden: That is what this is all about. We have to make sure we protect the service. Whatever action needs to be taken by the Seanad, let it be taken. If it is not taken here, it will be taken in the Dáil. I tell the Minister that he will be lucky to get this through before he completes his term of office.

Senator John Hanafin: I share the concerns expressed by other Members, in particular about the unintended consequences of the phrase, “except in such circumstances or geographical conditions as the Commission considers to be exceptional”. This means the commission could change the intention of the law which states the universal service provider must provide a service five days a week. I know this is not the intended consequence, but we could allow in law the commission to make this decision. This should be a matter for law only, which cannot be changed. I ask the Minister to review this decision.

Senator Nicky McFadden: I echo the sentiments of my colleagues on what the commission might consider to be appropriate. This is what I spoke about previously with regard to areas that would be difficult to get to and in a which a service would not be cost-effective, leading to the cherry-picking of urban areas. Like other speakers, particularly Senator O’Toole who spoke about the NRA, the HSE and other such bodies not answerable to Ministers, I have very serious concerns about what the commission might consider appropriate. We have had very bad experiences with such bodies. Will the Minister, please, reconsider the section?

Senator Jerry Buttimer: Senator Leyden never ceases to amaze me with his ability to speak in support of a Bill and against the Government and still vote for the Government.

Senator Martin Brady: Ingenious.

Senator Jerry Buttimer: I agree with him that it is important——

An Cathaoirleach: We are discussing amendments Nos. 6, 7 and 10 to section 16.

Senator Jerry Buttimer: Yes, I am discussing them. It is important that we protect the service. I am concerned about the commission and its interpretation or its ability to interpret. Senator Coffey was not wrong in the point he made. The headquarters dealing with rural areas might be found on Mount Street or Ely Place. I was in Ardara, County Donegal for the by-election and some of the townlands in that area——

Senator Terry Leyden: Not very successfully.

Senator Nicky McFadden: Better than the Senator’s party.

An Cathaoirleach: Members, we are dealing with a very——

Senator Jerry Buttimer: Our vote did not collapse by one half and we did not come third.

An Cathaoirleach: I ask Members to respect what is a serious Bill by having no interruptions or not engaging in smart-alec talk across the floor.

Senator Terry Leyden: I was tempted by it.

An Cathaoirleach: It is not acceptable. We are dealing with serious business. The Minister and his officials are present and I will not put up with this across the floor.

Senator Jerry Buttimer: I accept Senator Leyden’s apology.

Senator Terry Leyden: I did not apologise.

An Cathaoirleach: We are discussing amendments Nos. 6, 7 and 10.

Senator Jerry Buttimer: The Cathaoirleach is correct; this is an important Bill which is why I was making the point about Ardara where, in many cases, the postman or postwoman is the only person the mail recipient meets, sees or speaks to.

What does the Minister mean by “geographical conditions”? Today there would be no difficulty if mail was not delivered because one would not expect somebody to go out on in such conditions. However, does the Minister mean a geographical spot on the physical landscape such as an area off Kilmichael such as Tirelton in rural mid-Cork?

To return to what Senator O’Riley spoke about with regard to what is an appropriate installation, are we speaking about stopping service delivery and a person having to get into a car or on a bus to go to a mailbox or postbox in a post office like they do in the United States? Senator Hannigan spoke about the foyer of his apartment block; we do not expect a postman to go into every apartment complex and hand-deliver to every mailbox as, in some cases, the management fee covers the sorting and distribution of mail. I seek clarity on what is meant by a universal postal service. Senator McFadden rightly spoke about cherry-picking. The ambiguity is frightening and worrying.

The Minister also brings to the Bill the issue of weight and I am curious to know why that is the case. On occasion, one receive a card through the door stating one’s mail is available for collection in the local district office if the mail is of a particular weight. Why is this mentioned in the Bill?

I am anxious that the Minister give a commitment that delivery to homes will continue. It may not be the case in Cork city or south Dublin, but in rural Ireland, in particular, it is very important that the service is continued. I look forward to hearing the Minister’s response.

Deputy Eamon Ryan: I am afraid it is not proposed to accept the amendments and I will set out some of the reasons. Section 16 reflects Article 3 of the directive and sets out the minimum scope of the universal postal service, the essential element of which is collection and delivery to every home and premises in every corner of the country on each working day. It is very clear on the minimum standards that must be met by member states but in a realistic manner, recognising that, in certain cases, there may be exceptional circumstances where it is not always possible to do this. For example, alternative arrangements may be made for island deliveries or other areas for geographic or other reasons. ComReg is charged with ensuring that the universal postal service meets the reasonable needs of users and it is necessary for it to have flexibility to ensure that provision. In that regard, section 16(7) requires ComReg to have regard to “the reasonable steps a universal postal service provider may be required to take in order to meet the reasonable needs of postal service users, including ease of access to homes or premises and the health and safety of employees”. It is appropriate that ComReg carries out that assessment.

There appears to be some confusion and it seems that Members feel we are making major changes or that this is all new legislation. That is not the case. The proposed amendments would remove flexibility ComReg already has in current regulations, namely, the regulation of postal services, SI 616/2002, and the European Communities (Postal Services) Regulations. There have been several instances where people have applied for derogations, but ComReg has not given a derogation or permitted a variation. Therefore, there is nothing new in the proposed Bill. It simply replicates what exists in current legislation. At the same time, we need the flexibility and assessment that ComReg would provide with regard to how to supply the

universal service that would at the same time be subject to certain conditions and delivery arrangements in certain geographic circumstances. Any derogation would have to be done on a class basis rather than a one-off basis. Therefore, we would not have a universal service and say “except for that house”. Any derogation would be done on the definition of a class, which would be sufficiently precise so that it could not be argued that the effect of the derogation was to rewrite the legislation. That is the context for this section. People may feel there is a major change in the section, but there is not. We are just replicating existing regulations and giving the ongoing powers to ComReg to make sensible decisions around how the universal service is provided.

It is not proposed to accept amendment No. 10 because the directive requires member states to take steps to ensure that a universal service is guaranteed not less than five working days a week, other than where there were geographic or other circumstances which would allow for an exception to that clause. Section 16 of the Bill sets out the scope of the universal service and provides for the collection and delivery of mail to every house on every working day. That working day is defined in the Interpretation Act 2005 as a day which is not a Saturday, Sunday or public holiday. Therefore, it is not appropriate for us to require ComReg to amend what is provided for in primary legislation. The wording in the directive that it be “not less than five working days” stems from the fact that a number of member states provide for a six-day service. It should be noted that there is nothing to prevent An Post, or any provider designated in the future, from providing a Saturday service. Indeed, An Post frequently provides such a service for example at Christmas time.

I hope I have reassured Senators that this section does not seek to make a major new change. It simply recognises the existing powers ComReg has and replicates them within the context of the new directive, which still requires the basic components of universal service provision as exists today.

Senator Paudie Coffey: I thank the Minister for his clarification regarding the existing legislation. However, what he has said does not yet reassure me that the Bill as presented will not change the existing levels of service for people in rural areas. I accept there may be geographic conditions affecting islands and similar places. However, we have a system that works and is not broken. It is acknowledged by all and sundry that the system works and serves the community well. Can the Minister assure the House that this Bill will not change the existing levels of service for rural dwellers?

The Minister did not acknowledge in his response the concerns expressed by Senators regarding the diminution of service in rural areas. That is the nub of our concern. If the Minister can alleviate that concern, we will succeed in getting the legislation passed more easily. However, I have not got that reassurance from the Minister.

Senator Joe O’Toole: I listened carefully to what the Minister said. As I said earlier, I do not intend to push amendment No. 6 because it does not quite meet what I intended. I agree with the use of certain “weather” as opposed to “geographical” conditions. I now intend to bring forward a different amendment on Report Stage. This amendment will recognise the points made by the Minister and recognise some conditions will be relevant.

We need to go back to what the Minister said about the importance of primary legislation. This Bill is the primary legislation. Earlier, the Minister said to me that we should not try to undermine primary legislation by asking the Minister to regulate or interfere. Similarly, I hope he will accept that he has mentioned other directives and regulations. This is the primary legislation so we should not use the subsidiary position in order to defend it. I would like to

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deal with the issue of a universal service and to do that I suggest we look forward to section 18 of the Bill, page 20. It states:

A universal postal service is required -

(a) to provide a universal postal service ... subject to the interruption, suspension or restriction otherwise of all or any part of the universal postal service in cases of *force majeure*.

The point was made by Senator Brady earlier that issues will arise where it is above and beyond the ability of anybody to provide a service. I would like the Minister to explain the connection between these two sections. Section 18 is there to deal with the interruptions or suspensions that can happen for reasons which can be put down to *force majeure*. I recognise that *force majeure* is not defined in the Bill. Something else that is not defined in the Bill is "installation". I do not know what is meant by "installation". Perhaps my concerns, as indicated in amendment No. 6, could be dealt with by a definition of "installations" being included in the definitions section. If it simply means a road side letter box outside a front gate, that will not be a cause of concern. However, if it means it is something to which one will have to travel to another town or place to access post, I am opposed to it. As used in the Bill, there is no explanation for the word "installation". I imagine the Concise Oxford Dictionary would have ten pages on that word. I am not one to run to a dictionary just to support an argument, but am just concerned with the legalities. I do not know what is meant by "installation" and would like that clarified in the definitions of the Bill.

The Minister mentioned "islands" but I do not really understand what exactly he meant. What my amendment tried and failed to achieve could possibly be achieved by including the word "reasonable" to qualify the service, that it would do all that was "reasonable" and by replacing the word "geographical" with the word "weather". In other words, the service would do all that is "reasonable" and we would not expect it to deliver post daily in Inishturk if the boat only goes to Inishturk three days a week. However, I have concerns if the section means something else. I do not know what it means. If somebody wanted to establish himself in a hermitage on top of Croagh Patrick, I would not expect his post to be delivered to him every day. The issue is reasonableness. However, the Bill as is written leaves itself open to all sorts of interpretation.

We are talking about people who will be coming from outside to provide a cheap service at a cheap price. It will be a yellow pack job. If those people can find loopholes in the legislation to help them make more money, even if it means a diminution of the service, they will do that. I intend to return to amendment No. 6 on Report Stage so we can take on board the issues raised by Senator Brady and others and the issues raised by Senators O'Reilly and Coffey. We know what we mean and perhaps there is not a great difference between the Minister and us, but the Bill as written could be interpreted in a way that would not suit what the Minister requires. I will revisit that issue on Report Stage. On amendment No. 7, the Minister has not given us any comfort about the meaning of "installations". Is what he claims he is trying to achieve in section 16(1)(a) not covered in section 18 and, if it is not covered or if it is replicated, should we not be worried that it is left open to a loose interpretation?

Senator Joe O'Reilly: Senators on this side of the House are uncomfortable with leaving the wording as it stands. We are concerned that the provision may be used to undermine the principle of a universal service at some point in the future. In order to make a fast buck by providing a cheap service, it may be decided to require people from a dispersed community to get their post from an installation, that is, a post box in a fixed location.

The traditional way of life in country areas has been eroded. Post offices and Garda stations have closed and rural Ireland has been denuded of services. As we become more urbanised and removed from country living, the day may come when a commission considers it appropriate to restrict postal deliveries to a couple of days each week during the winter months or decides that certain geographical terrains do not merit delivery.

In his very competent contribution, Senator O'Toole spoke about *force majeure*. I assure the Minister that postal workers are braving the elements to deliver letters all over the country today. They would be horrified if they thought we were making legislative provision for them to do otherwise. Discretion will, of course, apply. If a road is physically impassable, a postal worker will not drive up it. If the seas are too rough on a given day to travel to the islands, deliveries will be delayed. A wild dog may prevent the postman from walking up a long bóithrín. Issues of *force majeure* will arise in practical situations but common sense will apply.

I do not question the Minister's bona fides but I doubt the wisdom of his answer. I am concerned that the section will be used cynically or for sinister purposes against the principle of the universal service obligation. We do not know what actors will be on the stage in the future or what their agendas may be. The desire for a quick buck could be the dominant motivation for a private operator who wins the franchise. An Post could perhaps come under serious financial constraints and, in order to achieve efficiencies, decide to deliver to a post box rather than to houses in certain locations. The universal service would then be thrown out the window.

The issue of weather is nonsense because common sense will apply. Postal workers try their best to deliver and it is seldom they are not successful in doing so. We should stand in awe at their efforts over the years.

We do not want to be remembered as the Legislature that presided over the end of the universal service or gave gangsters an opportunity to denude the people of a service for financial expediency. God knows, the people of rural Ireland whom I represent have suffered enough cutbacks in terms of closed Garda stations and post offices. We should not consider further cutting rural services. We need a vision and a value system that recognises the people who live up a bóithrín in Killinkere, of which Senator Brady is one of the most distinguished former residents, have the same right to post as the residents of Dublin 4. They have the same right to have it delivered efficaciously and with good humour as if they lived in Dublin 4. If there is a major physical obstacle to delivering the post, the postal worker will clearly use his or her discretion. Common sense has applied in these matters since time immemorial. I appeal to the Minister to reconsider the amendment because I do not accept his response on it.

Senator Paddy Burke: This is an interesting debate. I am reminded of the turf cutting legislation passed in 1998, which gave Ireland a ten year derogation. In this case, one could argue that we have a seven year derogation. Senator O'Toole raised an important point in regard to the definition of "installations". In seven years' time, I fear we will be blamed for passing legislation which results in the reduction of services to the islands and in installations being located at the heads of roads. I am disappointed with this aspect of the Bill. The form of competition now being proposed is not designed for our small economy and rural population. If we had a semi-State company which charged only as much as it needed to provide a service, would the Competition Authority play a role? An independent European committee should be established to benchmark the service provided in Ireland against jurisdictions in which competition exists before we legislate for multiple providers.

Several years ago, when banks were opening left, right and centre, I suggested there were too many banks. I was told I was off the wall because supposedly we needed all the banks to ensure competition. We may now be left with only one bank, in which case there will be no

[Senator Paddy Burke.]

competition. What could the regulator do about that? Would the State be required to set up another institution in competition with itself?

I support Senator O'Toole in regard to the definition of "installation". Before we proceed further, we need to deal with the core question of where installations will be located. Will they be located at the heads of roads or may people even be forced to drive to their local towns to collect their post?

Deputy Eamon Ryan: Senator O'Toole raised an issue about primary and secondary legislation. Effectively, we are reinforcing the arguments I made earlier by translating a statutory instrument into primary legislation. That is appropriate. We have the opportunity to do that in this legislation, although it is not at its core. We have not changed the wording or the arrangements, whereby ComReg considers what are the common-sense arrangements in terms of delivery. We need a mechanism, whereby common sense will be applied, as it has been for the past eight years since the statutory instrument was put in place. We are simply providing for a transformation of arrangements in moving from a statutory instrument to primary legislation. It would not be appropriate for us to change the nature of the common-sense arrangements in place under the statutory instrument. It would also not be appropriate to amend it. It is better to leave the arrangements in place which have worked and which I am sure will continue to work on a common-sense basis as they recognise the social importance of having a postal service in rural Ireland. It would be inappropriate to change them because, at least, we have a precedent and an example which have been developed over time. We should, therefore, maintain the provisions, as set out, on that basis. The provisions are sensible in terms of working day arrangements and definitions. While I hear what Members are saying and understand their concerns, they are misplaced in this instance because all we are doing is translating from secondary to primary legislation the existing arrangements for considering the provision of such a universal service.

Senator Joe O'Toole: What about the installations?

Senator John Hanafin: There is a difficulty other than the obvious one with the wording "except in such circumstances or geographic conditions as the Commission considers to be exceptional" which could change the universal service provision. "Geographic conditions" is not an exact term; the word "conditions" is a variable, as in the case of weather conditions. The geography of where one lives remains the same. The term "geographic conditions" would cover terrain which could change in that it could be muddy or dry. It would also cover climate conditions which could change, but the geography of where one lives does not. Therefore, the words used do not make sense.

In terms of appropriate installations, in the section we are allowing those who will enter the market to do so solely to gain maximum profit and at the lowest possible cost, whereby An Post will take on the expensive part of the service. We are allowing the commission the authority to possibly change the universal service provision. For example, people living on islands might not receive the same service as those living in other areas. Furthermore, post could be delivered to a central location. We would have a major difficulty with this. The reason we are happy the postman goes to every house is that he or she carries important letters and communications, including cheques. Once a letter is delivered to a person's home, there is certainty that it has arrived at that location. If letters are delivered to an installation, we cannot be sure cheques, including welfare cheques on which recipients depend, will arrive at the address to which they have been sent. That is a major difficulty. People are happy to pay extra to ensure they receive the level of service they are used to.

Senator Paudie Coffey: I concur with what Senator Hanafin said. The Minister is missing the point in regard to the concerns raised by Members on this side of the House about the terminology used, regardless of whether it is included in existing legislation. The terminology used is too vague and open to interpretation whether by the commission or anybody else. We need clear legislation. For the purposes of clarity, we need definitions. We need definitions of “an installation” and “geographic conditions” for the reasons outlined by Senator Hanafin. These terms are too broad, which leaves the door wide open for changes to be made, irrespective of whether it is intentional. The Minister’s advice is that the regulation is already in place and that its provisions will not change, but my concern is that it is open to interpretation. The definitions are not clear, which leaves the door wide open for a cherry-picking of services. This will result in a diminution of rural services. That is our concern. It is the concern of a large section of the population who could find, following the introduction of this legislation, that their existing service which is working well and efficient and one of the services provided at lowest cost in Europe will come under threat. I, for one, am not happy with the wording, as drafted.

Senator Joe O’Toole: The following is the point to be made about primary and second legislation. The Minister has made the argument, which I accept, that secondary legislation cannot undermine or change primary legislation. There is no argument about this. In this instance, we are moving in the other direction. We are translating what is contained in secondary legislation, a regulation, in primary legislation. There is no reason we would not stitch the primary legislation to deal with the matter. However, the Minister’s answer was that the regulation had worked very well to date.

I want to explain a few points. First — this is an old speech of mine — we rarely get to discuss regulations in this or the other House. Usually they are laid before the Houses and unless the Government side wants to have a resolution agreed within 28 days, they are not discussed. The Minister will find that there was no discussion in the House of this particular regulation. If there had been, he would have heard all of the points raised by Members today.

The second point is crucial. The Minister has said the regulation has worked very well to date. It has and no one would be shouting to have it changed if this was to be done under the protection of An Post. However, what we are doing is enabling outsiders to become involved in providing a service. We do not yet know their names. It might be Veolia or someone else who will tender to provide a service. We have no experience of what they might do. Neither does the Minister. We trust the people who are delivering the service; although we might complain about them and have an argument with them now and again, at least we know who they are. We have done business with them since the foundation of the State and their protection of the service is long established. As Senator Coffey said, post boxes, some of which have the Queen’s head on them, have been in place for 200 years. However, that is not what we are talking about — this is the crucial point of our discussion — rather, we are talking about people whose interest will be to make a profit. There is nothing wrong with this, but because they will be interested in making a profit they will be required to look at the most cost effective way of providing a service. If we pass legislation which allows them to provide a reduced level of service, we will not be doing for the taxpayer and the community a good day’s work. That is the point at issue concerning the primary legislation and the *raison d’etre* of our position which I want the Minister to understand. He can agree or disagree with me, but that is where we are coming from. Perhaps those who will enter the market will be better, more effective and caring and provide a better delivery service than An Post, who knows; we cannot know this. However, we have to legislate for either position.

[Senator Joe O'Toole.]

There is also the point made by Senator Hanafin about installations. I still do not know what an installation is; all I know is that it is not a house or a premises and that it could be located anywhere. I would not be doing my duty if I did not challenge this. That is where I stand on amendment No. 7.

Senator Ned O'Sullivan: I do not want to labour the point, as it has been well made. There is imprecision in the language used, which is worrying. Without being pedantic, Senator Hanafin put his finger on it in what he said about the word “geographic”. In that context, “meteorological” would be a more appropriate word to use. This provision needs to be reconsidered and redrafted, especially as regards the definition of an installation. No one has a clue what they are. If we are to pass legislation, at the very least we are entitled to know exactly what is meant. Without returning in detail to the argument about the cherry-picking of areas, that it is the imprecision in language that created difficulties for local authorities. Up to a few years ago the local council was in charge of refuse collection but the service was opened up to competition, which was fair. However, independent refuse collectors were able to enter the market and cherry-pick the best routes. They picked the big towns such as Tralee, Listowel and Castleisland and left the people of Knocknagoshel to fend for themselves or the county council to look after them as part of a loss-making exercise. This measure needs to be tidied. It should be referred back to the Parliamentary Counsel

Deputy Eamon Ryan: This does not make a change to the regulations. We are not providing for a new arrangement, whereby a business will decide that it will provide the service in a different way. The key body is ComReg which following the enactment of the legislation will have the exact same powers that it has currently⁶. It does not matter what other providers state; ComReg will have the same powers it has always had into the future to apply the provisions on a common-sense basis, as the directive requires, regardless of what any commercial interest may want. This is the public service looking after the public in a common-sense way. The same will apply after the legislation is enacted. There is nothing new in that regard. The wording refers solely to the role of ComReg and the approach taken by it in assessing the common-sense public interest approach adopted. It is merely doing what the directive states we should do, that is, including the existing requirements in primary legislation.

Senator Joe O'Toole: If a provider tenders or pitches for this work, reads the legislation and goes to the regulator to say this is what he or she intends to do, the regulator can state that is not the way things are done here and that this is the service which has always been provided. The person pitching for the work will be able to say this is what the legislation states and means and that this is what he or she proposes to do. In five years time a different person might hold the position of regulator and would simply be arguing with the written word. It is like going to court. A person could argue the regulator was demanding that he or she do something which was not required by the legislation. It would be game, set and match. Somebody could go to court on that point and it would not matter what nice things had been done or what nice arrangements had been in place previously. We are governed by the word of the law. How many times have we read in court judgments that the law is what it is? It is not its spirit or anything else. This provision is open to abuse. I fully accept that it is not what the Minister intends, but I hope he accepts my reading of it.

Amendment, by leave, withdrawn.

Senator Joe O'Toole: I move amendment No. 7:

In page 16, subsection (1)(a)(ii), lines 32 to 34, to delete all words from and including “or,” in line 32 down to and including “installations” in line 34.

Question put: “That the words proposed to be deleted stand.”

The Committee divided: Tá, 28; Níl, 22.

Tá

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Carroll, James.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Dearey, Mark.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.
Keaveney, Cecilia.

Leyden, Terry.
MacSharry, Marc.
McDonald, Lisa.
Mooney, Paschal.
Ó Brolcháin, Niall.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
O’Brien, Francis.
O’Donovan, Denis.
O’Malley, Fiona.
O’Sullivan, Ned.
Ormonde, Ann.
Walsh, Jim.
Wilson, Diarmuid.

Níl

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Fitzgerald, Frances.
Hannigan, Dominic.
Healy Eames, Fidelma.

McFadden, Nicky.
Mullen, Rónán.
Norris, David.
O’Reilly, Joe.
O’Toole, Joe.
Phelan, John Paul.
Quinn, Feargal.
Regan, Eugene.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Tellers: Tá, Senators Niall Ó Brolcháin and Diarmuid Wilson; Níl, Senators Joe O’Reilly and Joe O’Toole.

Question declared carried.

Amendment declared lost.

An Cathaoirleach: Amendments Nos. 8 and 9 are related and will be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 8:

In page 16, subsection (1)(b)(i), line 38, after “kilograms” to insert “in weight”.

Deputy Eamon Ryan: These amendments would insert “in weight” after “kilograms” and are being made for clarification purposes and to improve the text of the Bill.

Senator Joe O’Toole: I ask the Minister to reconsider the amendments. Every time we put a phrase into legislation such as “allowing discretion to be used”, it has reached the stage that it must be proved in court that discretion can be exercised and shown as exercised. Every time

[Senator Joe O'Toole.]

there is a list with the words “including” or “*inter alia*”, an element not on the list can be challenged in court. The legislation refers to two kilograms or 20 kilograms and the Minister proposes to insert “in weight” after this. This is unnecessary. If there is legislation where “kilograms” is written without “in weight” following, someone may be able to challenge it in court by indicating that there is no specification of kilograms in weight. What else could it be except in weight? Some of my learned friends are smiling but I have been dealing with lawyers too long and I believe this to be an error. It is unnecessary unless “kilograms” can mean something else and we should not add the words “in weight” after it. Do we put “in length” after miles or kilometres and do we put “in volume” after cubic measurements? We may be starting something I have not seen before and it is unnecessary. There are three lawyers in the Chamber and I hope they will support me or at least acknowledge the veracity of what I say.

Progress reported; Committee to sit again.

Lost at Sea Scheme: Motion

Senator Eugene Regan: I move:

That Seanad Éireann supports the findings and recommendations of the Ombudsman's Special Report on the Lost at Sea Scheme; and calls on the Government to implement these recommendations.

I welcome the Minister of State at the Department of Agriculture, Fisheries and Food, Deputy Seán Connick, whom I met at the Joint Committee on Agriculture, Fisheries and Food when we discussed the Ombudsman's special report on the lost at sea scheme. The issue before us is a serious one which the House debated and on which it passed a resolution to refer it to the joint committee. I am pleased the matter was examined by the joint committee.

The Ombudsman has an important role to play in providing necessary safeguards in our system to ensure proper administration and fairness in administration by Departments and public bodies and appropriate behaviour by Ministers who are in charge of Departments. In his autobiography the former Taoiseach, Deputy Bertie Ahern, explained the reason he did not retain the former Minister for the Marine and Natural Resources, Deputy Frank Fahey, in his Cabinet. He stated that Mr. Fahey had got the Government “caught up in a bit of difficulty” about the lost at sea scheme and it seemed to be “a good time to get him out of the spotlight”. While I do not wish to trivialise the matter, I agree with the former Taoiseach's assessment. It is a spot of bother and an important issue that the Ombudsman found that a Department and Minister chose to design and ring-fence a non-statutory, administrative scheme to benefit a select few individuals. The Ombudsman found that this was contrary to fair and sound administration, in other words, it was maladministration. Her finding against the Minister and Department is the reason we are debating this issue. The Government has politicised the matter by supporting the former Minister in undermining the Ombudsman and her report and calling into question, on spurious grounds, the validity of her findings.

Legislation was used to benefit individuals on a number of occasions in the past. Examinership legislation was introduced by the former Taoiseach, Albert Reynolds, to benefit Larry Goodman. The former Taoiseach, Deputy Bertie Ahern, introduced an amendment to the Finance Act in 1994 while Minister for Finance for the benefit of Ken Rohan in relation to his art collection. As Minister for Finance, the current Taoiseach, Deputy Brian Cowen, introduced the Markets in Financial Instruments and Miscellaneous Provisions Act 2007, which implemented changes that benefited none other than the former Minister for the Marine and Natural Resources, Deputy Frank Fahey, by ensuring his pension was backdated by two years

to allow him to benefit from an increase in his ministerial pension entitlements. These are examples not only of maladministration but of misuse of power.

Some of the changes such as the examinership legislation and the provisions on art in the Finance Act contained a safeguard in that they were passed and vetted by the Oireachtas and had more general application. However, the lost at sea scheme was introduced for one or two individuals in the fisheries sector. It transpires that one of the individuals for whose benefit the scheme was designed was not eligible to benefit from it. It appears, however, that the Attorney General advised that the individual in question had a legitimate expectation that he would benefit because the Minister wrote to him indicating that was the case.

We also had the finding of the Moriarty tribunal that Charlie Haughey, on becoming Taoiseach in 1987, conferred a benefit on Ben Dunne by seeking a reduction in tax from the then chairman of the Revenue Commissioners. This concerned a family trust on which the tax demand was reduced by more than €23 million to only €16 million. There is a history and pattern of Ministers using their office to benefit individuals for various reasons. It was as a result of this pattern of behaviour by former taoisigh and Ministers for Finance that Deputy Fahey believed he could do what he did with the scheme. He has been found out, however, by the Ombudsman which is highly embarrassing, not only for the former Minister but also for the Fianna Fáil Party and Fianna Fáil led Government. It is just another example of the type of unacceptable behaviour in office to which we have become accustomed and which has perhaps contributed to the difficulties in which the country finds itself.

The Ombudsman found that designing a scheme to allocate replacement tonnage for individuals who had lost a vessel at sea was desirable in principle. However, the scheme was designed and ring-fenced for the benefit of specific individuals and was never intended to have wider application. The Department opposed the introduction of the scheme because it saw the problems it could create in terms of limits on fishing as applied by the Common Fisheries Policy.

In her report, the Ombudsman states:

I had expressed the view that it was clear to me from his interview and the documentation on file that the Minister would have been anxious to ringfence the cases of the MFV Joan Patricia and the MFV Spes Nova and that of the Kreis An Avel, which was the subject of the High Court case. These cases were ultimately successful under the Scheme.

The two constituents of the then Minister benefited from more than 70% of the tonnage which was allocated. The former Minister said it was unfair and inequitable to apply the findings to the Minister and his officials. Having designed the scheme, the Minister sought to lay the blame on his Department. The Ombudsman found that in his involvement in ring-fencing and designing the scheme and directing it to be implemented, he was responsible.

An Leas-Chathaoirleach: The Senator has one minute remaining.

Senator Eugene Regan: The Joint Committee on Agriculture, Fisheries and Food examined this scheme. Have I 12 minutes in total?

An Leas-Chathaoirleach: I apologise. There are four minutes left.

Senator Eugene Regan: Thank you. The committee examined the report. If it had found the Ombudsman had erred in the facts in her interpretation of the legislation or otherwise, that would have been grounds for setting aside her report and the recommendations. However, the committee examined each allegation and the defences put up by the former Minister who claimed the Ombudsman and her officials had misconstrued the scheme. In reality, it was the former Minister, Deputy Fahey, who had misconstrued the scheme. Even in the committee he

[Senator Eugene Regan.]

continued to state that the scheme was for individuals who were still involved in fishing. The Ombudsman had to write to the committee to ensure this error of Deputy Fahey was corrected. Therefore, the very basis of his defence and his suggestion that there was some frailty in the report were found to be incorrect.

There was a suggestion that the scheme did not contravene EU regulations, which was also discussed at the committee. Of course, the scheme was never notified to the European Commission so the Commission never had the opportunity to suggest the scheme was fair, reasonable or otherwise.

Deputy Fahey stated persistently there was no finding of maladministration. In her intervention in the committee the Ombudsman specifically stated that she saw no difference between the term “contrary to fair and proper administration” and maladministration. On that point she found that the maladministration was in the drafting of the actual scheme. The maladministration applied to the Department in total, to the Minister as well as to the officials. She stated, “The difficulty I have is that I found maladministration in respect of the lack of fairness of the scheme”. When she was asked to clarify the difference between maladministration and “contrary to fair and proper administration” she said they were the same.

I reiterate the extraordinary anomaly in all of this is that one of the two main beneficiaries of the scheme which the Minister sought to enrich did not qualify. That was confirmed at the committee. The lack of advertising was based on a misconception by the former Minister that a person had to be involved in fishing at that time and therefore there was no need to advertise it widely. The committee’s report has a conclusion and analysis consisting of one paragraph: “The committee is of the view that the manner in which the scheme was advertised was not adequate but not to the extent that it could be considered contrary to fair and sound administration”.

Therefore, the committee is substituting its judgment for that of the Ombudsman, which is not its role. There is no basis set out in its report for that conclusion. The reality is the committee’s report does not, under any circumstances, reflect the debate, analysis and clear contradictions in the position which Deputy Fahey sought to advance at that committee. On each suggested frailty, fault or error in the report the Deputy was found to be wrong. It is my view that because the committee has not found any errors in the report and there is no evidence before the committee which would justify the calling into question of the report and the recommendations, there is no basis for rejecting the report as the committee proposes.

I propose, therefore, that this House upholds the findings and recommendations of the Ombudsman. She has made the point in subsequent public comment in regard to the committee that it did not carry out a full analysis and its report does not reflect the findings of the committee. We are examining enlarging the powers of committees and the Joint Committee on the Constitution is examining this issue. If the work of the agriculture committee is an example of how committees function in the Houses, where the Whip is applied, in this case the Government Whip, to ensure an outcome, then no reform of committees can make them fulfil a meaningful role in the Oireachtas.

Senator Paul Bradford: I thank my colleague, Senator Regan, for bringing this very important motion before the House. He has taken a great interest in the matter and was a regular attender at the Joint Committee on Agriculture, Fisheries and Food when the report came before us for deliberation. It is not the first time this House has discussed the lost at sea scheme. Once again it is appropriate as we reflect on this report and the matters to which it pertains that we acknowledge the great tragedy suffered by the Byrne family in October 1981. That was almost

30 years ago but the tragedy and loss suffered by that family and others is enduring. We should remind ourselves of that sad fact.

It is 12 months since the Ombudsman presented her special report to the Oireachtas. The report has been the subject of much debate and a certain degree of division since its publication. We must acknowledge the fact that a special report by the Office of the Ombudsman is a rarity and this is only the second such report. When Dr. FitzGerald's Government put in place legislation in the 1980s to create the Office of the Ombudsman and the first position was taken up by Mr. Mills, we aspired to having an Ombudsman's office that would be a final recourse to the citizen when the State, through its various agencies, channels and Departments, did not give a fair hearing to such a citizen. Much good and useful work has been done and many very fine recommendations have been made by the Ombudsman's office down the years, but I stress that only two such special reports have been made. This is one of them.

The Ombudsman's findings and recommendations are clear. The office has ruled firmly in favour of the Byrne family and has highlighted serious concerns about the way in which the initial scheme of compensation was put in place. Serious allegations have been made about the application procedure and a recommendation was made that compensation of an unnamed amount be awarded to the Byrne family. We have to take this report with absolute sincerity and respond to it in a serious fashion. If, politically speaking, we decide it was a good idea to set up the Office of the Ombudsman and give the office extensive powers to investigate and make recommendations, as I believe everyone will agree it was, we cannot have it both ways. We cannot say the Office of the Ombudsman must be independent, impartial, powerful, given facilities to investigate and allowed to report, and then, should we decide to do so, simply ignore the reports. Unfortunately, that is what the Department and the Government is doing with this report.

We have had an extensive review of the report at the Joint Committee on Agriculture, Fisheries and Food. We interviewed a significant number of witnesses and met and interviewed the Ombudsman, Ms O'Reilly. Unfortunately, at the end of our deliberations, party politics took over and the Government used its majority on the Oireachtas committee to find against the Ombudsman. That was a disappointing intervention of party politics in what should have been a deliberately sensitive and important report.

Politics is at a very low ebb at present. As we know, our economy is in freefall, the public has lost a huge amount of confidence in the Government and, sadly, has also lost a huge amount of confidence in the political system and political parties. The way the Government has dismissed this report and used its majority on an Oireachtas committee to reject it adds profoundly to the cynicism in which politics is held. It also adds to the sense of despair the citizen would feel as to what assistance or recourse to intervention is available when the Government decides to shut down assistance and help as outlined in this report.

The way we respond to this motion is important in that sense. We must show clearly that, as a House of the Oireachtas, we are able to look at the bigger picture and at the impartial, non-political work done by the Office of the Ombudsman. We should be big enough to decide we would not cherry pick and say some of the Ombudsman's reports are okay because they do not contain political criticism but reports which contain a degree of political criticism and demand a higher standard of political accountability can be cast aside. That would be a very dangerous response by this House to what is not just a report by the Ombudsman but a special report laid before this House.

The motion puts before all of us a challenge to do the right thing politically. We must show each and every citizen of the State that an independent office such as the Ombudsman will be allowed to get on with its work, that politics will not have the final say and that party politics

[Senator Paul Bradford.]

will not be used to make the final decision. Unfortunately, party politics was used to make the final decision at the joint committee. I would hope that in this more reflective Chamber of the Oireachtas colleagues would be prepared to see the bigger picture, to examine the wider consequence of a decision to reject the Ombudsman's special report and to try to act in a proper fashion.

It was at the Oireachtas committee when the Minister of State's former ministerial colleague and now former Member, Mr. Jim McDaid, said there was something of a stink about the whole compensation scheme, the way it had been implemented and the way the Byrne family had been treated. That was the commentary from a former Minister on the Government side who, I presume, had done extensive investigations into the whole process which has brought us to where we are. Most fair-minded people would be deeply unhappy with the way the Byrne family was treated. Most people for whom the bigger picture rather than party politics is the primary concern would feel that, once the Office of the Ombudsman investigates, deliberates, considers and reports on a matter, we should have the capacity to implement her findings.

The Ombudsman's report is spectacularly clear in its findings and recommendations. There is a moral obligation on us, as part of our broader efforts to renew politics and renew faith and confidence in political life, to accept the Ombudsman's recommendations and findings and to respond accordingly. That is the challenge to Senators and to this important House of the Oireachtas. I appeal to my colleagues on the Government side to try to act in the broader national interest and the interest of returning to politics some degree of decency and respect for the independence of the Ombudsman's office.

Senator John Carty: I do not intend to speak on this motion for any length as I feel it has been adequately dealt with over many meetings of the Joint Committee on Agriculture, Fisheries and Food. There were many witnesses at those meetings, including Ministers, former Ministers and officials such as the Secretary General of the Department of Agriculture, Fisheries and Food, Mr. Tom Moran, and his predecessor, the former Secretary General, Mr. Tom Carroll, who was in position at the time and was a very credible witness. We also had the pleasure of Senator Regan attending our meetings and giving us his side of matters and very good legal advice as well. I compliment him on that because the advice came free and his profession does not usually give that kind of information for free.

On the best advice offered by those officials, we on the Government side voted not to accept the recommendations of the Ombudsman. I and every Member have tremendous sympathy for the Byrne family and their great loss, both personal and commercial. I say to those who tabled the motion that if we are to believe the polls, they may well be in Government sooner rather than later and it will be up to them to re-open this case and pay compensation as they see fit. Indeed, Senator Regan may well be the Attorney General, and I look forward to that.

Senator Paul Coghlan: I welcome the Minister of State, Deputy Connick, who has spoken on this issue before on behalf of the Department. I second the motion as proposed by Senator Eugene Regan. I do not have anything for or against anyone involved in this scheme. Although I do not see it as a conflict, I have in the past year or two become personally friendly with a member of the Byrne family. From what I know, I genuinely feel they have been wronged.

This matter is outstanding since 1981. I do not know whether the scheme was suspect but that belief has been hanging about and it was referred to again in the House today. If it were in any way suspect or tainted, that would be all the more reason to accept willingly the findings of the independent Ombudsman on this matter. The Ombudsman is above politics, is appointed by both Houses of the Oireachtas, and is a most neutral referee. I would assume there is no one

above her in that respect. Her office invested much time, energy and resources in examining this matter fully. As I understand it, the office found the scheme was designed to discriminate against the Byrne family, who it seems have been very badly wronged by the State. The Ombudsman found that the scheme was contrary to fair administration and that there was maladministration. The lack of advertising was referred to. I was not involved in any way in meetings of the Joint Committee on Agriculture, Fisheries and Food, which considered this matter. However, let us be honest and state that its eventual decision was made totally on party-political lines. The committee found no errors in the report. As has been said, the Ombudsman does not take lightly the task of issuing reports. The report in question is only the second special report of the Ombudsman. The recommendations therein are very clearly in favour of the Byrne family. We cannot simply ignore or cast aside the report.

The Office of the Ombudsman should be the final arbiter. As I understand it, that was envisaged when the office was set up. In cases such as this, the Ombudsman was to be the final arbiter. It behoves Members of the Oireachtas to accept graciously the findings and recommendations in the report, which are totally clear.

I plead with the Government, at this late hour, bearing in mind that this matter was discussed before, not only to do the right thing but to do the honourable thing. There must be a way, even at this late stage, to deal with the matter properly and correctly. I have no doubt the Minister of State is a very fair-minded individual, as befits his office. I urge him to have this wrong righted, even at this stage.

Senator Ned O'Sullivan: I move amendment No. 1:

To delete all words after "Seanad Éireann" and substitute the following:

"notes:

- the lengthy and detailed consideration of the Ombudsman's special report on the lost at sea scheme by the Joint Committee on Agriculture, Fisheries and Food;
- the views of the joint committee, as set out in paragraph 5 of the committee's report; and

notes and accepts:

- the decision and recommendations of the Joint Committee, as set out in paragraph 6 of the committee's report."

I am very well acquainted with this story because I have spoken on it on a number of occasions in the House and at meetings of the Joint Committee on Agriculture, Fisheries and Food, although I am not a member of that committee. As Senator Carty pointed out, the matter has been debated comprehensively in this House and the lower House. It may be counterproductive to discuss it during Private Members' time at this stage.

Everybody in this House has the deepest sympathy for the Byrne family of Donegal on its loss. Everybody would like to see it receive compensation and a vehicle put in place that would allow it to draw it down. Having said that, I reject outright the comments of Senator Regan to the effect that the lost at sea scheme was devised by a Minister in such a way as to benefit a small number of his constituents, to the disadvantage of everybody else. That has been rejected and it is most unfair to the former Minister, Deputy Fahey, to keep trotting out this charge against him.

Senator Eugene Regan: It is in the Ombudsman's report.

Senator Ned O’Sullivan: I am coming to that report. I have studied it very closely. The Ombudsman is a very important and respected official in this State. However, as I stated before, that does not make her infallible. The Ombudsman can be wrong and I believe that, in this report, she is badly wrong. I am entitled to say that. She was badly wrong in the report she issued recently on the health issue. Anybody who listened to the Minister for Health and Children, Deputy Harney, during a television debate at the time in question will have heard that report soundly rebuffed. Everybody would have to concede that. Let us be clear that we are not talking about angels; we are all human and all can err. The Ombudsman has erred in her report. This is my view and I am entitled to it.

The lost at sea scheme was devised to help people with business problems on foot of tragedies at sea and to get those businesses back into operation. It was not about compensation *per se*. There had to be a cut-off date. Senator Regan, being a legal man, will know that a cut-off date must be honoured. If it is not honoured, it opens up every scheme introduced or to be introduced by a Government to *post hoc* appeals. In such circumstances, late applicants could ask that a scheme be reopened.

Senator Eugene Regan: It did not apply to the ministerial pension of Deputy Fahey.

Senator Ned O’Sullivan: I did not interfere with or interrupt Senator Regan and I demand the same respect.

Acting Chairman (Senator Denis O’Donovan): Senator O’Sullivan has the floor.

Senator Ned O’Sullivan: The joint committee studied this matter in great detail and witnesses of the highest integrity and calibre were invited to appear before it. The committee decided, by majority, to reject the report. Now we are saying it is politicised. It takes two to tango in politics. If all the Fine Gael members vote one way and all the Fianna Fáil members vote the other, is it because Fianna Fáil or Fine Gael has politicised the matter? Is it the result of the system we have?

With regard to politicisation, I vaguely recall a difference of opinion between a former Ombudsman, Mr. Michael Mills, and the then Taoiseach, Mr. Charles J. Haughey, over a certain matter. The outcome was that Mr. Mills was reappointed. The contretemps was dealt with in a much more low-key fashion than the one pertaining to the lost at sea scheme, which has become a big political football.

We must be careful. The Ombudsman has responsibilities. We have received two controversial reports from her. She, like ourselves, is trying to do the best she can for people. I concede immediately that she has done tremendous work for people, both individuals and the community at large. Anyone in politics will know that. When I was a county councillor, I had recourse to her office on one occasion as a last resort and found her approach to be professional and excellent.

I am not happy this issue should be politicised further. I am not happy Deputy Fahey’s name should continue to be vilified when he has been cleared in every right-thinking person’s mind.

Senator John Paul Phelan: He has not.

Senator Eugene Regan: Distortion.

Senator Ned O’Sullivan: Considering that we are talking about politics, it has been reported in the media that the Ombudsman may have a political future after she leaves office. I am stating a fact. Perhaps the Ombudsman will want to clarify that position now——

Senator Eugene Regan: Is the Senator attacking the Ombudsman now? Are we dealing with the report or the Ombudsman?

Senator Ned O'Sullivan: That is the third time the Senator interrupted me.

All these difficulties will be exacerbated if there is a political dimension to them, or a suspected political dimension. The same applied to Mr. George Lee when he was targeting the Government for months in advance of his becoming a Fine Gael candidate, which the dogs on the street knew would occur. When he became a candidate, he had his job well done. I am not saying the Ombudsman is in that position but she might do well to clarify her position on foot of speculation about her political future.

Senator John Paul Phelan: That is shocking politicisation of the Office of the Ombudsman.

Senator Ned O'Sullivan: It would help this debate and be of service to her office.

Senator John Paul Phelan: She was appointed by Mr. Charlie McCreevy.

Senator Ned O'Sullivan: It would be of service to the body politic.

Senator John Paul Phelan: Under the Standing Orders of the House, that comment should not be allowed to stay on the record. Senator O'Sullivan just made a political charge against the Office of the Ombudsman. I like Senator O'Sullivan and get on well with him but believe his speech was absolutely shocking. I could not disagree more with it.

I welcome the Minister of State, Deputy Connick, my neighbour.

The Ombudsman's report and the subsequent debate at meetings of the joint committee outlined fundamental flaws in our current political system. Senator O'Sullivan praised the work done by the Ombudsman, yet a very detailed report produced on the lost at sea scheme, which identified significant errors in the way the Byrne family was dealt with, was completely ignored by the Oireachtas owing to a party-political vote on foot of the whip being used at a meeting of the Joint Committee on Agriculture, Fisheries and Food. I reject absolutely the notion that the Ombudsman is adopting her position for political purposes, as mentioned by Senator O'Sullivan. Her role is very important and significant within the overall political system. The Ombudsman examined the facts as they were presented and, contrary to what Senator O'Sullivan stated, her contention in the report that the scheme was improperly advertised was upheld by the Joint Committee on Agriculture, Fisheries and Food. One of the most fundamental aspects of her report was upheld by the committee. Far from being the issue relating to Deputy Fahey's role being discharged, the position remains somewhat clouded.

Other than having read the report and observed some of what occurred at the Joint Committee on Agriculture, Fisheries and Food, I do not know a great deal about this matter. It seems patently obvious, however, that the former Minister of State, Deputy Fahey, used the lost at sea scheme to sort out a couple of his constituents. The bottom line is that almost 30 years ago a man and his son drowned following an accident off the coast of County Donegal and the Byrne family has suffered a great deal in the intervening period. In politicising this matter and voting down or not accepting the Ombudsman's recommendations at the Joint Committee on Agriculture, Fisheries and Food, the Government has brought all of us into disrepute. The Byrne family has suffered enough.

There were two elements to the Ombudsman's report, namely, findings and recommendations. If the Government is serious about the maintaining the functions of the Office of the Ombudsman, it must reappraise how it deals with reports that are produced by that office.

[Senator John Paul Phelan.]

We either have an independent Ombudsman or we do not. If, for whatever reason, the majority party, and perhaps the minority party, in government does not agree with the Ombudsman, there is no point in accusing her of being affiliated to Fine Gael or stating, as Senator O'Sullivan did, that she has political aspirations.

Senator Ned O'Sullivan: I never mentioned Fine Gael.

Senator John Paul Phelan: The Senator compared her directly to Mr. George Lee.

Senator Ned O'Sullivan: There appears to have been a Freudian slip on Senator Phelan's part because I did not refer to Fine Gael.

Senator John Paul Phelan: Senator O'Sullivan also stated that it was reported in the media that the Ombudsman has political aspirations. His comments are beneath contempt and he should not have made them. The Ombudsman has fulfilled her role in an admirable way. Even though the Government has ignored her report, she has remained in her position.

This is the second report to be produced by the Office of the Ombudsman and laid before the Oireachtas. I understand the previous report, which related to a matter involving Revenue, received a better reception from the Government. I cannot understand how the Government can stand over the Ombudsman remaining in her position if it is going to ignore the recommendations contained in a report she has produced. The Ombudsman was appointed to her position by the then Minister for Finance, Mr. Charlie McCreevy, who was a member of a Fianna Fáil-Progressive Democrats Government. The Ombudsman has done her job very well but her report is being ignored.

The comments from the Ombudsman following the decision of the Joint Committee on Agriculture, Fisheries and Food not to support her report are quite damning. She stated that in this instance the Government was allowed to be the judge in its own case. That is what happened. The Government colleagues of the former Minister of State, Deputy Fahey, voted at the Joint Committee on Agriculture, Fisheries and Food to exonerate him when a cold examination of the facts quite clearly indicates he should not have been exonerated. There was something very wrong with the way the lost at scheme was operated within the Department.

The independent person who was appointed to protect the rights of citizens, regardless of whether that person has any political affiliations, produced a report with the assistance of her staff. That report clearly indicated there was something wrong with the relevant scheme, and because Government members on a committee of these Houses then voted it down, we are supposed to leave the matter at that.

In the context of suggestions that this is a political attack on Deputy Fahey, if he had not taken the relevant decisions in respect of the scheme in question, no one would be attacking him. Even former Members of the Lower House, such as Dr. Jim McDaid, have admitted that there was something wrong with the way the scheme was implemented.

Senator Eugene Regan: Deputy Bertie Ahern also made such an admission.

Senator John Paul Phelan: I was not aware of that fact but Dr. McDaid certainly indicated there was something significantly wrong with the way the scheme was operated. Surely it is time to acknowledge the suffering the Byrne family have endured. It is also time for the Government to accept that something went awry in the administration of this scheme. To restore some credibility to the relationship between the Government, the institutions of the

State and the Office of the Ombudsman, we should not fly in the face of the findings and recommendations of a detailed and carefully considered report. As stated and as far as I am aware, the report is only the second of its kind to be laid before the Houses by the Ombudsman. Perhaps the Minister of State, Deputy Connick, might indicate that the Government is undergoing a change of heart in respect of this issue.

Senator Niall Ó Brolcháin: I welcome the Minister of State. The debate on this matter relates to the fact that the *MFV Skiffjord* sank in October 1981 and that five people, Mr. Francis Byrne, his 16 year old son, Jimmy, and three other crew members died. Mr. Byrne left behind a widow, five sons and three daughters. Where is the humanity in this debate? The debate has become a political football that is being kicked around, principally by Fine Gael and Fianna Fáil. This matter should have been settled before the moving of the motion. I do not believe the debate in which we are engaging will lead to it being settled.

Will the Minister of State ensure the matter in question is dealt with, especially in view of the fact that Mr. Byrne's widow has been obliged to live with her grief for 29 years? For almost ten years, issues relating to it have been raging back and forward. The Ombudsman produced a 105-page document in which a clear recommendation is made. To a large extent, I appreciate Fine Gael's position in respect of this matter. I share the view of a previous speaker, however, that the party is, unfortunately, using it as a political football.

The Ombudsman has made it absolutely clear there was maladministration involved in the lost at sea scheme. One can dress it up whatever way one likes but maladministration involves a lack of integrity and, therefore, corruption. This was not a good scheme. In fact, it was an appalling scheme.

Like previous speakers, I do not wish to revisit the entire matter. I wish to place on record, however, a view expressed by the Department on 10 November 2000. I refer to a letter which states that the skippers, Mr. Faherty and Mr. Mullen, of the *MFV Joan Patricia* and the *MFV Spes Nova*, both of which were lost at sea, be informed that, regrettably, it is not possible to accept the capacities of their vessels as replacement capacities. Speakers on the Opposition side referred to these two vessels in the context of the 75% of tonnage allocated under the scheme going to the Galway West constituency. The letter to which I refer states that the overriding problem in respect of accepting the two vessels for the scheme is where it would stop. That is precisely the same language with regard to the Byrne family's vessel, the *MFV Skiffjord*. Having attended all the meetings of the relevant committee, I am of the view it is imperative for the political system to ensure the Byrne family are dealt with in a fair and equitable manner.

The integrity of the Ombudsman is at question in this. That is my principal concern and not all the political nonsense that has surrounded this issue. The political system has failed the Byrne family and I and my party believe this matter must be dealt with. It absolutely will not be dealt with by means of a vote on the motion. I regret that the matter is being used to drive a wedge between the Government parties. It is clear where my party stands. Deputy Sargent, in a letter to the Joint Committee on Agriculture, Fisheries and Food, asked on behalf of my party to ensure that this issue was dealt with at the committee. It happened that there were the various different reports at the committee. We examined it in detail. I was of the view, which I expressed quite clearly at the committee even though I am not a member of it and did not have a vote on it, that we should come to a conclusion on this and that the issue in this report should be dealt with fairly and equitably.

[Senator Niall Ó Brolcháin.]

I agree with the views opposite that the integrity of the Ombudsman is not in question here. That is not the issue. As Members have said, the Ombudsman has submitted her report. I quote from her media release:

While the Department is free in law to reject the Ombudsman's recommendations, this is only the second time in the twenty-five year history of the Office that this has happened. The first occasion was in 2002 in a case involving the Revenue Commissioners, which, with the assistance of the Oireachtas, was ultimately resolved to the then Ombudsman's satisfaction.

On behalf of the Green Party, I met Ms Emily O'Reilly and she suggested that we would bring it to the Joint Committee on Agriculture, Fisheries and Food. That has happened but, unfortunately, the matter did not end there. It should have ended there.

I ask the Minister to take on board what I am saying, that this should end after tonight and that the Government of which the Green Party is part would come to a conclusion of this issue. It is vital that the political system is seen to work and that the integrity of the Office of the Ombudsman is upheld.

I will not vote against the motion as put forward by the Opposition, but at the same time I feel it is being used as a political football here and I regret that. I really wish that accommodation had been found at the level of the Joint Committee on Agriculture, Fisheries and Food because that is what the committees are for.

I cannot plead often enough that accommodation is found for this matter, that we bring it to a conclusion honestly in memory of Mr. Francis Byrne, his son and the other members of the crew, and that we bring closure to this on behalf of the Byrne family. We are in a difficult financial position at present. This will not make or break the Government. We need to find a conclusion and we need to bring closure. That is what I ask the Minister of State, Deputy Connick, to do.

Senator Paschal Mooney: I welcome the Minister of State, Deputy Connick.

In all of this, as has been touched on, is the sad fact that people lost their lives in the seafaring tragedy in the early 1980s. I note that has not been lost in all of the discussion and debate that has surrounded this controversial issue.

I also regret that I agree with the view that this has become now a political football. While I have the greatest of respect for the legal expertise and motivation of Senator Regan, since I returned to this House I note that it has been his consistent position to seek out what he believes to be low standards in high places, specifically if it is directed at this Fianna Fáil-Green administration. He is right and proper in calling political parties in Government to account. I have no quibble with that whatsoever. However, it seems on occasion — with respect, it is a little like the boy who cried wolf — that if one keeps shouting loud enough and often enough, either people will stop listening to you or, alternatively, if one fires enough mud, some of it might stick.

I restate that I have the greatest of sympathy for the family involved and the trauma that they have been going through over such a long period. In this issue, which it seemed on the face of it had been resolved and which, as Senator Ó Brolcháin stated, is still in the public domain, there is the continuing trauma that the family must be experiencing and the level of

expectation that they must have each time this issue comes up that now, maybe this time, it will be resolved.

The scheme, when it was introduced, was not about money; it was about tonnage. Second, the charge has been repeatedly made against the former Minister, Deputy Fahey, by Senator Regan and others that he was somehow acting corruptly, incorrectly, and was in a favoured position to favour political supporters of his in Galway. These are serious charges. They are political charges and therefore quite legitimate, but they are serious nonetheless, and they have been rebutted repeatedly. Also, there is the question of where would the advantage have been. The scheme was not about money. Also, Department officials consistently rejected the view that the family were to be compensated.

Irrespective of who is in the job, the Ombudsman is a well-respected position and its integrity is rarely, if ever, questioned. It is the destination of last resort. For those who are desperate having, in their eyes, tried and had their application to the system rejected, this is the way forward and the Ombudsman is the last resort.

Despite the fact — Senator Ó Broilcháin referred to it, we read about it and the Ombudsman herself has said it — that there were only two instances over the past number of years where recommendations were turned down, the fact is there is nothing inherently wrong with the Ombudsman's recommendations being turned down but the impression given is that, because the Ombudsman stated that it was so, it must be so. In all of this, I and many others wish this issue had been resolved, and I thought it had been through the committee.

I leave the House with this thought. I wish Senator Regan well. He will be a member of a party that will form the next Government and I and others will await with great interest how he will address this long-running controversy when he is in a position in Government to see all the files. I am sure he has seen them already. I am sure that the system has been open and transparent because it has been debated so long and so often. It will be interesting to see ultimately what decision will be taken collectively by a Fine Gael-led Government on this issue. I finish as I started, wishing that there was some way that this family could be compensated for the loss with which they will continue to live long after this has gone out of the political debate.

Minister of State at the Department of Agriculture, Fisheries and Food (Deputy Seán Connick): At the outset I too express my deepest sympathies to the Byrne family, who have been to the forefront of the minds of all, regardless of party politics, in this difficult case and issue.

I welcome this opportunity to contribute to the debate on the Ombudsman's special report on the lost at sea scheme. This issue has been extensively debated, both in this House and in the Dáil, as well as having been thoroughly analysed and considered by the Joint Committee on Agriculture, Fisheries and Food. Indeed, I contributed to the debate in this House in March and I was also one of a number of witnesses who appeared before the joint committee during its consideration of the Ombudsman's report.

In the course of my contribution to the joint committee, I had been following the proceedings of the committee with great interest and I have read the committee's report and, in particular, noted and agree with its conclusions and recommendations. The committee is to be commended for the diligent manner in which it went about its work over the course of a number of meetings, to which a number of relevant witnesses were invited, including the Ombudsman herself.

When appearing before the committee in June, I stated I did not propose to cover all the ground already covered by previous witnesses, and I do not intend to traverse that ground

[Deputy Seán Connick.]

today. However, there are a few important points I want to make about the process which has, ultimately, led to today's debate.

I want to pick up Senator John Phelan on the fact that he mentioned that we ignored the report. Nothing could be further from the truth. From my appointment on 23 March, this is one of the first issues I had to deal with in my new ministry. I read the report extensively, along with thousands of other pieces of paper and documents. I spent many hours with my officials debating the pros and cons of this case. I have spent a great deal of time on this matter, preparing for either the debates here or my appearance before the Oireachtas committee, and it is wrong to say the report was ignored.

When the Ombudsman published her special report on 14 December last, she invited the Houses of the Oireachtas "to consider my report and to take whatever action they deem appropriate in the circumstances." She also acknowledged that her findings were not binding on the Department and that it was free in law to reject her recommendations. Its response to her recommendations has been articulated on several occasions — in this House and the Dáil by me and my predecessor, Deputy Killeen, and by senior officials of both my Department and the former Department of the Marine, including my Department's Secretary General, during their dealings with the joint committee and in correspondence with the Ombudsman's office.

Having been invited to consider the Ombudsman's special report, the Dáil and the Seanad considered the report in February. In the course of the Dáil debate there were calls for the report to be referred to the Joint Committee on Agriculture, Fisheries and Food. The Taoiseach confirmed to the Dáil that he had "no difficulty with the relevant committee dealing with any of these matters" and went on to say, "If the Ombudsman wants to come before that committee in order to discuss the matter, that is fine." During Private Members' time in this House there was a further extensive debate on the report.

At its meeting on 31 March the joint committee decided to consider the Ombudsman's special report and report to both Houses of the Oireachtas thereon. The committee held a series of five meetings with relevant witnesses between 21 April and 16 June. At the conclusion of these meetings, it wrote both to the Ombudsman and the Secretary General of my Department and asked that they engage in dialogue with a view to reaching a compromise. In response to this request the Ombudsman's office and the Department discussed the possibility of finding a compromise. However, as the committee concluded, "The respective positions of the Office of the Ombudsman and the Department of Agriculture, Fisheries and Food, as articulated before the Committee, are irreconcilable". The respective positions of the Ombudsman and my Department are set out in the committee's report and, as acknowledged in the report, "both parties have been consistent in their stance".

In this regard, it is worth recalling the Department's position which was based on a careful examination of all aspects of the matter and legal advice sought and taken. It is that the scheme was properly devised; that its terms and conditions were clear; that it was properly advertised in a targeted way to its target audience, namely, the fishing industry and related coastal communities, and in accordance with custom and practice for fishery-related schemes at the time; that it was scrupulously fairly administered, as the Ombudsman has acknowledged; that the application in this case was properly refused in the first instance as it was more than one year late for a scheme which ran for only six months; that there was no compelling case the applicants should receive any award under or on foot of the scheme; that there was no basis for the payment of compensation in this case, in the amount recommended by the Ombudsman or any amount; that there was a risk of undermining the administration of the wide range of schemes

and programmes operated by the Department, all of which had strict terms and conditions, as well as many other administrative schemes across government that had application deadlines, terms and conditions. The Department's concerns are supported by the specific legal advice obtained. It is for these specific reasons that the Department has disagreed with the Ombudsman's finding and the recommendation for payment of compensation. As I have mentioned, the Department's view is supported by the specific legal advice available to it.

There is a genuinely held view that the Ombudsman's recommendation in this case could give rise to major financial liabilities arising from claims from other unsuccessful applications under the lost at sea scheme that may well undermine other departmental and public service schemes. My Department's position in this regard was addressed extensively during the joint committee's consideration and the basis for my Department's concerns about the potential precedent that might be set for other schemes was clearly articulated on that occasion. I am satisfied that it is clear from the information provided for the Ombudsman, the Dáil, this House and the Oireachtas joint committee, supported by the Department's files, that the scheme was carefully developed and fairly administered. I commended the committee for its work. It has performed a very useful function in teasing out the various issues and by providing a public forum in which such issues of public interest can be debated.

As this was only the second occasion on which the Ombudsman had published a special report, there was no prescribed procedure by which such reports should be considered. The Ombudsman's Act 1980 is entirely silent on what, if anything, the Houses of the Oireachtas should do with any special report laid before each House. In this regard, I agree with the joint committee's view that "the process for consideration of such reports should be clearly set out" and note that it has "agreed to recommend to the Committees on Procedure and Privileges of both Houses that Standing Orders should be amended to provide that future special reports of the Ombudsman should be considered by the relevant Oireachtas committee on a specific referral motion by the House or Houses concerned".

On the subject of advertising schemes, I accept the recommendation of the joint committee that "all future administrative schemes should be advertised in the national newspapers". I also welcome the committee's conclusion that it is "not persuaded by the Ombudsman's views in relation to the design of the scheme" and, consequently, that "the Committee is not in a position to recommend acceptance of the Ombudsman's special report to the Houses of the Oireachtas". I commend the Government's counter motion to the House.

Senator Eugene Regan: I thank the Minister of State for outlining his position. He adopted this position when he addressed the joint committee in June, when he stated, "I am confident that a fair and objective examination by the committee of all the written and oral evidence placed before it over the past two months will show that the Department's position is both fair and reasonable." As I pointed out to him at the time, while he had suggested he welcomed the outcome of the committee's deliberations and looked forward to reading its report, he had already decided that he was not going to entertain the Ombudsman's report.

A charge has been laid against me in raising this issue. I am not making this up; I am quoting essentially from the Ombudsman's report. The Ombudsman is an independent officer in an independent office which has analysed and investigated an issue brought to her attention. She has followed fair procedures in acquiring the necessary information and coming to a considered view. I am on good ground in raising the issue of the Ombudsman's report and asking why the report should be dismissed out of hand by the Government.

[Senator Eugene Regan.]

Senator O’Sullivan made a political attack on the Office of the Ombudsman, which is a disgrace. It proves that there is an agenda being followed by the Government to undermine the Ombudsman because she has seen fit to point to a scheme designed by a former Minister which was flawed, unfair, unreasonable and constituted maladministration. This is what has got up the noses of members of the Government and why, as in all cases, they defend their own.

Senator Ó Brolcháin has stated this issue has been turned into a political football. It is a political issue. As the Green Party is very much involved in the Government, it cannot dissociate itself from what is happening and the way in which the Ombudsman’s report has been dealt with. This is unfinished business and one cannot simply state it is a political football. Fine Gael is raising a legitimate issue — the Ombudsman in an independent report has made findings and recommendations on fair and reasonable grounds and not one iota of the facts or interpretation or the views expressed by her has been found to have been made in error by the committee. In fact, the committee endorsed her fundamental finding that the scheme had not been properly advertised, yet it failed to draw the logical conclusion to concur with the Ombudsman that it was unfair and an example of poor administration.

Recently, the Ombudsman stated:

In its published decision on the Lost at Sea Special Report the [Joint] Committee [on Agriculture, Fisheries and Food] said it accepted that the way the Lost at Sea Scheme was advertised “...was not adequate, but not to the extent that it could be considered contrary to fair and sound administration...”. The Committee went on to conclude that it “...is not persuaded by the Ombudsman’s views in relation to the design of the scheme.” In effect, the Committee has substituted its own judgement for the Ombudsman’s; its report contains no further analysis or stated rationale for the foregoing conclusions. Indeed, its entire analysis runs to a single paragraph. It appears to the Ombudsman that the Committee has taken a view based, not on an objective and critical analysis of the report, but on the basis of the party whip system. This does not constitute a rational and objective engagement on the particular case.

That is the problem with the work of the committee. It has, effectively, ignored the analysis, the debate and the findings and drawn a conclusion which is consistent with Fianna Fáil policy. At least the Minister of State has been straight about the situation. The Government was never going to accept this report but was going to support the Minister of State’s colleague Deputy Fahey, come what may, as has always been done in the past. Whether it was Charlie Haughey, Bertie Ahern or Willie O’Dea, Fianna Fáil supported its own. That is where the problem arises.

Deputy Seán Connick: That is not the case.

Senator Eugene Regan: I expected more from the Green Party, although I know it is committed to supporting the Government in matters financial. This is a fundamental issue of principle and I ask the Government to reconsider its position. It is a political issue that can only be resolved by the politicians in this House.

Amendment put.

Senators: Vótáil.

An Cathaoirleach: A division has been claimed on the question: “That the amendment be made.” Tellers Tá are Senators Diarmuid Wilson and Niall Ó Brolcháin; tellers Níl are Senators Maurice Cummins and Eugene Regan.

The Seanad divided by electronic means.

An Cathaoirleach: I announced the incorrect tellers on the Government side. Tellers Tá were Senators Diarmuid Wilson and John Carty; tellers Níl were Senators Maurice Cummins and Eugene Regan. Does anyone object?

Senators: No.

Senator Frances Fitzgerald: Who is missing?

Senator Ivana Bacik: Is it possible to change the tellers after they have been announced?

An Cathaoirleach: I received the agreement of the House. Senators did not have a problem with the change.

Senator Dominic Hannigan: I ask for a clarification for future reference because a similar incident occurred several weeks ago.

An Cathaoirleach: I can put the question again.

Senator John Carty: I propose we have a manual vote.

Amendment put.

The Seanad divided: Tá, 26; Níl, 19.

Tá

Boyle, Dan.	Leyden, Terry.
Brady, Martin.	MacSharry, Marc.
Butler, Larry.	McDonald, Lisa.
Callely, Ivor.	Mooney, Paschal.
Carroll, James.	Ó Domhnaill, Brian.
Carty, John.	Ó Murchú, Labhrás.
Cassidy, Donie.	O'Brien, Francis.
Corrigan, Maria.	O'Donovan, Denis.
Daly, Mark.	O'Malley, Fiona.
Dearey, Mark.	O'Sullivan, Ned.
Ellis, John.	Ormonde, Ann.
Feeney, Geraldine.	Walsh, Jim.
Hanafin, John.	Wilson, Diarmuid.

Níl

Bacik, Ivana.	Hannigan, Dominic.
Bradford, Paul.	Healy Eames, Fidelma.
Burke, Paddy.	McFadden, Nicky.
Buttimer, Jerry.	O'Reilly, Joe.
Cannon, Ciaran.	O'Toole, Joe.
Coffey, Paudie.	Phelan, John Paul.
Coghlan, Paul.	Regan, Eugene.
Cummins, Maurice.	Twomey, Liam.
Donohoe, Paschal.	White, Alex.
Fitzgerald, Frances.	

Tellers: Tá, Senators Diarmuid Wilson and John Carty; Níl, Senators Maurice Cummins and Eugene Regan.

Amendment declared carried.

Amendment put.

The Seanad divided: Tá, 27; Níl, 21.

Tá

Boyle, Dan.
Brady, Martin.
Butler, Larry.
Callely, Ivor.
Carroll, James.
Carty, John.
Cassidy, Donie.
Corrigan, Maria.
Daly, Mark.
Dearey, Mark.
Ellis, John.
Feeney, Geraldine.
Glynn, Camillus.
Hanafin, John.

Leyden, Terry.
MacSharry, Marc.
McDonald, Lisa.
Mooney, Paschal.
O'Brien, Francis.
O'Donovan, Denis.
O'Malley, Fiona.
O'Sullivan, Ned.
Ó Domhnaill, Brian.
Ó Murchú, Labhrás.
Ormonde, Ann.
Walsh, Jim.
Wilson, Diarmuid.

Níl

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.
Fitzgerald, Frances.
Hannigan, Dominic.

Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
O'Reilly, Joe.
O'Toole, Joe.
Phelan, John Paul.
Regan, Eugene.
Ryan, Brendan.
Twomey, Liam.
White, Alex.

Tellers: Tá, Senators John Carty and Diarmuid Wilson; Níl, Senators Maurice Cummins and Eugene Regan

Amendment declared carried.

Sitting suspended at 6.45 p.m. and resumed at 7 p.m.

Prevention of Corruption (Amendment) Bill 2008: Report and Final Stages

An Cathaoirleach: Before commencing I remind Members that a Senator may speak only once on Report Stage, except the proposer of the amendment, who may reply to the discussion on the amendment. On Report Stage each amendment must be seconded. Amendment No. 1 arises from Committee proceedings and amendment No. 2 is related; the amendments may be discussed together by agreement of the House. Is that agreed? Agreed.

Senator Ivana Bacik: I move amendment No. 1:

In page 5, line 21, after “opinion” to insert “or suspicion”.

We had a full debate on these amendments on Committee Stage and I do not propose to go back over all of it. We have a different Minister of State in the House — he is welcome — and I should mention that the aim of these two amendments is to widen the protection to whistle-blowers and encourage potential whistle-blowers to make disclosures in the public interest in good faith. Currently the Minister has included just the word “opinion”, and whistle-blowers

would be protected against liability where they inform or disclose an opinion that an offence has been or is being committed.

I am grateful to the Minister for Justice and Law Reform because he accepted two other amendments on Committee Stage which will also significantly widen the protection for whistleblowers. That will cover an offence which may have been or may be being committed, which is a great improvement on the language in the original Bill. Opinion should not be left as bare opinion because that places the bar too high for the whistleblower, and it would require that a whistleblower would form an opinion. A potential whistleblower may have something which he or she regards as no more than a mere suspicion but if it is genuine and made in good faith, we believe the person should be protected from liability where there is disclosure. There is also the provision that such people will not be protected where they make a disclosure knowing it to be false, misleading, frivolous, vexatious or reckless in that regard. There is already a protection against any misleading or frivolous allegations.

It seems that “opinion” is setting the bar too high and it is not the same as “suspicion”. We had a long debate earlier about the meaning of the two words and I am grateful to Senator Regan for his support for the amendment. Senator Regan and I are right in arguing that “opinion” is not the same as “suspicion”, as an opinion is more than a suspicion. We agree that an opinion includes a suspicion and may be formed on the basis of a suspicion but it requires more than a suspicion to form an opinion. This may sound like semantics but we want to ensure that those who believe they should make a disclosure in the public interest in good faith are not discouraged from doing so because they believe that what they have is no more than a suspicion and they do not have enough to have a full opinion.

Inserting “opinion or suspicion” would create an atmosphere and context that is more encouraging to potential whistleblowers. We have already had a full debate on the value of whistleblowing and the enormous importance of the deed in a range of areas from institutional sexual abuse to banking and medical malpractice to corruption in the planning process. I will not go back over that ground but the Minister for Justice and Law Reform indicated earlier that he would consider the argument made by Senator Regan and me before coming back to us with a view on whether “opinion” could be broadened to “opinion or suspicion”. I hope the Minister of State has good news for us and I would be very grateful if he considered accepting these two amendments, which strengthen the protection for whistleblowers afforded by section 4.

Senator Eugene Regan: I second the amendment. I made my arguments earlier and it may be a question of the period of reflection which the Minister has had that determines if he is minded to accept the amendments at this stage.

Minister of State at the Departments of Health and Children, Education and Skills, Enterprise, Trade and Innovation and Justice and Law Reform (Deputy John Moloney): I wish I was the bearer of good news. The Minister gave a commitment to reflect and consult with the Attorney General. I apologise to the House as the Minister could not be here but on his behalf I thank Senators for their contribution to the debate on this amendment on Committee Stage earlier today. It was an interesting and useful discussion which contributed greatly to clarifying some matters.

The Minister admitted there is a certain difficult balance to be reached in encouraging whistleblowers in good faith including, as Senator Bacik mentioned, those who are young and possibly vulnerable. The Minister appreciates that for those people in particular it takes a great deal of courage to come forward to act as whistleblowers. For that reason the Minister, Deputy

[Deputy John Moloney.]

Dermot Ahern, accepted on Committee Stage the amendments which made it clear the protections under section 8A encompass offences which may have been or may be being committed.

With regard to amendments Nos. 1 and 2, the Minister promised this morning to give further consideration, as mentioned by Senators Bacik and Regan, to include the words “or suspicion” that an offence is being committed. This would amend the current term, which provides protection in respect of those communicating their “opinion” that an offence under the Corruption Act has taken place.

Senators will be aware that the Minister considered these amendments previously in the Dáil and did not accept them on the basis that the extended wording would broaden the existing meaning of the provision. The Minister reverted to the Attorney General on the matter and the query over lunch resulted in a mini-conference on the issue. The advice received was that “opinion” encompasses suspicion and to include “or suspicion” could cast doubt on the meaning of both terms as it becomes necessary to differentiate between them. This could result in it being difficult to decide when the protections are to apply. In light of the advice the Minister is of the view that we cannot accept the amendments.

The Minister accepted the Senator’s amendment on Committee Stage making it clear that the whistleblower may report an opinion that an offence may have been or may be being committed. The Minister has taken the advice of the Attorney General and is sticking to the original wording.

Senator Ivana Bacik: I am grateful to the Minister of State for giving a full response. I am also glad the Minister has consulted further and impressed that a mini-conference with the Attorney General was held at lunchtime. I still contend, however, that opinion is not the same as suspicion because while an opinion may encompass suspicion, it amounts to more than a suspicion. The requirement to have more than a mere suspicion may have an off-putting effect on potential whistleblowers. The use of the words “opinion” and “suspicion” would not create confusion. The Bill contains examples of the use of several words with slightly different meanings — for example, the words “false”, “misleading”, “frivolous” and “vexatious” — to convey a more nuanced meaning. While I am pleased to learn that the Minister has consulted, as promised, and appreciate his decision to do so, I propose to press the amendment.

Amendment put.

The Seanad divided: Tá, 18; Níl, 28.

Tá

Bacik, Ivana.
Bradford, Paul.
Burke, Paddy.
Buttimer, Jerry.
Cannon, Ciaran.
Coffey, Paudie.
Coghlan, Paul.
Cummins, Maurice.
Donohoe, Paschal.

Hannigan, Dominic.
Healy Eames, Fidelma.
McFadden, Nicky.
Mullen, Rónán.
O’Reilly, Joe.
Phelan, John Paul.
Regan, Eugene.
Ryan, Brendan.
White, Alex.

Níl

Boyle, Dan.
Brady, Martin.
Butler, Larry.

Callely, Ivor.
Carroll, James.
Carty, John.

Níl—*continued*

Cassidy, Donie.
 Corrigan, Maria.
 Daly, Mark.
 Dearey, Mark.
 Ellis, John.
 Feeney, Geraldine.
 Glynn, Camillus.
 Hanafin, John.
 Keaveney, Cecilia.
 Leyden, Terry.
 MacSharry, Marc.

McDonald, Lisa.
 Mooney, Paschal.
 Ó Brolcháin, Niall.
 Ó Murchú, Labhrás.
 O'Brien, Francis.
 O'Donovan, Denis.
 O'Malley, Fiona.
 O'Sullivan, Ned.
 Ormonde, Ann.
 Walsh, Jim.
 Wilson, Diarmuid.

Tellers: Tá, Senators Ivana Bacik and Eugene Regan; Níl, Senators Diarmuid Wilson and Niall Ó Brolcháin.

Amendment declared lost.

Senator Ivana Bacik: I move amendment No. 2:

In page 6, line 9, after “opinion” to insert “or suspicion”.

Senator Brendan Ryan: I second the amendment.

Amendment put and declared lost.

Senator Rónán Mullen: I move amendment No. 3:

In page 14, line 12, after “contravened” to insert the following:

“, or in any action in damages of the kind specified in section 8A(1)”.

Section 3(7) of the Schedule provides that: “In proceedings under this Schedule before a rights commissioner or the Labour Court in relation to a complaint that section 8A(5) has been contravened, it shall be presumed, until the contrary is proved, that the employee concerned acted reasonably and in good faith in forming the opinion and making the communication concerned.” That section 8A(5) provides that: “An employer shall not penalise or threaten penalisation against any employee or cause or permit any other person to penalise or threaten penalisation against an employee ... for ... having [among other things] formed an opinion of the kind referred to in subsection(1) and communicated it”. It is only in the case that the person formed the opinion and communicated it knowing it to be false, misleading, frivolous or vexatious, or was reckless as to that, that an employer may penalise or threaten penalisation.

Subsection (7) of the Schedule referred to by the Minister simply tracks the normal employment law position. For example, in the case of unfair dismissals legislation, where it is established that a person has been dismissed, the dismissal is presumed to be unfair. In employment law the presumption operates to the benefit of the employee. In a sense, this subsection seeks to achieve that in so far as section 8A(5) is concerned. Where an employee makes a complaint that he or she has been penalised for allegedly making or engaging in a false, misleading or vexatious act of whistleblowing, the presumption lies in his or her favour. The onus is on the employer to prove the employee had not acted reasonably and in good faith. The effect of my amendment would be to seek to extend in an explicit fashion the same protection to an employee where he or she was the defendant in an action in damages brought, for example,

[Senator Rónán Mullen.]

by an employer in regard to an allegedly false, misleading, frivolous or vexatious act of whistleblowing.

In normal tort matters the onus or burden of proof is on the plaintiff or person bringing the case. To that extent one could say the plaintiff would have to do the proving in any case and the employee or former employee would enjoy that presumption to the extent that the burden of proof would be on the plaintiff. It is worth making more explicit the presumption that the employee concerned was acting reasonably and in good faith. That presumption should also operate in the kind of proceedings specified within section 8A(1), namely, proceedings in damages in respect of a communication or an act of whistleblowing, the substance of which the defendant allegedly knew to be false, misleading, frivolous or vexatious, or was reckless as to all that. It would strengthen the psychological impact of this Bill in favour of whistleblowers were it to be made explicit where an employee is concerned. There are other people who might be the subject or target of proceedings under section 8A(1), but where it relates to an employee, it would be consistent to have this made explicit and the employee would be presumed to have acted reasonably and in good faith until the contrary was proven.

The question has been asked whether this is the appropriate place to extend such protection because subsection (7) relates to the Schedule and to proceedings under the Schedule of an employment nature before a rights commissioner or the Labour Court in regard to a complaint of victimisation or penalisation. I believe the amendment I have drafted is sufficiently stand-alone to allow it to relate to proceedings taken under section 8A(1).

Senator Eugene Regan: I second the amendment.

Deputy John Moloney: I apologise to Senator Mullen and other Senators for the unavailability of the Minister, Deputy Dermot Ahern. While I appreciate the points made by Senator Mullen, section 8A(1) makes it clear that a person who wishes to sue a whistleblower will not be able to hold the whistleblower liable in damages until he or she can prove to the court that the whistleblower communicated his or her opinion knowing, or being reckless as to whether, it was false, misleading, frivolous or vexatious, or that he or she knowingly furnished false or misleading information in this regard. I am of the view that the existing protection for whistleblowers against civil action provides the right balance between encouraging whistleblowers to make reports while at the same time avoiding reckless or malicious reporting which might negate the constitutionally guaranteed right everyone has to their good name. I am, therefore, not in a position to accept the amendment.

Senator Rónán Mullen: I thank the Minister of State for his response. I am not in a position to put the issue any further. I wish he would accept the amendment but I must accept his response.

Question put and declared lost.

Bill reported without amendment and received for final consideration.

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

Senator Eugene Regan: I thank the Minister of State, Deputy Moloney, and the Minister, Deputy Dermot Ahern, for giving time to this important Bill, in which we are essentially ensuring we are in compliance with our international obligations. It is regularising a situation which has been amiss for some time.

Senator Ivana Bacik: I add my voice to that of Senator Regan in thanking the Minister of State, Deputy Moloney, the Minister, Deputy Dermot Ahern, and his officials for their work on the Bill. We supported the Bill in the Dáil and in this House. As Senator Regan said, it effectively implements and fulfils our international obligations. I am grateful to the Minister for accepting two of my amendments on Committee Stage. Those amendments to section 4 will significantly enhance the protection for whistleblowers in the Bill and I look forward to seeing the Bill, as amended, pass back through the Dáil. I welcome the strengthening of anti-corruption law that the Bill represents. We look forward also to the day when we have a fully codified anti-corruption law in this country.

Senator Denis O'Donovan: I add my thanks to the Minister of State and his officials. In particular, I did not get the opportunity to place on record my appreciation for all the Minister, Deputy Dermot Ahern, has done in service to the State. On a personal basis, I am sorry, as we are of about the same vintage, that he is no longer going forward for election. As Minister for Justice and Law Reform, he has been a tremendous and very fair Minister, which was indicated today by his very open acceptance of two Labour Party amendments, for which Senator Bacik praised him. He is one of the Ministers I am sorry to see going. He will be a huge loss not alone to his party but to public life.

Senator Rónán Mullen: I welcome the progress of the Bill and look forward to seeing it enacted. While recognising the intent behind it is to meet our international commitments, we are, however, only scratching at the surface of what is required. I will not reiterate at length what I said earlier, namely, there is the possibility and ought to be an acknowledgement that there are general principles which apply to the protection of whistleblowers, whether in the context of the reporting of corruption or other kinds of wrongdoing or mismanagement.

What we should have before us is not the minimalist legislation this Bill represents but something more substantial that takes account of the weaknesses that have emerged in our society and culture around wrongdoing and our general failure as a population on occasion to take wrongdoing seriously and to take the necessary steps to ensure it stops. We have a journey to go in terms of creating the kind of culture where whistleblowers acting in good faith can do right by themselves, the organisations for which they are working and their society. I look forward to a more open approach on that issue and to the bringing of legislation before these Houses that will go much further than this legislation.

Minister of State at the Department of Justice and Law Reform (Deputy John Moloney): I thank Senators for their participation in the debate. I commend the Bill to the House.

Question put and agreed to.

An Leas-Chathaoirleach: When is it proposed to sit again?

Senator Denis O'Donovan: Ag 10.30 a.m. amárach.

Adjournment Matters

Water and Sewerage Schemes

Senator Ciaran Cannon: Many who have visited County Galway in recent years have been fortunate enough to visit the picturesque village of Kinvara on the west coast of Galway, which

[Senator Ciaran Cannon.]

I argue is one of the most picturesque villages on the whole western seaboard. There is a vibrant and diverse community living in Kinvara who have done incredible work in recent years to ensure it remains a very attractive and vibrant place to live.

The one glaring omission which has not been addressed to date in Kinvara is the lack of a sewage treatment plant to serve that town. Every day, 70,000 gallons of raw untreated sewage is discharged into one of the most picturesque bays on the western seaboard. The topography of that bay and the current movements that take place within it do not provide for the complete flushing out of this raw untreated sewage on a daily basis. Anyone who is fortunate enough to visit Kinvara, particularly during the summer, and I have been there on many occasions, will know that when there is a low tide, the stomach churning stench that emanates from that raw untreated sewage in the bay is horrendous. At other times, when a serious discharge has taken place at high tide, one can see faeces floating around the quay in Kinvara.

A preliminary report for a sewage treatment plant for Kinvara was submitted by Galway County Council to the then Minister for the Environment, Heritage and Local Government, Deputy Dick Roche, for his approval in October 2002. In October 2005, the European Commission slammed the Government for its failure to introduce pollution control measures at Kinvara and at 13 other designated shellfish locations. In December 2005 in this House, following questioning by my colleague, Deputy Ulick Burke, the then Minister of State, Deputy Frank Fahey, concluded his speech by stating:

It is a scandal that raw sewage is going into Kinvara Bay which is an enclosed bay with a significant oyster bed. It is also used for fishing and water sports and so on. We all need to see that scheme move on as quickly as possible.

Approval for the scheme was granted by the Department in December 2006 after a very active campaign by the local people. In 2007, the Minister, Deputy Gormley, confirmed that the Kinvara sewerage scheme had been included in his Department's water services investment programme as a scheme to begin construction in 2008. We are now approaching the end of 2010 and, to date, there is still no unequivocal and reliable assurance for the people of Kinvara that they will get a sewage treatment plant.

The water services department of Galway County Council and its director of services have been most proactive in making progress on this matter in the past five to seven years. The director and his engineers have done everything required of them in this regard. As with many other projects in County Galway, we await final approval from the Department of the Environment, Heritage and Local Government giving the go-ahead to the county council to prepare the contract documents and finally move to a position where the people of Kinvara will see an end to this long and very unedifying saga. I hope the Minister of State will give them some hope in order that they will believe this saga is coming to an end.

Everyone, including the Minister for the Environment, Heritage and Local Government, Deputy Gormley, argues for greater efficiency within the public service. Sometimes I wonder whether the Minister looks within his own Department to see

the delays that occur time and again in processing applications such as this. It happens with regard to sewage treatment and water supply provision. It is a bad example to set and intolerable. I look forward to receiving a positive response from the Minister of State at long last.

Minister of State at the Department of Health and Children (Deputy John Moloney): I apologise on behalf of the Minister who cannot be present this evening.

I thank the Senator for giving me the opportunity to set out the current position on the Kinvara sewerage scheme. The scheme is one of 26 water services projects, with a total value of €113 million, included in the Department of the Environment, Heritage and Local Government's water services investment programme for the period 2010 to 2012 that are due to advance to construction in County Galway during the period of the programme. Under the scheme, Galway County Council proposes to provide a new wastewater treatment plant and upgrade and extend the collection network in the town, at an estimated cost of €4.8 million. The Department is examining the council's design review report on the scheme which was received last July and a decision on the revised design proposals will be conveyed to the council as soon as possible.

The Department is awaiting additional information from Galway County Council on the two foreshore licence applications before the Department for site investigation works associated with the outfall pipe for the Kinvara sewerage scheme and the construction of the outfall. The council has yet to carry out an assessment of the impact of discharges from the new treatment plant on the special area of conservation within which the new outfall pipe will be located and the adjacent special protection area. It must also submit a marine safety statement on the potential impact of these developments on navigational safety. Until both assessments are submitted, the Department cannot progress the applications further. Accordingly, the sooner the council submits the outstanding assessments, the sooner the Department can conclude its examination of the foreshore licence applications and the council can, in turn, advance the Kinvara sewerage scheme to procurement stage. To that end, all statutory and planning processes must be completed before the council can proceed with the preparation of contract documents for the scheme.

The Minister is aware that the Kinvara sewerage scheme is a priority for Galway County Council in the context of water services provision in the county. His Department is committed to advancing the project as quickly as possible. Once the council's revised design proposals for the scheme have been approved and the foreshore licence applications have been determined by the Department, the council will be in a position to draft contract documents to seek tenders for the scheme.

Under the Department's devolved schemes administration procedures, Galway County Council will be able to advance the Kinvara sewerage scheme to construction without further recourse to the Department, other than to obtain confirmation that the necessary funding is in place before a contract is signed with the successful tenderer. The Department will continue to work closely with the council to ensure the scheme and the other contracts and schemes in its programme are advanced as far as practicable in the next two years.

Senator Ciaran Cannon: I find it strange that the Department of the Environment, Heritage and Local Government is requiring Galway County Council to carry out an assessment of the impact of discharges from the treatment plant on a special area of conservation. The sewage is completely untreated and 70,000 gallons are being discharged into the same bay every day. Somehow the Minister and his Department consider it is appropriate to carry out an assessment of the discharge of treated effluent. The Minister of State has said the Minister is committed to advancing the project as quickly as possible. This problem has featured since 2002. What commitment is there to complete the project?

Deputy John Moloney: I share the Senator's worry. I regret, however, that I am not in a position to elaborate further. The Senator has raised a fair point and I will organise to have officials meet him and me some day next week.

Mental Health Services

Senator Fidelma Healy Eames: I welcome the Minister of State at the Department of Health and Children, Deputy Moloney, who is responsible for disability. I want him to outline the reason for the delay in ratification of the UN Convention on the Rights of People with Disabilities and the timeframe for its delivery. If we had the needs of people with disabilities at heart, ratification of the convention would be achieved without further delay. When can we expect ratification to take place? Ironically, Ireland was among the first group of countries to sign the convention, subject to ratification, when it opened for signature on 30 March 2007. The convention entered into force on 3 May 2008 and, to date, 96 countries have ratified it. Ireland is not one of them. The European Union is in the process of becoming a signatory or party to the convention, making it the first comprehensive human rights convention to which the Union will become a party, yet it has not been ratified in Ireland. This makes our commitment to human rights disgraceful.

The UN Convention on the Rights of People with Disabilities is a move away from viewing persons with disabilities as objects of charity, medical treatment and social protection towards viewing them as subjects with rights. "Rights" is the key word. The convention does not create new rights; it only aims to make the full sweep of existing rights equally effective for all persons with disabilities.

We have two Acts that have not been implemented in full, one of which the Disability Act. It has only been implemented in respect of those up to the age of five or six years. The Minister of State will be aware that we were promised progressive realisation of people's needs over time. Many of the sections of the Education for Persons with Special Educational Needs Act have not been implemented. This means children with disabilities and special needs in schools are not protected by law. There is still no means by which one can enforce an individual education plan, which the children concerned obviously need. They are not on a level playing field with their peers in the classroom

Professor Gerard Quinn of the disability law unit of the National University of Ireland, Galway, has suggested in *The Irish Times* that Ireland has delayed ratification of the convention until it can reform its outdated legal incapacity laws in keeping with Article 12 of the convention. These laws date from a time when people with disabilities were dealt with as objects. Article 12 insists on a plenary right to decide for oneself and a corollary right to support decision-making when that capacity is reduced. This is a true human right. This article, like all other provisions in the convention, makes no distinction between those with intellectual disabilities and others.

Ratification of the convention, we are told, depends on the mental capacity Bill. When asked by Deputy Naughten about the progress of that Bill on 10 November, the Taoiseach said the detailed provisions of the Bill were at an advanced stage and that it was expected they would be published in the current Dáil session. When will this happen? We only have a very short time left.

According to a disability campaigner from a family affected by disability, ratification of the convention must be a priority to protect the fundamental rights of people who feel forgotten and marginalised. The same people are suffering further in the current climate owing to cut-backs in health and disability services. Both the Minister of State and I know that people with disabilities are always the first to be at risk of poverty. Even in the boom times, this was the case. It is clear that the persistent and cumulative impact of the financial crisis threatens the

progress made toward achieving equal rights for people with disabilities. The recession has had a disproportionately negative impact on them.

One interesting aspect of the convention, according to Professor Quinn, is that it does not require every goal to be achieved at once.

Some deference is due to states with respect to the allocation of scarce resources, which would suit Ireland. We accept that resources here are scarce. However, that does not mean we should not ratify the convention or implement the law. It is critically important that we move forward on this issue, particularly during a period of recession when, in many cases, the temptation may be to cut services. In the past the Government stated that if the legislation was fully implemented, people with disabilities would bankrupt the country. We know who bankrupted the country — it was the Government which made bad decisions and the banks.

Friday next, 3 December, is International Day of Persons with Disabilities and the theme this year is keeping the promise for disability. I appeal to the Minister of State to keep the promise and listen to the calls of those with disabilities. The UN Convention on the Rights of Persons with Disabilities must be ratified without further delay.

A support group in Galway, Hope for Disability, is of the view that this matter is extremely important and believes the issue of rights to be the key barrier improving the quality of life of people with disabilities. Will it be the Minister of State's legacy to have the convention ratified before the end of this Dáil term? I will be delighted if he indicates that this will be the case.

Deputy John Moloney: I accept the sincerity of Senator Healy Eames regarding the proposals she has made. I am aware that she has a deep interest in this issue. I am not really a believer in legacies, as such. However, when I was appointed to the Department over two years ago, I gave certain commitments. I have always made the point that the €1.6 billion allocated to the disability sector should not be a major issue for the Government. I have also made the point that people with disabilities should have the right to choose the type of services which they, as individuals, might require.

It takes time to make changes. I initiated a value for money review 15 months ago in the clear understanding that it was not to be an attempt by the Government to hive off moneys from the disability sector and allocate them elsewhere. To try to give some credibility to my decision in this regard, I appointed two people from the disability sector — Mr. John Dolan from the Disability Federation of Ireland and Mr. Brendan Broderick — to serve on the review committee.

Senator Healy Eames rightly mentioned that next Friday is International Day of Persons with Disabilities. It has always been my intention, prior to my leaving the Department, to issue clear policy proposals as to how changes can be made. I will be doing this on Friday. I refer, in particular, to individualised payments for people with disabilities. I will bring some clarity to the entire matter on Friday.

Senator Fidelma Healy Eames: Therefore, the Minister of State is not going to outline the position now.

Deputy John Moloney: No, because I have not finalised my proposals. I do not intend to be glib, but a certain amount of work remains to be done. I gave a commitment a long time ago that I would bring forward specific proposals on Friday next.

[Deputy John Moloney.]

I completely accept there is a need to have the mental capacity Bill published. This time last year I gave a clear commitment at the Inclusion Ireland conference in Killarney that the legislation would be introduced before the summer. Unfortunately, that did not happen. The Senator outlined the position well in that ratifying the UN convention does not need to involve the provision of major funding in the future. However, it is clear that we cannot ratify the convention until the mental capacity legislation is in place. I reiterate my commitment that the Bill will be published prior to the end of this session. I have apologised for the fact that it was not possible to publish it prior to the end of the summer session.

Senator Fidelma Healy Eames: Therefore, the mental capacity Bill will be published this session.

Deputy John Moloney: Yes, and I am well aware that only a few short weeks of the current session remain. I will not use the excuse of budgetary considerations, etc. As Minister of State with responsibility in this area, it is up to me to ensure the legislation is published during the remaining two or three weeks of the session.

I wish to provide a full reply on the specific matter to which the Senator refers. In that context, the United Nations Convention on the Rights of Persons with Disabilities is an important human rights instrument with an explicit social development dimension. It adopts a broad categorisation of persons with disabilities and reaffirms that all persons with all types of disability must enjoy all human rights and fundamental freedoms of existing United Nations human rights conventions.

Not long ago I met representatives of Amnesty International which has been campaigning for some time in respect of mental health as a human right. That is Amnesty International's prerogative and it is the issue on which it is placing emphasis. I provided its representatives with a commitment on this matter when I met them three weeks ago. Last week the Minister of State at the Departments of Justice and Law Reform, Community, Equality and Gaeltacht Affairs and Education and Skills, Deputy Mary Alexandra White, and the Minister for Community, Equality and Gaeltacht Affairs, Deputy Carey, and I also met the representatives and I provided them with the same commitment I have just given to the Senator. While I do not see the Government's term being extended beyond February or March next, it is important that the legislation be dealt with in order that we might implement the provisions of the convention.

Ireland was in the first group of countries to sign this very important convention when it opened for signature on 30 March 2007 and is totally committed to the implementation of its provisions and the consequent improvements in the lives of people with disabilities. We are well advanced towards achieving this through the national disability strategy, the ongoing implementation of which is informed by the requirements of the UN convention and which comprehends many of its provisions. In addition, an interdepartmental committee on the UN Convention on the Rights of Persons with Disabilities monitors the remaining legislative and administrative actions required to enable the State to formally ratify the convention. This committee has developed a programme, on which work is progressing, to address the matters that need to be aligned with the convention.

It is the Government's intention to formally ratify the convention as quickly as possible. However, as the Senator is undoubtedly aware, Ireland does not tend to formally ratify treaties until it is, first, in a position to comply with the obligations imposed by such treaties, including by amending domestic legislation, as necessary. One of the key legislative requirements identified by the interdepartmental committee in this regard is the introduction of mental capacity

legislation, which is the responsibility of the Department of Justice and Law Reform. However, I have always stated that, as Minister of State with responsibility for disability and mental health, it is my intention to drive the legislation forward.

As indicated in the Government's legislative programme, it is intended that the mental capacity Bill will be published during the current Dáil session. The Senator may state the term "intended" is too loose in nature. However, I reiterate my commitment to publish the legislation during the current session. The main purpose of the Bill is to reform the wards of court system in so far as it applies to adults and replace it with a modern statutory framework governing decision-making on behalf of persons who lack capacity. The wards of court system is outdated and incapable of coping with the existing and projected demographic growth in the numbers of persons who lack capacity. The Bill will provide greater protection for a range of adults, including persons with intellectual disabilities, persons suffering from dementia or mental illness and persons who have acquired brain injuries through trauma or accident.

The main provisions of the Bill include setting down guiding principles to assist both the courts and persons making decisions on behalf of adults who lack capacity. The statutory guiding principles will require that any act done or decision made on behalf of a person must be in that person's best interests. The Bill will also provide that a person is entitled to supported or assisted decision-making. Where it is not possible to support a person in exercising capacity or making a decision, the Bill will provide that the court or a personal guardian appointed thereby will act as the substitute decision-maker on his or her behalf. Under the Bill, an office of the public guardian which will be responsible for the supervision of personal guardians and donees of enduring powers of attorney will be established. The Bill will also repeal and subsume the provisions of the Powers of Attorney Act 1996. The Bill's passage will give effect to the Hague Convention on the International Protection of Adults, as well as adding substantially to the overall progress made in implementation of the requirements towards ratification of the UN Convention on the Rights of Persons with Disabilities.

While Ireland has not yet ratified the convention, the national disability strategy and the work of the interdepartmental committee have ensured considerable and ongoing progress is being made. The actual implementation of the convention will be well advanced by the time the formal ratification process has been completed. I will ensure the legislation is published before the end of the session.

Senator Fidelma Healy Eames: I did not receive a copy of the Minister of State's script.

Deputy John Moloney: I apologise to the Senator.

Senator Fidelma Healy Eames: I would appreciate it if a copy could be forwarded to me, particularly in view of the importance of this matter to the people to whom it concerns. I like the Minister of State's straightforward manner. He tends to take it on the chin. However, we have still not been provided with concrete dates. He has indicated that the mental capacity Bill will be published during this session. I accept his commitment in that regard, but will he indicate when the convention will be ratified?

Deputy John Moloney: I have no intention of playing some sort of get out of jail free card.

First, I cannot ratify it until I bring in the essential element, that is, the mental capacity Bill, which will be published this session. I am not able to say when, but I ask Senator Healy Eames to believe that if we are stating consistently all along that we cannot ratify until we have the mental capacity Bill, to my mind that clearly leads the way for us then to ratify the UN conven-

[Deputy John Moloney.]

tion, although I accept it is not enough for Senator Healy Eames or the House. Many Ministers have said that we cannot ratify until we have published the mental capacity Bill. I ask Senator Healy Eames to understand that such would be the Government's intention for early next year.

Senator Fidelma Healy Eames: I thank the Minister of State.

National Lottery Funding

Senator Jerry Buttimer: Cuirim fáilte roimh an Aire Stáit. This Adjournment matter concerns the allocation of funding from the national lottery. The amount of money accruing to the Exchequer from the national lottery in 2009 was €275 million. That figure was given by the Minister for Finance, Deputy Brian Lenihan. I hope the Minister of State will explain to the House where the money from the sale of national lottery tickets, be it Lotto or scratch cards, goes. Given that there has been a freeze in the sports capital programme grant, it is important the Government explains to the House where the money generated by the national lottery goes. Under the 1986 National Lottery Act, the national lottery was primarily set up to fund the promotion, development and provision of sporting, recreation and health facilities. I raise this matter on the Adjournment because it is of absolute importance that the Minister of State explains where the money is going, where the proceeds of the sale of tickets are being allocated — to which Departments and what areas, given that there is a reduction in funding in the sports capital programme.

I refer to more than the sports capital programme. As the Minister of State, Deputy Moloney, will be well aware, lottery funding has been allocated to clubs, communities and organisations and has been utilised to maximum beneficial effect in creating sustainable communities in every corner of the country. It has enhanced communities by the awarding of money in addition to the money provided from the resources of different community organisations and sporting clubs. Lottery funding has also assisted the Department of Health and Children and the Department of Community, Equality and Gaeltacht Affairs in the drug rehabilitation programmes and other activities.

Looking through the 2009 distribution of funding, I am concerned that many worthy organisations that receive funding, for example, Bishopstown social services, Cork City Partnership and Mahon CDP in my area, will have no source of funding this year. I hope the Minister of State's reply will outline to the House that this critical source of funding will be made available and that it is still being disbursed given that there has been an increase in the sale of lottery and Lotto tickets.

My party has put forward a document, *Reinventing Government*, which calls for reform in the allocation of capital grants under the sports programme for funding sports and leisure facilities. While it is not for this debate, perhaps there has been ministerial bias in the allocation of funding. That is not the remit of the Minister of State, Deputy Moloney. There must be an open and transparent approach to the distribution of public money. Democracy demands fairness. The allocation of the fund should not be at the behest of a Minister based upon a constituency need.

The lottery funding comes from ordinary people's money. The funding derived from that which goes to sporting and community organisations and voluntary and charitable organisations is a stimulus to local communities, and the services and enhanced facilities are of benefit to all. We must outline to the people where the money from the national lottery goes. The Minister

has stated in a reply to me in this House that there is no sports capital programme. I hope that there will be one. I look forward to the Minister of State's reply to the debate.

Deputy John Moloney: I am acting on behalf of the Minister for Finance who has responsibility for the national lottery, but I want to be helpful by way of giving a response. Section 5 of the National Lottery Act 1986 provides that the surplus from the national lottery may be used for the following purposes: sport and other recreation, national culture, including the Irish language, the arts within the meaning of the Arts Act 1951, the health of the community, and for such other purposes as the Government may determine. The following additional categories have been so determined: youth, welfare, national heritage and amenities. To give effect to this statutory provision, I understand the surplus from the national lottery is transferred to the Exchequer regularly and is applied each year to part-fund the Exchequer allocations to a specified range of expenditure subheads across various Votes. Each year, the amount transferred to the Exchequer from the national lottery surplus, together with details of the total Exchequer allocations to the relevant subheads, are set out in Appendix 1 of the annual Revised Estimates for Public Services.

The elements of the Department of Tourism, Culture and Sport Vote which are part-funded by proceeds of the national lottery are as follows: subhead C1 — grants for sporting bodies and for the provision of sports and recreational facilities under the sports capital programme; subhead C3 — grant-in-aid provided to the Irish Sports Council in respect of general assistance to sports organisations and expenditure on sports activities; and subhead D7 — grant-in-aid allocation provided to the Arts Council. In 2010, €48 million has been allocated for subhead C1, €49.572 million for subhead C3 and €69.15 million for subhead D7.

On subhead C1, the sports capital programme is the primary means of granting Government support for the provision of sports facilities at national, regional and local levels. Under the programme, the Department of Tourism, Culture and Sport allocates funding to voluntary, sporting and community organisations for the provision of sports and recreational facilities. More than 7,400 projects have benefited from sports capital funding since 1998, bringing the total allocations in that time to more than €738 million. The programme has transformed the sporting landscape of Ireland in the past ten years with improvements in the quality and quantity of sporting facilities in every part of the country. The facilities funded range from the smallest clubs to national centres of sporting excellence and provide an opportunity for participation in sport which leads to healthier lifestyles and a reduced likelihood of young people drifting into anti-social behaviour.

Another of the elements of the Department's Vote which is part funded by the proceeds of the national lottery is subhead C3 — grant-in-aid provided to the Irish Sports Council, ISC, in respect of general assistance to sports organisations and expenditure on sports activities. The ISC was established on a statutory basis on 1 July 1999, and the functions of the council are outlined in section 6 of the Irish Sports Council Act 1999. The key functions are encouraging the promotion, development and co-ordination of competitive sport, developing strategies for increasing participation in recreational sport and co-ordinating their implementation by all Irish bodies involved in promoting recreational sport and providing recreational sport facilities, facilitating good standards of conduct and fair play in both competitive and recreational sport, combating doping in sport, initiating and encouraging research concerning competitive or recreational sport, and facilitating research and disseminating information concerning competitive or recreational sport.

[Deputy John Moloney.]

The third element of the Department's vote which is part funded by the proceeds of the national lottery is subhead D7 — grant-in-aid allocation provided to the Arts Council. The Arts Council of Ireland, working within the framework of the Arts Acts 1951-2003, is the Government agency for developing the arts. The council works in partnership with artists, arts organisations, public policymakers and others to build a central place for the arts in Irish life. Arts Council funding is distributed across a myriad of activities to include various art forms such as dance, music, theatre, literature and architecture, and programmes, venues, events, once-off projects, organisations, individuals and partnerships with, for example, health, education, local authorities and Departments. Policy initiatives undertaken by the council included a traditional arts policy, opera initiative, festivals scheme, a pilot community music scheme and the provision of capital to assist regional arts centres to upgrade their facilities to participate in the council's touring initiative.

This has been a long-winded response and I hope Senator Buttimer got some information from it.

Senator Jerry Buttimer: I thank the Minister of State for his reply. I will raise another issue on the Adjournment in this regard.

The Seanad adjourned at 8.10 p.m. until 10.30 a.m. on Thursday, 2 December 2010.