



DÍOSPÓIREACHTAÍ PARLAIMINTE PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Tuesday, 7 December 2010.

SEANAD ÉIREANN

*Dé Máirt, 7 Nollaig 2010.
Tuesday, 7 December 2010.*

Chuaigh an Cathaoirleach i gceannas ar 12.00 mean lae.

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 Tánaiste and Minister for Education and Skills to require colleges of teacher education to include a component for pre-service teachers on awareness of fatal allergies which can cause anaphylactic shock in children.

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

The need for the Tánaiste and 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 express her views on an international agency to protect sport from all forms of attacks on its integrity such as, for example, match fixing.

I have also received notice from Senator Brian Ó Domhnaill of the following matter:

The need for the Minister for the Environment, Heritage and Local Government to allow Donegal County Council recruit a youth council co-ordinator.

I regard the matters raised by Senators Healy Eames and Corrigan as suitable for discussion on the Adjournment and they will be taken at the conclusion of business. 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. I regret that I have also had to rule out of order the matter raised by Senator Ó Domhnaill as the Minister has no official responsibility in the matter.

Order of Business

Senator Donie Cassidy: The Order of Business is No. 1, Communication Regulation (Postal Services) Bill 2010 — Committee Stage resumed, to be taken at the conclusion at the Order of Business and adjourn not later than 7.30 p.m., if not previously concluded. The business of the House shall be interrupted between 3.15 p.m. and 5.30 p.m.

Senator Frances Fitzgerald: Over the last few days, we have heard a new version from the Minister for the Environment, Heritage and Local Government on the bank guarantee scheme, and this raises many questions. Today, hard working people in Ireland will find out the further cost of years of mismanagement by this Government. They will see tax increases, cuts in social welfare and threats to front line services to name but a few ways in which their lives will be impacted by this budget. The Minister for Finance told us last year that we had turned the corner. We know now that is not true because that has not happened. We face a most serious situation in our national finances today. The question must be asked how should the budget be judged. Fine Gael will judge it on a number of pillars. Will it introduce reform? The public are looking for reform of how we do our business. We have raised many times the way in which the budget itself is presented. There has been no new mechanism to involve these Houses in the budget. We will also judge it on whether it is fair and protect the most vulnerable. That is a key question for the many people who have had to claim unemployment benefit. Also, will it create jobs? Is there a job stimulus package? That is a critical question for those tens of thousands who have become unemployed. They must be given some hope and find a way back to work and education. That is a critical test of the budget.

Fine Gael has put forward our four year plan, a fully costed plan that has been made public and the Government is aware of our views. I hope some of the initiatives we have suggested will be incorporated. Today should mark the end of this Government's time, it should herald a new beginning for the country. The sooner we have a new Government in place, the better.

We will have an opportunity to discuss the budget further but I want to raise the issues aired on "Prime Time Investigates" last night about marginalised communities. It focused on a particular community in Limerick but at this time, when we are making serious decisions about budgets, we must think about those communities that are most marginalised. No family in this country should have to cope with the type of anti-social behaviour and the absolute stress they are being forced to cope with as a result of anti-social behaviour in their community. To see ordinary families facing such distress and upset while they try to continue their lives, while facing extraordinary anti-social behaviour, was harrowing in the extreme.

Senator Joe O'Toole: As we approach the budget and there is a focus on the involvement of Independent Members in the other House, in particular, I wish to note the extraordinary imbalance in the commentary. When Ministers vie with each other to direct money from the national lottery to their constituencies, or to secure school buildings or decentralised offices for their constituencies, they are considered to be looking after their constituents. When Independent Members try to do the same, they are considered to be holding the country to ransom. None of the Independent Members I have seen has held the country to ransom, all they have done is try to secure some help for their constituencies, the same as they would if they were members of Government parties and that should be remembered. There is a bias against Independent Members in such commentary.

We sat all night one night on the question of the bank guarantee. We went through every aspect of it and as asked every question. I remember, in particular, Senator Alex White asking the Minister to take us through step by step what happened on that night, how they came to certain conclusions and what the banks were saying. This was presented as an urgent priority that was brought to the Government at very short notice and on which they had to make quick decisions. The leader of the Green Party, the Minister for the Environment, Heritage and Local Government, Deputy Gormley, however, said at the weekend that the Cabinet discussed this at a meeting on Sunday. If that is the case, this House, the Dáil and the people of Ireland have been seriously misled. We were never given any indication of this extraordinarily serious matter. Everyone of us felt the Government was under pressure — I supported the Govern-

ment in its decision on the facts given to me at the time — but every single Member of the Oireachtas, apart from the Government it would appear, was led to believe this came upon the Cabinet on the Monday, the night they met before bringing the guarantee before the Houses. This House is entitled to some explanation of this.

It is unfortunate that for technical reasons we could not deal with the Croke Park agreement this week, although the Leader assures me we will discuss it next week. At the start of this crisis, one of the first questions asked in the House was why there were no economists in the Department of Finance. The answer is simple: we could not afford to pay them. We will now, once again, be reducing all salaries in the public sector. To use a blunt instrument such as this is not the way we should do our business. We are walking into the same mistakes we made before. When the boss of Bord Gáis was asked yesterday morning how he would deal with the reduction in his salary, his answer was simple: he said he would go straight back to the private sector. The House should think about that.

Senator Dominic Hannigan: Today sees the introduction of one of the harshest budgets in the history of the State. This comes on the back of a series of fateful decisions by the Government, of which none, perhaps, is as important as the bank guarantee in 2008. The version of the story we have been told up to now, which we all believed, was that it was necessary to introduce the guarantee to avert an impending crisis in the financial system. When my colleague Senator Alex White asked the Minister for Finance, Deputy Brian Lenihan, why the guarantee was introduced so quickly on that fateful night in 2008, the Minister said:

[B]y Monday evening it was clear to the Government that the huge battering the Irish bank shares had taken on the Stock Exchange reflected a general collapse in market confidence in the whole Irish banking sector. This was a very serious situation.

He said the guarantee was his answer to this situation. However, according to the version we heard last weekend from the Minister for the Environment, Heritage and Local Government, Deputy Gormley, there had been a meeting of the entire Cabinet the previous day, Sunday, at which this was discussed and agreed. The Minister said on Saturday morning that it was not a spur-of-the-moment decision, although I read this morning that he has since rowed back slightly from those comments. However, the fact remains that this is the first time anybody has ever heard about a Cabinet meeting taking place on the Sunday. There is still a discrepancy between what Deputy Gormley is saying and what the Minister for Finance told this House. I ask the Leader to ask the Deputy Leader, who is the chairman of the Green Party, whether he can corroborate those statements by Deputy Gormley at the weekend, because it runs entirely contrary to what the Minister for Finance told this House.

The spin at the time was that there was a sudden crisis and that we had to introduce the guarantee to avert that crisis and save the banking system when in fact there had been discussions throughout September. The Government knew what was happening with Irish Nationwide and Anglo Irish Bank and it had been contemplating such a guarantee throughout that month. It ignored the €7 million report from Merrill Lynch, it approved the guarantee at the Cabinet meeting on Sunday and then, on the fateful Monday, it invented the crisis so it could push its policy through. We need to hear more about this and we must have clear and concise reasons for what happened. This is a sore that will fester until we get the truth.

Senator Dan Boyle: I can sense the concerns of some Senators today and the need to reinvent history. My recollection of the events of 30 September was that a number of events had preceded them. There was an ongoing concern about the viability of banks prior to that date, and the Cabinet had several discussions about the policy options open to the Government and the likely consequences of any particular policy option. It is true that the preferred course of action,

[Senator Dan Boyle.]

if a particular set of circumstances arose subsequently, was a bank guarantee, but the events of 30 September were immediate and significant and a particular response was required. They were not preceded by a decision.

Senator Joe O'Toole: We were never told by the Government about such a meeting.

Senator Dan Boyle: I have a particular recollection of ongoing debate at that time about the policy options that were available. None of us knows what was said in the Cabinet conversations, but I am led to believe that some of the people who are most opposed to the existence of the bank guarantee, namely top-level economists, were among those who advised in favour of such a guarantee at the time. In view of the level of conflicting advice, to go back to the events of two years ago and see them in a context that did not exist is not helpful. I am convinced that the events of 30 September resulted in an emergency reaction that determined Government policy. That remains the fact of the matter.

Senator Joe O'Toole: That is not the issue.

(Interruptions).

An Cathaoirleach: No interruptions.

Senator Joe O'Toole: That is not the issue at all.

An Cathaoirleach: Please, no interruptions.

Senator Liam Twomey: When we came in here on that night, the Minister stood across from us and said the bank guarantee was not going to cost us anything. When I tabled an amendment to that legislation to the effect that we should not spend more than €10 billion on bailing out the banks, the Minister stated neither he nor his Government envisaged spending anything like that sort of money. No one from that side of the House, including Senator Boyle and his colleagues in Government, gave us any indication at that time that the Minister, Deputy Gormley, was privy to other information that could have been shared with the House to help us make a more informed decision. We were always given the impression that the Minister, Deputy Gormley, was woken in the middle of the night, not that he sleepwalked his way into this.

Senator Dan Boyle: It was not true then either. Which story does the Senator wish to believe?

(Interruptions).

An Cathaoirleach: Please, no interruptions.

(Interruptions).

An Cathaoirleach: Senator Twomey without interruption, please.

Senator Cecilia Keaveney: Tell us.

Senator Liam Twomey: Senator Boyle has tried to take the high moral ground with the Green Party as to how they would act in government.

An Cathaoirleach: Please, questions to the Leader.

Senator Liam Twomey: They have been just as deceitful as their Fianna Fáil colleagues in the Cabinet with regard to giving information to the people. All through this year since the last budget and with regard to the banking crisis, it has been nothing but lies after lies after lies.

Senator Dan Boyle: “Lies”, a Cheann Comhairle. What about Standing Orders?

Senator Jerry Buttiner: The Senator is not back in the Dáil yet.

Senator Liam Twomey: Quite clearly these lies go back even further than the budget last year.

Senator Dan Boyle: On a point of order, Cathaoirleach——

An Cathaoirleach: I cannot stop someone making a political charge.

Senator Dan Boyle: Charging a Member with “lying” is not allowed in Standing Orders.

Senator Dominic Hannigan: Someone is not telling the truth.

Senator David Norris: Cathaoirleach, I find your rulings increasingly extraordinary. One thing is perfectly clear: I have been stopped for using pretty mild language. Lying is outlawed in every parliament in this Continent. If you cannot see it then there is something very seriously wrong with this House and with your rulings in particular. I am horrified by it.

An Cathaoirleach: Members are experienced enough not to use that type of language and I call on the people who use that language simply to withdraw it.

Senator Liam Twomey: My apologies. I withdraw it and substitute for it the word “untruths” if that is what the Cathaoirleach wishes.

Senator Marc MacSharry: As Members have mentioned, it is budget day. I look forward to the debate tomorrow when we will have an opportunity to discuss the measures and to express the hope that today’s announcement will be fair and, to the maximum extent possible, that it will protect the most vulnerable in society. In that context if it is so deemed that higher sections of the public services or the semi-State sector must take pay cuts then, unlike Senator O’Toole, I have no difficulty with it. If people within the semi-State sector or the senior Civil Service determine, following a pay cut, that they must revert to the private sector then I wish them well. We will be sorry to lose them. However, no one will hold the State to ransom regardless of whether it is a salary issue. I share the view that we must have economists working for us but I do not share the view that we cannot afford them. There are many economists available and they need not be those who command the massive salaries and who go on various television shows as celebrity economists.

Following the budgetary discussions tomorrow I call for an urgent debate on the new system of dealing with mortgage arrears introduced by the Central Bank yesterday. Senator McFadden remarked last week that she had encountered a family which, to pay the mortgage, had to turn off the electricity and not feed the children for a few days. This is replicated throughout the country. These will be further replicated and we must have the legislative reform for which the Prevention of Family Homes Repossessions Group has pushed for some two years now, that is, to amend the Enforcement of Court Orders Act to prohibit the granting of a court order for the repossession of a family home. It would cost the State more to house, heat and feed these people. We must protect family homes, not trophy homes. Whether it is this or the next Government, this legislative reform must take place quickly to give families the protection they require.

Senator David Norris: With regard to the bank guarantee, I share my colleagues' concern. I voted against the guarantee. I also asked several pertinent questions. I asked about the exact amount of the guarantee, which was some €440 billion. Then I asked the Minister and his advisers our gross national product for the previous year. They did not know and had to go out and make a telephone call. Is that not extraordinary? When they came back, it turned out that our gross national product for that year was less than half what we were to guarantee. It was quite extraordinary and one of the principal reasons I voted against it. I am concerned that, not only in this Parliament but across Europe, politicians are playing their own narrow sectional, national and partisan games. There is no doubt the German Chancellor, Angela Merkel, is making a mistake when she sets her face against the development of euro bonds. This is the weapon about which I was talking last week that might help to rescue the situation and she opposes it for perfectly sound national electoral reasons. If the euro is to survive, there is an inevitability that centrifugal forces will drive it towards such centralisation. If it does not, the euro will fracture.

I believe we are entitled to know various matters about the bank guarantee. Recently I tried to put some bondholders' names on the record but the Cathaoirleach stopped me. I will now try to do so again and, subsequently, will be looking for the Cathaoirleach to explain why he stopped me. Will the Leader confirm that one of the bondholders is Goldman Sachs? This company has been described as a vampire squid on the face of the public purse and we are entitled to know if it is one of the bondholders. Money has been taken from the people referred to by Senator MacSharry who have had to switch off their electricity supply and live in squalor, fear and the cold to pay these big financial institutions which have gambled. It is wrong, unethical and unjust. We need to know to whom we are giving the money.

An Cathaoirleach: Time, Senator.

Senator David Norris: I want to end on a positive note. There were some wonderful programmes on television last night. I hope RTE which is consistently under attack will be supported and given money to develop creative programmes. Last night "Nationwide" carried a wonderful celebration of the magnificent institution, *The Munster Express*, a report on a young farmer with cystic fibrosis——

An Cathaoirleach: Time, Senator. I call Senator Leyden.

Senator David Norris: —as well as a report on a lady of certain years in County Laois. It was a wonderful and inspiring programme.

An Cathaoirleach: Please, Senator.

Senator David Norris: Let us have more home-produced programmes and less of the tripe bought in from abroad.

An Cathaoirleach: The Senator is out of order.

Senator Cecilia Keaveney: That is interesting coming from Senator Norris, considering his double-jobbing between radio and television.

Senator Terry Leyden: Last night "Prime Time Investigates" presented a sad, serious and hopeless situation in certain estates in Limerick. Will the Leader arrange a debate on the Limerick regeneration project? Judging from last night's programme, it seems all of the investment has been made in vain. No one gave the other side of the argument. The Minister responsible must explain the position on the regeneration of Limerick city. It was tragic and appalling

to see what had happened to some of the estates, some of which are no-go areas. I had never seen anything like it before. It is hard to believe it is happening in our own country. I commend “Prime Time Investigates” and want the Government and the Ministers responsible to explain where the money has gone so far in the regeneration project and what has been achieved. This House has a role to play and I hope it will have one in the future.

Senator Jerry Buttiner: Will the Leader arrange a debate before Christmas on parliamentary democracy?

Senator David Norris: Hear, hear.

Senator Jerry Buttiner: The events of the initial bank recapitalisation underline the fact that the Government has lost the trust and confidence of the people and cannot be believed. The issue is not whether the Minister for the Environment, Heritage and Local Government, Deputy Gormley, was asleep or what the Government did prior to the weekend before the guarantee was given. It is why it indicated to the people and this House that the bank guarantee was the subject of an eleventh hour decision that had to be made when it had already met on the Sunday to discuss it.

Senator Dominic Hannigan: Yes, that is the issue.

Senator Jerry Buttiner: They misled the people and broke trust again. Budget day will bring to an end the argument and the notion that the bill for the recapitalisation of the banks is the cheapest in world history. Instead, it will be the most expensive. It is the people – the gnáth duine, the ordinary man and woman – who will pay for the Government’s failure, dereliction of duty, abdication of responsibility and gross mismanagement. It is the time the Leader’s party faced the consequences of bad governance, but that will require more than a debate in this House. It will require a fair and just budget. I do not want to hear mealy-mouthed Members across the floor——

An Cathaoirleach: Does the Senator have a question for the Leader?

Senator Jerry Buttiner: I am asking him questions. I do not want to hear mealy-mouthed platitudes from Members on the other side of the House. We need to see a budget that is fair, equitable and aimed at those who can afford to pay most. That means an awful lot more than just cutting ministerial pay, even though that would be a start. That debate needs to begin out on the hustings with a general election because the Government has lost all credibility.

Senator Cecilia Keaveney: I commend Senator Norris on naming a number of programmes that were aired last night, although I did not get to see any of them. I note that none of them concerned the people who are currently involved in double-jobbing between radio and television programmes. Senator Norris is right when he says that we should try to expand the amount of talent within our national broadcasting company, and not have people monopolising radio and television programmes. The question concerning today’s budget is whether it will examine that issue, given that the politicians were clearly told to stay away from double-jobbing.

The reason I did not see the programmes last night is that I left my house yesterday morning at 10 o’clock in the car to come to Dublin. I was trying to beat the weather because the gritter had gone past the house at 9.30 a.m., so I thought it was safe to drive. As I slid sideways and forwards down through the traffic and finally got to the bottom of the road safely, without taking six or seven cars with me, I parked and returned home.

[Senator Cecilia Keaveney.]

I am seeking a debate on how Ireland copes with bad weather and why the National Roads Authority has monopolised salt supplies. The effect of the NRA centralising salt supplies means that Donegal County Council does not have any salt. The council always used to be able to manage salt reserves by getting extra supplies from Carrickfergus at a quick turnaround. I am thankful I was not a cancer patient yesterday trying to get to Dublin or a tourist trying to get to an airport. I left the car and tried to get a bus, but there were no buses because the road that had been gritted with a mixture of salt and sand was impassable half an hour later due to falling snow. A friend gave me a lift in a four-by-four to Derry where I got a train that was 30 minutes late because the driver was delayed coming from Donegal.

An Cathaoirleach: We are on the Order of Business now and the Senator has sought a debate.

Senator Cecilia Keaveney: I just wanted to give an outline of how one decision——

An Cathaoirleach: That is not necessary.

Senator Cecilia Keaveney: —by the NRA meant that thousands of people were discommoded in the north west yesterday. Roads are closed today, thus discommoding thousands of others. We need an urgent debate on why we cannot cope with a small bit of snow and ice.

Senator Paschal Donohoe: Many of my colleagues have referred to today's forthcoming budget. In that context, I am asking the Leader for a debate on the fourth report of the Joint Committee on Finance and the Public Service, entitled Report on Macroeconomic Policy and Effective Fiscal and Economic Governance. This report has been endorsed by all parties in the House and seeks a more effective way to deliver budgets through the Houses of the Oireachtas and ensure past mistakes are not repeated. The core of the report is about ensuring Parliament has a more powerful and proper role to play in developing budgets and tracking their implementation. I have no doubt that if this report were to be implemented — and I hope it will be by the next Government — it would make a major contribution towards ensuring our current difficulties are not repeated.

I concur with Senator Norris's request for a debate on the role of Irish art and how we can support it. I saw a magnificent film at the weekend, entitled "His and Hers" and supported by the Irish Film Board, which concerns the lives of couples in the midlands. It is a wonderful piece of art that speaks to the lives of people in Ireland and will be of help to them.

A debate has also been sought on who the bondholders are in Ireland. If international banks are bondholders, which they are, can the Leader clarify the degree to which Irish pension funds are holders of senior debt in our banks?

Senator Labhrás Ó Murchú: Some time ago, I went to Limerick and visited some of the areas which were affected by anti-social behaviour and criminality. I also met members of the regeneration team on that occasion. I was particularly impressed by their commitment as well as their knowledge of the problems involved and how to confront them. They were determined to give back a decent life to decent people. I was involved in the establishment of a project in the region and I was pleasantly surprised at the number of young people, almost 400, who came forward to be part of the project. It struck me that, unfortunately and necessarily, we must highlight particular elements in those areas but the vast majority of people are ordinary decent, honest to God people who want to live their lives and give a future to their children. As we watched the programme on television last night, we could once again see the extent of the seriousness. Can the Leader arrange for a debate as soon as possible to give everyone the opportunity to bring forward their experiences? It struck me that the women on the programme

who were prepared to explain what was happening showed great courage in doing so. Knowing those areas, there are people in those areas try to silence such people. In the midst of the serious issues of the budget, the human issues must be given attention. My hope is that the regeneration will go ahead and we will engage as much as we possibly can with those people affected.

Senator Maurice Cummins: Today the OECD reported that literacy level in Irish schools has fallen dramatically in recent years. The country has gone from fifth to 17th in the rankings. There is a need for the Minister for Education and Skills to evaluate this as a matter of urgency and to come into the House to explain the action she intends to take to address this alarming development.

Regarding "Prime Time Investigates", it is appalling that the ordinary, decent people involved who want to live their lives in comfort find themselves in the situation shown in the programme, but we have such anti-social behaviour in many estates throughout the country. My understanding is that local authorities cannot act because they are waiting for court cases to be heard before taking action. While we definitely need reform of the political system, we also need reform of the courts system. These issues should be speeded up and there should be complete reform of the court service to expedite matters of national interest. These matters are also of interest to ordinary decent people trying to live their lives in their homes.

Senator Ann Ormonde: I too saw the programme last night. I was struck by it and I began to think why this was happening and why society cannot come to grips with what is happening. The regeneration project was wonderful. I listened to the people who took a leadership role. Despite this, it seems we cannot break the ground on it. This has nothing to do with money. Civil society must play this role to a greater degree. We have gone beyond pumping money into this or going to the local authority or the key people in society. This must come from a bottom-up approach and that is the way forward for the regeneration of Limerick. Society must play a big role and society throughout the length and breadth of Ireland must be questioned about where we go from here.

Comments were made about parliamentary democracy earlier. I have been calling for reform of parliamentary democracy for a long time. I am tired of lines about lies, being deceitful and being mealy-mouthed. These lines are most unprofessional. I have respect for each parliamentarian in this House and I expect to receive the same treatment, but I do not. It is not good enough that we should be passing snide remarks across the Chamber at one another. It is not right. It is not professional. We are all professional people and we should know how to do our business and talk about policies, not talk about personalities. I would love a debate on the reform of our democracy and parliamentary approach.

Senator Ivor Callely: Hear hear.

Senator Ann Ormonde: We should also consider other issues such as civil society and how best we can all play a role. It is not about us alone. I cannot do very much on my own. I need to go out into the community, help out and get people around me. I am not playing a leadership role unless I do that. I am not good enough to do it in this House, neither is anyone else either. A debate on that would be worthwhile.

Senator Ivor Callely: I support my colleague, Senator Ormonde, in what she just said. In every walk of life and at every level in our community the human spirit is stronger than anything that can happen to it. That is the attitude we all need to have. I have seen it at different

[Senator Ivor Callely.]

levels in various communities. With a can-do positive attitude and the human spirit we can address and face anything that may cross our paths, including along the lines on which Senator Ormonde touched. I very much agree with what she said. We have seen all too much of that. Some of us have experienced it at first hand.

I wish to raise two issues. The first is domestic violence. Sadly, there is an increase in the level of domestic violence. I ask the Leader to arrange a debate, if at all possible, at an appropriate time with appropriate briefing documents on the level of support for people who experience domestic violence. Is there anyone out there who is aware of the various legal procedures, some of which are causing obstacles with regard to domestic violence? Groups exist that are very involved. They can certainly supply the information. It would be very much welcomed if a brief could be put together.

The final point relates to something which will be necessary, in particular in the first quarter of next year, namely, a debate on health-related matters. We are aware in particular of difficulties in accident and emergency units at the moment. We are also aware of a large increase in fractures and bone damage. That will require a certain priority in the first quarter of the new year when surgical procedures may be necessary. We should put in a special effort with the National Treatment Purchase Fund to address that, which is why I seek a debate on the matter.

Senator Niall Ó Brocháin: I join with other Senators in calling for a debate on reform, not just of our political system but of society as a whole. It will happen whether any of us like it or not. I would prefer not to see bloodied revolutions. I would prefer to see a reasoned debate and a reasoned, quiet reform of our society. People are calling for the abolition of the Seanad, for example, which is a knee-jerk reaction to reform. I would far prefer to see things reformed for the better rather than just thrown away.

Senator Dominic Hannigan: We have been waiting decades for it.

Senator Niall Ó Brocháin: Reform always comes from without. When I was growing up people used to say, it is not what you know it is who you know. That is something which needs to be ditched. The clientelist politics we have in this country is not the way forward. It is not the norm in Europe to the same extent that it exists in this country. Even at a local authority level we have the business of repairing potholes which permeates as far up as Cabinet level. Parish pump politics has to go. I would like to have a fulsome debate on reform. There will not be a vote on it but we need to put our ideas honestly and openly before this Government finally ends. We need to put our views on reform into the public domain.

Senator Camillus Glynn: I watched the television programme on Limerick last night. I feel very sorry for all the good people in the area that was mentioned. I cannot help but notice that much of today's anti-social behaviour, from unprovoked attacks on people to rob them to the extortion of money from those who owe money to drug barons and drug pushers, is generated by the drugs problem. Therefore, the sooner we get to grips with it, the better. What really annoys me is that some prominent people in society make excuses for the use of cannabis. Anyone who knows anything at all about drugs will tell us about how dangerous a drug cannabis is. Not only is it a gateway and soft drug, it also causes mental illness. Anyone who advocates its legalisation needs his or her head examined. If we could eliminate the drugs problem, we would be able to eliminate much of the anti-social behaviour in society. I feel sorry for those who live in certain areas of the country, not just the area in Limerick mentioned last night. In the main, drugs are at the centre of all of the problems encountered.

Senator Donie Cassidy: Senators Fitzgerald, O'Toole, Hannigan, Boyle, MacSharry and Buttmer expressed their opinions on what is an important day in the calendar of the Houses, budget day. The budget is designed to make the adjustment to meet the requirements of the Exchequer, be it in respect of social welfare, education or health services, as well as to pay members of the Army and the Garda and workers throughout the rest of the public sector. It covers all of the State's expenditure. The budget to be announced today is one of the most crucial we have ever had. I wish the Minister for Finance well. There is an onerous responsibility on all public representatives, be they in government or opposition, to ensure the budget will be voted through. The debate on the budget in the Seanad will be held tomorrow morning after the Order of Business and I will allow the longest time for every Member to make his or her views known to the Minister and the Department.

Senators Fitzgerald, Leyden, Ó Murchú, Cummins, Ormonde, Callely and Glynn expressed their views on last night's "Prime Time Investigates" special on anti-social behaviour in a certain part of Limerick. I watched "The Frontline", on which representatives from Limerick correctly pointed to all of the great things happening there. I refer, in particular, to a gentleman who was an employer. Two other gentlemen highlighted the fact that difficulties had been caused by young people not having opportunities to gain employment, undergo training and so on. The regeneration of Limerick under the stewardship of Mr. John Fitzgerald has been exemplary. He was an incredible city manager in Dublin —

Senator Ivor Callely: Hear, hear.

Senator Donie Cassidy: —and I look forward to the Oireachtas assisting him in relieving the plight of the people of Limerick.

Before becoming a Member, Senator Glynn gained considerable experience in the health sector and he has given the House advice on the abuse of drugs. I will have no difficulty in arranging a debate to determine how we can play our part in supporting everyone who is trying to address the difficulties being experienced in a minority of areas of the country, which is how we want to keep it.

Senator O'Toole correctly outlined the significant work done by Independent Members of the Oireachtas since the foundation of the State. Every Member, as an Independent Deputy or Senator or as a member of a political party, works in the best interests of his or her constituency; that is what he or she has been elected to do. Independent Members are no different from any other Member. As I told the Senator last week, the contributions of the Independent Members I have known during the many years I have been a Member have been exemplary and I commend them for their commitment.

Senator O'Toole also mentioned the Croke Park agreement which will return to the Order Paper next week when the Minister of State, Deputy Calleary, will attend the House for a debate on the issue.

Senators Twomey, MacSharry and Norris spoke about banking, Cabinet confidentiality and various matters that have been highlighted in the media in recent days. I believe 30 September was a difficult day for the Government.

Senator Norris wanted to know who the bondholders were, whether they were the pension funds or various sectors of the Irish banks, and if credit union money was invested. Any fair-minded Member of either House can attest that there was great concern on the part of the Government towards protecting every Irish citizen, whether it was in terms of savings, pensions or whatever, in the national interest. The decent people who had worked so hard for gener-

[Senator Donie Cassidy.]

ations to have those small amounts of savings in place for the next generation certainly had to be looked after and protected.

Senator MacSharry wanted a special debate on yesterday's Central Bank announcement about mortgage holders who are in arrears, which I welcomed. I have no difficulty with this, but perhaps in the budget debate tomorrow that might be mentioned by the spokespersons. I will discuss this at next Tuesday's meeting with the group leaders to see how it might be progressed, because I would like to have this debate before Christmas.

Senators Norris, Keaveney and Donohoe congratulated RTE on its very many outstanding home produced programmes in recent days. Those of us who have been big supporters of RTE for most of our lives would agree. Certainly the "Nationwide" programme last night was exemplary. I congratulate the presenters, producer and everyone associated with it, and last night's programme was just outstanding. One would be proud to be Irish and see what had been achieved in the 35 years the programme covered, especially in terms of the Army, women in the Army and how it has progressed so well in playing its part worldwide.

Senators Buttmer and Ó Broin again called for a debate on parliamentary democracy. I have already made a commitment in this regard and I have no difficulty in allocating time to it, if possible. Senator Keaveney and many colleagues referred to the difficult weather we are experiencing at the moment. I want to record our thanks and gratitude to all the local authorities, the Garda Síochána, the Army, which is doing tremendous work, Civil Defence and everyone playing their part in no small way in probably the worst weather conditions Ireland has faced in the past 30 years.

I certain take the point made by Senator Keaveney about funding for the NRA and what is left aside for rural Ireland. People in rural Ireland must be allowed to continue to survive, live and be able to play their part in their communities. We should not be completely blocked in for days and weeks, as has been the case, and there is no difficulty with the House having a debate on this. I shall certainly pass the Senator's strong views on to the Minister after the Order of Business.

Senator Donohoe called for a debate on the fourth report of the Joint Committee on Finance and the Public Service, and there is no difficulty with this taking. I shall try to arrange to have it debated before Christmas, if at all possible.

Senator Cummins called for a debate on educational issues which he outlined to the House, and there is no difficulty about this. He also called for a debate on reform of the court services. This is an area in which Senator Cummins has a good deal of expertise, I appreciate the gravity of the request and I shall do everything I can to ensure this is also debated as soon as possible.

Senator Ivor Callely again called for a debate on domestic violence and legal procedures. The Senator has vast experience in this area, given his former portfolio as a Minister of State, and there is no problem as regards having a debate on this. The Senator also called for a debate on health matters, and I have no difficulty in arranging this at the earliest opportunity.

Order of Business agreed to.

Business of Seanad

Senator Diarmuid Wilson: With the agreement of the House, I propose the sitting be suspended until 1.30 p.m., as the Minister of State is not available.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Sitting suspended at 1 p.m. and resumed at 1.30 p.m.

Communications Regulation (Postal Services) Bill 2010: Committee Stage (Resumed)

SECTION 16

Debate resumed on amendment No. 8:

In page 16, subsection (1)(b)(i), line 38, after “kilograms” to insert “in weight”.
—(Minister for Communications, Energy and Natural Resources).

Minister of State at the Department of Environment, Heritage and Local Government (Deputy Ciarán Cuffe): Amendments Nos. 8 and 9 which insert the words “in weight” after “kilograms” are being made for clarification purposes and to improve the text of the Bill. During last week’s debate Senator O’Toole questioned the amendments, suggesting the inclusion of the words “in weight” would create legal uncertainty about legislation which referred to weight but did not include the words “in weight”. However, the Parliamentary Counsel has assured us that the amendments are being made for the purposes of correcting the drafting.

Senator Joe O’Toole: I do not wish to take up the time of the House unnecessarily. However, this is a mistake. I studied physics for many years. While all other measurements are metered, the kilogram is the only unit of measurement based on a mixture of arithium and platinum that is kept in France. It is the only unit of measurement kept in a solid physical state. It used to be based on the weight of a litre of water at sea level. Therefore, the problem with the term “weight” is that it changes. I raised this issue with the Minister of State earlier.

In 1901, to deal with the confusion caused in terms of what constituted a kilogram, the International Bureau of Weights and Measures engaged in its third significant discussion of the issue and determined that it was a unit of mass. That is the official legal position. Mass is different from weight which I could explain if I had two hours. Mass relates to matter, while weight relates to the gravitational pull required to hold something steady without it floating away. What is being inserted in the Bill, therefore, is not correct. I made a number of legal points on the amendments on the last occasion which I will not rehearse as we have a lot of business to deal with and the Minister of State is under pressure. However, there have been many tests done in this regard. It is equal to the mass of the international prototype of the kilogram. Therefore, the words it is proposed to insert do not create certainty, rather they create uncertainty. I am completely right in my argument, regardless of what the lawyer has to say about the matter. The Minister of State should ring the lawyer and ask the reason the Bill is to include the words “in weight” when a kilogram is a unit of mass. It is different from almost every other measurement.

I accept the Minister of State will not concede the point. However, this is wrong. This is the type of legislation on which the Seanad should bring its experience and knowledge to bear. If we need to ensure there is certainty in this regard, this is not the legislation in which to do so. The matter should be addressed in an interpretation Bill, of which there is a number. We have defined “a straight line”, “distance” and many other terms. The last interpretation Act was passed in 2005. Where there is doubt, the matter should be addressed in interpretation legislation. The inclusion of the words “in weight” after “kilogram” is akin to including the words “in length” after “a mile”. If the Minister of State will not accept my argument, as he clearly

[Senator Joe O'Toole.]

will not, perhaps he might explain what needs to be clarified to provide certainty. How do the words “in weight” provide it? What was not clear about the term “kilogram”?

Deputy Ciarán Cuffe: I am always keen to learn from the deliberations of the Seanad. It is news to me that a kilogram is defined by reference to the international prototype. Whenever I come to the Seanad, I am impressed by Members’ knowledge. However, I must defer to the Parliamentary Counsel, with whom my officials communicated following the debate on this matter last week. The Parliamentary Counsel has confirmed that this is the correct drafting. While it may appear to us that the Parliamentary Counsel operates in a different language or parallel universe, I must on this occasion defer to their wisdom. I thank the Senator for his contribution on the matter, from which I have learned. I will endeavour to feed it into future deliberations in addressing the issue of weight in legislation.

Senator Joe O'Toole: This is a classic example of what happens. The Minister of State does not know the reason for the uncertainty that required the matter to be clarified, yet he has opted to make this decision based on the advice received. I do not blame him for that, but this is what is going wrong in Irish politics. Everything I have said is factually correct. I am a legislator and do not know what is being clarified by the insertion of the words “in weight”. As far as I can see, this will create uncertainty. These are the issues at which we need to look. While this is only a minor issue, it is a mistake.

Amendment put and declared carried.

Government amendment No. 9:

In page 16, subsection (1)(b)(iii), line 43, after “kilograms” to insert “in weight”.

Amendment put and declared carried.

Amendment No. 10 not moved.

Question, “That section 16, as amended, be agreed to,” put and declared carried.

SECTION 17

Acting Chairman (Senator Dan Boyle): Amendments Nos. 12 to 14, inclusive, 16 and 16a are related to amendment No. 11 and all will be discussed together.

Senator Joe O'Toole: I move amendment No. 11:

In page 18, subsection (1), line 32, to delete “7 years” and substitute “20 years”.

Deputy Ciarán Cuffe: It is not proposed to accept the amendments. I have, however, given further consideration to amendment No. 14 and, following consultation with the Office of the Parliamentary Counsel, have tabled amendment No. 16a to give effect to the spirit of that amendment.

Senator Joe O'Toole: The problem I have relates to the contract duration which I would like to see increased from seven years to 20. Section 17(1) states: “An Post is designated as the universal postal service provider for a period of 7 years beginning on the commencement date”. That is unfair and an extraordinary short period to deal with the business in hand. I have

examined recent major contracts. For example, the contract granted for the National Aquatic Centre is for almost 30 years; the M50 toll bridge, 30 years; the N6, Galway-Ballinaloe, 30 years; and the N4-N6 Kinnegad bypass, 30 years. To make a provision such as this operational, it is unfair to restrict the contract to seven years. I have picked a figure of 20 years because that is closer to what has been the standard figure in the private sector for similar arrangements in recent times.

Senator Joe O'Reilly: I welcome the Minister of State's acceptance of the spirit of amendment No. 14. I am happy that is the case because we should maintain a democratic basis for what we are doing. The ultimate authority in the State should be the Oireachtas which should have the power to review and make decisions.

I strongly support amendment No. 11 to which my name is also appended following discussions with Senator O'Toole who cited a number of private sector contracts involving significant commitments in terms of resources, planning, finance and personnel. He also identified that the providers had been given contracts of much longer duration than seven years, which is a logical way to approach them. International research suggests this country will only be able to sustain one universal service provider and it should be written in stone for the longest possible period that it should be An Post. If private operators are allowed into the market, we will end up with a more expensive postal service, regional disparity in the cost of delivery of letters, job losses, a loss of €100 million of taxpayer's money which has been invested in four automated mail centres, placing 2,000 jobs at risk. While mail services might become cheaper for large organisations, there is a risk of increased costs for ordinary consumers and SMEs.

Everybody's mantra nowadays is that there is a need to reduce costs. However, there is a risk that we could contribute to increased costs. If the contract is not written in stone for a more reasonable period of 20 years, we could put at risk the USO, which would be an horrendous outcome, given the dispersed population in rural Ireland and on the islands. No provision should be included in the legislation that could put the USO at risk. It is critically necessary that everybody in the country receives his or her mail on a next day basis or as close to this as possible. The percentage of next day deliveries is high; An Post should be congratulated on its success to date. People should receive their post the next day, no matter where they live for the same cost, irrespective of who or what they are. We will not have served the people well if anything jeopardises this.

This is sensitive day in the country's history. People are in raw form and it would not contribute to their good humour if they observed the Oireachtas doing anything to undermine the USO, nor would it be right. Senator O'Toole made a sound commercial argument in favour of the amendment. I strongly support his practical business argument by highlighting the desirability of the maintenance of the USO, jobs in An Post, investment in the automated mail centres and a low cost postal service for everybody, not just for a few major organisations. The other amendments set out to achieve the same objective.

I am pleased the Minister of State has accepted the spirit of my amendment, the objective of which is to make the Oireachtas the ultimate authority when it comes to making decisions on the USO or any other aspect of the postal service. As was pointed out last week, the Oireachtas cannot micro-manage the service; nor is it suggested it should, for example, supervise the output at Belmullet on a given day. While that is not the objective, the Oireachtas should have overall oversight and overall democratic authority in this regard.

I make no apology for Members thrashing out this Bill thoroughly as they would be negligent otherwise. I will conclude by stating, however, that it is not simply a fanciful concept that the

[Senator Joe O'Reilly.]

postal service should be preserved for everyone or that it should be preserved for as long as possible for everyone at the cheapest possible price. This is not a fanciful, nice concept of mine and a few other Members. It is not esoteric but is a real issue for real people who live in isolated places such as the backs of hills, etc. I refer to people who have chosen to live there, whose families lived there before them and who have a right to live there. Moreover, such people have a right to a postal service of equal standard as that available to those who live in Foxrock, Killiney or Dublin 4. This is not an unreasonable proposition and, if it is, there is something unreasonable about us.

Deputy Ciarán Cuffe: What I found disappointing about the contributions to the debate on these amendments is that there has been no mention of the seismic shift that has occurred over the past decade on foot of the advent of the Internet and electronic mail. It is disappointing that Members' contributions did not mention the way in which the world has changed over the last ten or 20 years. The seven-year designation is not a derogation from competition and competitors are not precluded from entering the letter post market from 1 January 2011. However, An Post has been designated since the year 2000, that is, ten years ago, under current regulations. An Post has held a monopoly since its establishment in 1983. It is not as though this measure is something new that has appeared out of nowhere as clear signals have been given over the past ten years that this would occur.

Senator O'Reilly suggested that there might be regional disparities. Nothing in the legislation suggests there would be regional disparities and the Senator is simply throwing up something that has no basis in the legislation as proposed. It is important to put on the record that universal service continues. There has been lengthy discussion, deliberation and debate on what would be an appropriate length of time and after the seven-year designation, ComReg is charged with reviewing the market and ensuring the universal service provision. As five-day delivery and clearance is guaranteed by the Bill and the directive, I consider seven years to be an appropriate timeframe. In designing the new framework, one must be cognisant of two key objectives, namely, the maintenance of universal service and the promotion of competition and innovation, and this Bill strikes a balance between them.

On the issue of amendment No. 16a, it does not exactly match Senator O'Reilly's suggestion to delay a ComReg decision not to designate before the Oireachtas. However, the proposed amendment No. 16a requires such a decision to be published in *Iris Oifigiúil* and for both the Minister and the European Commission to be notified, all in the interests of increased transparency.

Senator Joe O'Toole: The Minister of State misses the point as it is precisely for the reasons he mentioned about innovation and moving forward. It is to ensure people take a long view in respect of making changes. While I am open to correction, my understanding is that ComReg will make a decision on service levels and the form of service. As the Minister of State noted, the universal service obligation is covered in the legislation and while Members may have had marginal arguments about attributes of it, all agree on its core. I refer to the type of service and the introduction of innovation and new technology, which of course should be part of that. My understanding, and the Minister of State should correct me if I am wrong, is that this is a matter for the regulator. In other words, the regulator will determine the type of service, information flow, etc. that will be determined and the provider will simply deliver on it. This will be the same as what happens in respect of ComReg's other arrangements for telecommunications and so on. I believe the Minister of State and I have discussed how this works

with the regulator in other committee meetings. This is my understanding and if I am incorrect, the Minister of State certainly is right to criticise me. This is my understanding, however, and it is how it was explained to me in earlier discussions and in respect of any briefing I received.

I certainly agree completely that we must use all such innovations. The intention of the amendments was to facilitate long-term planning. I approached this from the perspective of what happened in Eircom, which people entered and left simply for a fast buck. People should commit for a longer term and such a commitment means putting in place things that will last for a longer term. One of the most important developments in An Post is the manner in which it has reduced the number of employees. It has shown good intentions with regard to developing a lean operation, a good service and making it work.

Consequently, my aim in this regard is to do precisely that. I agree with the point made by the Minister of State. Lest there be any indication that I only desire people to continue doing things the way they always have done them, I reiterate that my intention is to ensure people make a longer-term commitment. Introducing technology often requires longer-term preparations and one has seen repeatedly that companies, especially private sector suppliers, will not wish to invest in changes in scenarios in which they might find themselves out of the marketplace two or three years later. This was my point of view. I do not mind whether the 20-year period I have proposed is staggered in some way or if some kind of intermediate or intervening period is introduced. I wish to ensure that whatever entity is in place considers the long term and not simply the short term. This was my perspective and I agree with the Minister of State's point of view. If it is not a requirement of ComReg to ensure the use of the most up-to-date methods, innovations and information technology, then I agree with the Minister of State that it certainly should be.

Senator Joe O'Reilly: I fully accept the Minister of State's thesis and Members would have taken that as a given. I believe reference was made on Second Stage that Members are more than aware of the degree to which information technology has caught on and is being used. In a way this makes it more necessary to be supportive of the universal service obligation and supportive of An Post. It will not simply face competition from private operators but also from information technology in the broad sense of developments with e-mails and so on. All Members are aware of this and all Members of this Parliament, myself included, albeit belatedly, have been obliged to adapt to and use new technology day to day. While no question arises in this regard, it underlines further the need to support An Post. I refer first to the need to support the universal service obligation on a statutory basis and, second, the need to support An Post.

I take the point made by the Minister of State in his response to me that it obviously is a given in the legislation that the universal service obligation continues. While it may be a given in words, Fine Gael's objective is to ensure the prevention of what happened in England and other countries. The Minister of State will be aware of studies in other countries that have brought in and given legislative effect to the European Union directive but which did not build in sufficient safeguards, which has resulted in the universal service obligation being threatened and in costs becoming prohibitive. Fine Gael is seeking to achieve the preservation of the universal service obligation by preserving a pitch on which it can survive. This is the reason I have tabled this proposal. I take it that amendment No. 16 will be dealt with later and that Members are dealing with amendments up to amendment No. 15?

Acting Chairman (Dan Boyle): No, amendments Nos. 11 to 14, inclusive, 16 and 16a are being discussed together.

Senator Joe O'Reilly: Very well. Again, this point is expressed in my amendment No. 16, which includes the phrase, "and having regard to the cost to the consumer and to the quality of service". One does not want a situation to arise in which, between information technology on one side and private operators on the other, there is no provision for State support for An Post in a doomsday scenario. I acknowledge Members will discuss State support later. If no State support is to be forthcoming for An Post in a doomsday scenario, which is what the Bill proposes in its current form, if one accepts the reality of information technology being of great importance at present, and if one intends to allow in private operators, one is coming at the universal service obligation in a big way, which makes it all the more an imperative that this obligation be supported legislatively.

John Hanafin: In supporting necessary amendments, I am conscious that the amount of capital invested by An Post would indicate that we will have to be careful in how we designate the universal supplier. Seven years would not be sufficient under any banking terms. It would be a most unusual rate of return to get the capital returned over seven years. An Post has made significant capital investment in its markets, its computers and its people. While agreeing with what has previously been said, we must be conscious that there is a limited pool here. With that limited pool, new entrants will come in and try at every hand's turn to cherry pick the most profitable areas only.

The purpose of these amendments is to ensure a level playing field. If we do not get it right now, we will pay for it on an ongoing basis, just like the postal service in the UK. That is why I ask the Minister to consider extending the seven period to 20 years for the designation of a universal service provider, and to take on board what we previously mentioned, namely, the importance of An Post and its type of carriage. It really is a specialist area and we must be careful to assess the type of provider that is given a licence. There should be stringent regulations on who has responsibility for carrying Government cheques, cash or valuables in the post, and the form that would take.

Senator Martin Brady: I agree with Senator O'Toole and others that seven years is a short time. Eircom provides a good example of what has happened with all these new regulations. The service provided to the customer by Eircom has diminished drastically when compared with the service it provided ten years ago. It is very difficult to get a telephone fixed. It is very difficult to get a telephone in some parts of Dublin. One might have to wait two years, which is hard to believe, but I know it to be the case. A pilot scheme could go on for seven years to determine finances, to examine new technologies and so on.

ComReg plays an important role in this area as well. For example, it could designate An Post to look after Dublin 1 and Dublin 2. It could designate a competitor to look after Cork city. Naturally, we have to be careful with that. An Post has invested much money in its service, including millions of euro spent on new technology and so on in its main sorting office in Clondalkin. We want to avoid the situation that has already occurred in telecommunications whereby competitors can come in and piggyback on the infrastructure that has already been built up by the taxpayer. We cannot just throw all that away.

I fully support the extension from seven years. The period is too short. Senator O'Reilly pointed out that there are sustainable jobs at stake here. There are dedicated workers in An Post and they provide a good service to the public. We must ensure this continues.

Deputy Ciarán Cuffe: There has been a series of good contributions to the debate at this stage. Senator O'Reilly mentioned that costs are prohibitive in some jurisdictions. If he has examples of that, I ask him to bring them to the attention of the Minister, Deputy Ryan.

Senator Joe O'Reilly: The Royal Mail is having problems in England.

Deputy Ciarán Cuffe: If there are examples of prohibitive costs, let us look at them and tease out where things went wrong and learn from the experience. The Senator wondered whether I accept IT is very important. I think it is very important and I think it will be even more important in the years ahead. That is why An Post must be adaptable and innovative in the same way as other institutions, and must look at which way the wind is blowing and adapt to that.

We have had a debate on seven years and 30 years. There is a difference between a road project and the postal service. When a road is built, it is built from scratch and I can understand that if it is being financed from private sources, there must be a much longer lead-in time of 25 to 30 years for it. There is a much shorter timeline for using IT systems and mechanical systems for places like An Post. We cannot compare chalk with cheese in this instance. An Post has invested heavily in its services, but it is not correct to compare it to the major capital infrastructural projects that have gone on within the State over the last decade.

I accept the point made about learning the lessons of Eircom, making sure there is no quick fix solution that could be challenged in future years. The world is changing. I got rid of my Eircom line and I think many households in the State have done so. The biggest mistake we could make is to pretend the world has not changed and that things will be the same in 20 or 30 years. A key issue within the Bill is to move on and to make sure we are adaptable and capable of responding to the information technology challenges.

It must be stated that designation is not a prerequisite to innovation, and An Post will still be the national, State owned postal service provider offering a national postal service. The universal service obligation is an obligation on the State, and designating An Post for seven years ensures the universal service obligation is met. ComReg is still charged with ensuring this universal service, and decisions it makes on designations must be made to meet this objective. However, as I stated, the market is changing rapidly and the universal service obligation could be met by the market and designated universal service providers. A period in excess of seven years is not appropriate, given the changing market. It could be the equivalent of giving a 30 year level of service provision to the canals when the railways had just started up. The world is changing and I want to reflect that. At the same time, I want to ensure that we allow An Post to continue as a strong, innovative and viable company.

Senator Joe O'Toole: I do not want to argue with the Minister of State's points, but he is not picking up on our points. The length is not the issue that will preclude innovation. I completely agree with the Minister of State's point on that. Of course roads are different, but I just used that as an example of contracts, pay back and long-term investment. It is up to the Minister State to accept or reject that. Of course these things are like chalk and cheese, but they are still contracts, even though they are on different issues.

The Minister of State has not dealt with Senator O'Reilly's second amendment, which refers to costs and quality. That is where we are being caught out all the time. The Minister of State said to Senator O'Reilly that this is something we can talk to the Minister about. One of my biggest problems with this Bill is that Ministers are being taken out of the equation. I failed to pass an amendment the last day which would ensure that a Minister could intervene in certain situations. There is not much point in telling the Minister any more about anything. The Minister can bring things to the attention of the regulator, but the regulator is the person with the authority. The Minister of State is about to propose an amendment changing the word "specified" to "determined". I do not want the Minister to micro-manage but, as we have learned from the HSE and other bodies, there comes a time when a Minister must be able to intervene.

[Senator Joe O'Toole.]

I wanted that to happen and it is not happening. It is all the more reason why we are more careful about this issue. Surely, in the light of what the Minister of State said, is it not important to re-examine amendment No. 16, which states the commission may determine different universal postal providers, having regard to the need to ensure there is no duplication on each service provider, and also that he would take into consideration cost and quality? Is that not completely in line with what the Minister of State said when we discussed these amendments: the quality of service and if we need further innovation or approaches, new technology?

Senator Hanafin made the point about the level of capital investment made by An Post in recent years. That is why I wanted the length of time to be extended. An Post is building offices and putting in sorting equipment that may then be moved out of the equation. Private sector operations are required in terms of proper management for the directors of companies to ensure they do not invest in something they could not get payback on. An Post has made enormous capital investments.

The Minister of State mentioned the market and I have no problem with markets. In my time as president of a trade union, I always managed to puncture the privatisation argument against nationalisation by saying a plague on both those houses, we need competition. The Minister of State made the same point about changing his phone line. Old fashioned man that I am, I still have my Eircom line but I take the point. I told Bord Gáis I would not change provider from ESB until ESB was allowed to compete on a level playing field; I come from a statist background for which I make no apologies. I insist, however, that the public sector provides quality, service, efficiency, effectiveness and a lean operation. In future markets, that will be the only way to survive. I am trying to put in place something that allows us to maintain An Post and that is why I want ministerial involvement and a longer term, why I want us to take cost and quality into consideration. We have lost that.

The Minister of State has changed from an Eircom line.

Deputy Ciarán Cuffe: I use a mobile telephone.

Senator Joe O'Toole: Still, however, he has no conscience about using the Eircom phone line.

Deputy Ciarán Cuffe: I do not use it.

Senator Joe O'Toole: Well, most of the people who have moved over to UTV or whatever still use it.

Deputy Ciarán Cuffe: It is called mobile.

Senator Joe O'Toole: Those of us who live miles away in north Dublin cannot get broadband or telephone reception in our houses but that is another day's work. Many of those who have moved from Eircom still use the Eircom copper wires and they do not have any conscience about it until they break down and then Eircom must fix them. That is something we should go into another day, and I accept there are two sides to that story. In this situation, however, I want An Post to be recognised for what it has done and what it can do. It must be put under pressure to deliver the best possible service, with ministerial involvement where necessary, the timeframe extended and issues in the areas of cost and quality addressed, as proposed by Senator O'Reilly. We have put to the Minister of State a group of amendments that he should re-examine.

Deputy Ciarán Cuffe: As an example, the Senator and other Members know we communicate with those we represent by post. I am looking for quality, cost and a service that responds to

the needs of the user. When it comes to delivering communications to the people of Dún Laoghaire, I look to a company that can provide a layer of sophistication on delivery. I would love to think An Post can compete on cost, quality and response to my demands. Sadly, at certain times in the past, An Post has said to me that I cannot specify geographic areas because the company uses different areas. I have asked An Post to deliver in late November and it said it could not, that its deliveries operated differently. That flexibility is needed. I am dying to get An Post to deliver the communications I have, and on many occasions I use An Post but there is an issue of quality, cost and response to the users' demands. It is not an issue of the good postmen and women on the ground, it is an issue of middle management where we need the flexibility, adaptability and a response to the user. I see it in the private sector and I want to see it happen within An Post and if it does happen, An Post can and will deliver to a degree where it can do much better than the private sector. Like Senator O'Toole, I want the State to do things when it can and I want to see the State show that flexibility and adaptability and hold its head high on these issues. It will not happen as easily, however, if there is a 20 year derogation.

Senator John Hanafin: We all want the same thing and we agree on the principle of quality of service and competition. The anxiety expressed in the amendments is that unless new entrants come to the table with suggestions of how to grow the business, there is an absolute inevitability that there will be a division of the existing business, which is only marginally profitable as it stands, at less than 1% of turnover, which is within the margin of error for any reduction in postal services. If we are not asking new entrants for a plan to grow the business, we must allow An Post the chance to recoup the money it has already invested. Any business, private or public, would be making a reasonable proposition in making a request for an extension of seven years. There is a limited pool and unless there is a larger plan for new entrants to state they can increase business by a certain percentage, which they then take, we will end up subsidising An Post because it is has lost business to new entrants and, effectively, we will be subsidising the new entrants.

Senator Joe O'Reilly: It is not in conflict with the Minister of State's ambition to see An Post compete and adapt to the market place; there is no incompatibility here. The amendments enshrine in this legislation that whoever delivers the service, private or public, there is a legislative imperative to do so with regard to cost, efficiency, universal delivery and low pricing. I do not see the difficulty; surely putting that prerequisite in the legislation will enhance the possibility that all service providers will do it. Extending the term would make it viable for An Post to plan and adapt. As Senator Hanafin said, the profit margin would suggest that such an extension is necessary.

I cannot see how our position is incompatible; all we want to do is give legislative effect to the stated objective of the Minister. If the Minister is truly committed to the stated objective, he should accept these amendments or bring in alternative amendments to achieve the same objectives on Report Stage.

Deputy Ciarán Cuffe: We must come back to the issue of designation; it is not a monopoly and does not preclude market entry. What it does, in effect, is place an obligation on An Post. There is an issue with the protection of consumer interests which must be addressed and we must be careful not to err on one side or another. I also reiterate the point that this proposal has not come out of the blue. We have been aware of the EU directive for some time; it is not as if it suddenly dropped out of the sky after seven years.

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

Amendment declared lost.

Senator Joe O'Toole: I move amendment No. 12:

In page 19, subsection (3), line 4, to delete “may” and substitute “will”.

Question, “That the word proposed to be deleted stand,” put and declared carried.

Amendment declared lost.

Senator Joe O'Toole: I move amendment No. 13:

In page 19, subsection (3), to delete lines 5 to 10 and substitute the following:

“from the expiry of that period designate a Universal Postal Service Provider.”.

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

Amendment declared lost.

An Cathaoirleach: Amendment No. 14 has been discussed with amendment No. 11. Is it being pressed?

Senator Joe O'Toole: No.

Senator Joe O'Reilly: If I understood the Minister of State correctly, it is being accepted. On that basis it is not being pressed.

Deputy Ciarán Cuffe: We are introducing a very similar amendment.

An Cathaoirleach: The amendment is not being pressed.

Senator Joe O'Reilly: The Minister is accepting it.

An Cathaoirleach: Is it agreed that the Minister will accept the amendment?

Senator Joe O'Toole: The Minister has replaced it with another.

Deputy Ciarán Cuffe: Amendment No. 16a addresses the spirit of amendment No. 14.

Senator Joe O'Reilly: All right.

Deputy Ciarán Cuffe: I think it is a decent way of dealing with it.

Amendment No. 14 not moved.

Government amendment No. 15:

In page 19, subsection (5), line 20, to delete “may specify” and substitute “may determine”.

Amendment agreed to.

Senator Joe O'Reilly: I move amendment No. 16:

In page 19, subsection (5), line 26, after “designated” to insert the following:

“and having regard to the cost to the consumer and to the quality of service”.

Amendment put and declared lost.

Government amendment No. 16a:

In page 19, between lines 34 and 35, to insert the following subsection:

“(7) Where the Commission makes a decision under subsection (2)(b), (3)(b) or (4)(a), as the case may be, that no designation is required, it shall—

(a) publish notice of such a decision in *Iris Oifigiúil* and in such other manner as it considers appropriate, and

(b) notify in writing the Minister and the European Commission.”.

Amendment agreed to.

Question proposed: “That section 17, as amended, stand part of the Bill.”

Senator Joe O’Toole: I know the Minister was absent on important business, during which time he was ably represented by the Minister of State, Deputy Cuffe. We have had a long discussion on issues we consider are at the core of the Bill such as quality, cost and competition. I will not reopen that discussion, but we are making a mistake in not making various changes to this section. I find it hard to accept it as it stands.

Senator Joe O'Reilly: To ensure the efficient running of the House, I will not reopen the debate, but I advise the Minister to read the transcript to see the arguments we made. I appeal to him to either accept our amendments or tell us that he will come back with proposals to achieve the same objectives which should not be disputed.

An Cathaoirleach: Does the Minister wish to speak to the section?

Minister for Communications, Energy and Natural Resources (Deputy Eamon Ryan): No; I will certainly read the transcript to see the arguments made, but I would prefer to let the section stand, as amended by amendment No. 16a, and continue with our discussion of the Bill.

Question put:

The Committee divided: Tá, 29; Níl, 14.

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.
Keaveney, Cecilia.

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

Níl

Bradford, Paul.	Hannigan, Dominic.
Burke, Paddy.	McFadden, Nicky.
Buttimer, Jerry.	Mullen, Rónán.
Coffey, Paudie.	O'Reilly, Joe.
Cummins, Maurice.	O'Toole, Joe.
Donohoe, Paschal.	Ryan, Brendan.
Fitzgerald, Frances.	Twomey, Liam.

Tellers: Tá, Senators Niall Ó Brocháin and Diarmuid Wilson; Níl, Senators Maurice Cummins and Joe O'Reilly.

Question declared carried.

Senator David Norris: On a point of order, I had to rush to the Chamber to take part in the division because the division bell never rang in my office. Neither did it ring in the offices of my secretary or Senator O'Toole, both of which I was in. It was my secretary who pointed out to me that a division had been called.

An Cathaoirleach: I apologise and will have the matter investigated immediately.

Section 18 agreed to.

SECTION 19

Senator Dominic Hannigan: I move amendment No. 17:

In page 20, subsection (2), lines 42 to 47, to delete paragraphs (a) and (b) and substitute the following:

“(a) the terms and conditions, excluding those specifying the amount of the charges, in accordance with which a postal service user may avail of the postal services concerned, and”.

Deputy Eamon Ryan: The effect of the amendment would be to remove the need for An Post, or a designated universal service provider, to notify ComReg of its tariffs and changes thereto. Tariffs are an integral part of a universal postal service provider's terms and conditions. To safeguard the interests of users, the general terms and conditions, including the terms and procedures for dealing with consumers, which apply to An Post as a designated universal service provider and any other provider which provides universal services must be approved by ComReg.

Charges for postal services not within the scope of the universal service are not subject to such oversight. In addition, Recital 34 of the first postal service directive states “Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (7) applies to postal operators”. The oversight by ComReg gives the operator a practicable defence against claims that, even where its terms and conditions are not negotiated with consumers, they are unfair and, therefore, unenforceable. Such protection is specially needed in cases where users have no bargaining power. On these grounds, I cannot accept the amendment as proposed.

Senator Dominic Hannigan: I thank the Minister for his comprehensive reply. I will consider it with my advisers and, if necessary, resubmit the amendment on Report Stage.

Amendment, by leave, withdrawn.

Amendments Nos. 18 and 19 not moved.

Section 19 agreed to.

Sections 20 and 21 agreed to.

SECTION 22

Government amendment No. 20:

In page 23, subsection (3), lines 23 and 24, to delete all words from and including “under” in line 23 down to and including “2010” in line 24 and substitute the following:

“and, subject to section 29 of the Arbitration Act 2010, that Act shall apply to an arbitration under this Act”.

Deputy Eamon Ryan: This drafting amendment specifies the particular section of the Arbitration Act 2010 which applies in this case. It is proposed in the interests of adding clarity.

Amendment agreed to.

Section 22, as amended, agreed to.

Section 23 agreed to.

SECTION 24

Government amendment No. 21:

In page 24, subsection (3), lines 40 to 44 and in page 25, lines 1 to 11, to delete paragraph (b) and substitute the following:

“(b) A universal postal service provider shall have the power to charge and recover from the person—

(i) from whom a postal packet to which this subsection applies purports to come, or

(ii) by whom or on whose behalf such postal packet purports to have been sent, as a simple contract debt in any court of competent jurisdiction, the difference between the postage which would have been payable had the postal packet been posted in the State and the amount actually paid or payable to the universal postal service provider in respect of that postal packet posted outside the State to an address in the State and purporting to be sent by or on behalf of someone who is residing or carrying on business in the State unless terminal dues, which meet the requirements specified in subsection (1), apply to that postal packet.”.

Deputy Eamon Ryan: This textual amendment substitutes the words “that postal packet” for “a postal packet” and is being made for clarification purposes.

Amendment agreed to.

Section 24, as amended, agreed to.

SECTION 25

An Cathaoirleach: Amendments Nos. 23, 24 and 26 are consequential on and amendment

[An Cathaoirleach.]

No. 25 is related to amendment No. 22. Therefore, amendments Nos. 22 to 26, inclusive, will be discussed together.

Senator Brendan Ryan: I move amendment No. 22:

In page 25, line 19, to delete “overall limit = (Δ CPI) — X” and substitute “overall limit = (Δ CPI) — X + Y”.

This amendment has been proposed by An Post which states price control should reflect structural declines in volumes, given the fixed nature of many of the costs incurred in providing a universal service. As volumes decline, costs per unit increase. Without this adjustment, it would not be possible for it to be cost reflective. This adjustment is catered for in other countries such as the United Kingdom and France.

Senator Joe O'Toole: The Bill proposes ComReg can put a price cap on certain services being supplied. This is an interference with the market and we heard a lot earlier from the Minister of State, Deputy Cuffe, about its importance. I have no problem with interfering with the market. That is what regulation is supposed to be about, as long as it is done on a qualitative basis. We know the problem created by putting such a similar restriction on the ESB several years ago when it was not allowed to charge market prices and lower its prices. While it seemed like a good idea in 2001, it was a very bad idea two years ago.

The legislation makes a solid argument for allowing ComReg to put a cap on certain prices. However, such a cap should only be maintained for a short time. Maintaining a price cap for five years would be unfair on any service provider. Surely the market and consumers' interests should have an input in this regard. The price should be allowed to float in these cases.

While we argue about the need for competitiveness and allowing the private sector, as the Minister of State said, to become involved in this market, proposing a price cap seems to be the obverse of these arguments. It also makes the position intractable and irrecoverable. I do not believe, therefore, that there is a substantial argument for allowing this to happen. Will the Minister put the matter in context in terms of quality of service, how it interfaces with the marketplace and ensures fairness? This mistake was made with the energy regulation legislation and the ESB. We should be learning from all these experiences. If there is a need for a price cap, one or two things should be done. Either reduce the five-year period to three or some other figure, or else get rid of the word “shall”. That is another way to take cognisance of changing circumstances over the period, so it could be revisited one way or another. The provision that it “shall continue for five years” is very harsh indeed. I ask the Minister to re-examine this matter and give it his best shot in responding to it.

Senator Joe O'Reilly: I strongly support Senator O'Toole's amendment to delete “five years” and substitute “three” because three years is a reasonable period. Five years would put An Post into a straitjacket. As I said on Second Stage, I am concerned that we should preserve the universal service obligation and the excellent next-day delivery levels to every part of Ireland that An Post has achieved. That is the premier objective. The second objective is that we have a quality delivery service to people's homes, not to central collection points. Cheques and moneys should not be put at risk by being collected at central locations, nor should we allow private operators at a lower level in the marketplace where they can cherry-pick.

Our big objectives are that An Post should be competitive, deliver a quality, universal service, preserve the taxpayer's investment at €100 million at the four automated centres, and keep its excellent workforce in place. Given those objectives, it is too much of a straitjacket to box it into a five-year price control system. We think that three years is a reasonable period.

Obviously, a submission for a price increase in three years would have to go through the normal processes rather than being automatically agreed.

Were An Post bizarrely to propose a trebling of postage rates, that would not be accepted because there are controls to ensure it would not happen. Normal price controls would apply of having to go through the regulator and the Minister. One assumes, therefore, that the proposed regulations could not be abused. It is too much of a straitjacket to opt for the five-year period because we cannot gaze into the crystal ball to that degree. Senator O'Toole made the valid observation that we were wrong in the case of the ESB. There is no harm in learning from mistakes. If there is something we should all learn on this unique day in our history, it is the capacity to accept error, build on it and do new things as required.

I appeal to the Minister to accept the amendment as a reasonable proposition. Sufficient safeguards are built into the system for the consumer, yet it affords flexibility to adapt to what might be a very different situation in three years' time. We hope, of course, that postal services will get cheaper. That is our general ambition and no one is arguing to the contrary, but we are just trying to be sensible in the circumstances.

Deputy Eamon Ryan: I have to disagree with Senator O'Toole's ESB analogy. There has been a misconceived public campaign on the electricity sector stating that we are the most expensive country in Europe and the worst in the world. If one looks at the reality of what is happening, the policy measures that have been introduced are working. Statistics show that for large energy users, where employment is a key issue, Ireland is the sixth cheapest of the 27 EU countries.

Senator Joe O'Toole: That is correct, yes.

Deputy Eamon Ryan: We have seen a huge reduction in electricity prices in the last two years. There are several reasons for this, but one of them is that a competitive market arrangement is working. The ability to allow other competitors, such as Bord Gáis and Airtricity, to underprice the ESB in electricity supply has created a competitive retail market as well as in the business sector. In February or March, when it goes above 40%, the ESB will then be free to change. That good regulation is in place and the price cap did what was meant to do, allowing competition to develop, bringing prices down and improving services for everyone. It is important to recognise that because there is an alternative campaign which says our electricity companies are not working for us, we must break them up and sell them. I do not think that is in the public interest, however, and it is based on a campaign which is inaccurate. The question is whether our regulatory system and semi-State utilities are working effectively within a competitive functioning market, and to my mind they are. They provide a good example of how one can create a competitive market and have companies that provide a real public service. On a point of principle, I contend the Senator's argument in that regard.

I cannot accept the five amendments concerning the proposed price cap. This is a similar example where we are looking to create a market that does not underpin or undermine An Post. It may give it a measure of certainty rather than looking case by case, as it currently does, for a price increase in particular product areas. At the same time, it recognises for An Post that the response to a declining market and declining volumes cannot just be to see if it can get an increased price on the remaining volumes. That would just be a never-ending downward spiral as a business model. That is why we put a five-year cap period in section 25. It is also critical because it affords protection against price increases for users who do not have market power. It is for small businesses and individuals who cannot negotiate their postal pricing arrangements with An Post. That particular category is the only one where we are seeking to put a cap in place.

[Deputy Eamon Ryan.]

I do not believe that the annual review proposed in the amendment would work as effectively. One would be in a constant state of uncertainty if one had an annual review. It would not provide the sort of business environment that would help either An Post, consumers or other market operators.

Section 25(5) includes a provision for a review after three years. If people think five years is too long, there is a mechanism to amend the component parts if the assumptions under the cap are no longer true. It is not setting five years in stone, but is providing for a five-year period with a review clause after three years. That is an appropriate measure which allows the flexibility to make adjustments. There is such a need for certainty, however. Examples in other areas where we have opened up markets to competition — I will take electricity as the example because it has been raised — show that this can work both for An Post and the consumer.

Senator Joe O'Toole: I have looked closely at the analogy used by the Minister and I agree with the points he has made about the need to do certain things. As regards people in Ireland who are talking about the ESB, I have examined how it worked in other countries. In New Zealand, for example, they broke the electricity company into nine separate sections and it has been a disaster, although they do not admit that. In fact, they had difficulty selling off certain sections of the company and have failed to do so. They also had difficulty in connecting the network to the grid. Consequently, the city of Wellington was left without power for three weeks at one stage because of the mess they made of it. My argument is not at all in support of that particular approach. Neither is my argument that we needed to do something back in 2001, although I resent the fact that — as the Minister will recall — electricity prices went up before they came down. There was a period when Ireland went from having the lowest electricity prices in Europe to being nearly the most expensive.

The Minister is right to say we are back down the list and are now sixth or seventh in the league, so in that regard it is working. It is being unfair to the ESB, however, to have to sit back and think of Ireland for the last nine years without being able to fight back. My argument is that the period was far too long.

I admit that I had not seen the review process provided for in section 25(5), which is governed by subsection (10). I acknowledge that meets my secondary argument in that regard. However, the five-year period seems far too long.

I still consider three years would be appropriate. They could do what they wanted after three years of certainty. The Minister must accept that he contradicted himself in respect of the argument on certainty. He is saying reducing the period to three years would create uncertainty

3 o'clock and at the same time it could be reduced to three years. The arguments cancel each other out. It is not that I think we should not interfere, but I said at the beginning that I was not an advocate of the market.

Many of the arguments made against our proposals today and last week were based on allowing competition in the market. In this case the market may be used unfairly, but the Minister says this is not the case. I cannot speak with certainty anymore than he can and either of us could turn out to be correct. Perhaps the truth lies somewhere in the middle. There is an internal conflict. The phrase that jumped out at me was, “The price cap shall apply for a period of 5 years”, while it is stated in section 25(5) that it can be reviewed. This is a contradiction in favour of what I am seeking. I thought the use of the term “shall” was far too strong, particularly when section 25(5) provided a basis on which the term could be undermined. A period of three years would be more acceptable, although I acknowledge the point made by the Minister that there is a review clause and a requirement to engage in a review process. I would like to know more about the process, but

I do not expect the Minister will have the answer to this rhetorical question. I would like to be reassured it would be done in a way that would be fair to all parties and, in particular, An Post.

Senator Brendan Ryan: In response to amendment No. 22 and the necessary clarifying amendments Nos. 23, 24 and 26 the Minister indicated it would not be good for An Post. It is its position that this would be the correct thing to do. Therefore, I do not accept the Minister's argument.

Deputy Eamon Ryan: By having a cap for An Post there will be certainty which will enable it to engage in its business planning. There is recognition that there is a need for a cap because it is likely that for at least five years the sector will be one in which there will not be real competition and An Post will be in a dominant position as a result of its unique advantage in having a distribution chain. The Bill recognises such market dominance. There is a common regulatory process in which the regulator will have the power to set a price cap and ensure operators work within it, make efficiencies and improve service delivery. This is a standard regulatory process and one that is appropriate. The better way is to have a five-year period, rather than having an annual battle with the regulator trying to change prices. The regulator can set a cap and review the matter after three years, if necessary.

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

Amendment declared lost.

Amendments Nos. 23 to 26, inclusive, not moved.

Section 25 agreed to.

Sections 26 and 27 agreed to.

SECTION 28

An Leas-Chathaoirleach: Amendments Nos. 27 to 29, inclusive are related and will be discussed together.

Government amendment No. 27:

In page 29, subsection (3), line 8, after "necessary" to insert "to resolve the dispute".

Deputy Eamon Ryan: This section provides for agreement to be reached between the postal service provider and a universal service provider on access to the latter's network. The intention behind the drafting amendments is to ensure decisions made by ComReg on access will be subject to the appeals provisions provided for. Amendment No. 45 to section 47 inserts a new appeals section. The amendment to section 28(3) clarifies that the steps to be taken by ComReg under the subsection relate to the resolution of a dispute in the event that an agreement is not reached. The amendment to section 28(4) makes it clear a decision by ComReg not to intervene or to discontinue intervention in resolving a dispute is a decision to be made by it and, as such, may be appealed under the proposed new section 47. The amendment to section 28(5) clarifies that the action taken by ComReg under the subsection in resolving a dispute is appealable under the new section 47.

Amendment agreed to.

Government amendment No. 28:

In page 29, subsection (4), to delete lines 10 to 15 and substitute the following:

“(4) With regard to any intervention by the Commission under subsection (2) or (3), the Commission may decide—

(a) not to intervene in the negotiations concerned, having carried out a preliminary examination of the matter, or

(b) to discontinue the intervention in those negotiations.”.

Amendment agreed to.

Government amendment No. 29:

In page 29, subsection (5), line 21, to delete “shall resolve” and substitute “shall make a decision in relation to”.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 30 and 31 are related and will be discussed together.

Senator Joe O'Toole: I move amendment No. 30:

In page 29, subsection (5), line 23, after “it” to insert the following:

“including the use of Independent Mediation. In determining access charges the cost of providing the Universal Service Obligation must be taken into account in addition to avoided costs”.

This amendment goes to the core of the matter. Earlier, when the Minister of State, Deputy Cuffe, was present, we discussed the difficulties created for Eircom at the beginning when it was required to unbundle its infrastructure and make it available to the competition. This is similar, where there will be access to the postal network for other providers. The postal service has the right to enter into negotiations with another party. If An Post is the universal service provider, a private operator can enter negotiations with it. The next subsections in section 28 ensure An Post will not be able to play the old soldier by not engaging in real negotiations or not being straight and honest. The commission can set a time limit within which negotiations must be concluded and it can also intervene if progress has not been made in the negotiations within that period. I do not disagree on how we will get to that point, but what happens in terms of the agreement is what we are concerned with. If there is a disappointed party, where it has entered into negotiations with An Post to provide a postal service in County Mayo, cannot come to agreement and considers it has not received a fair crack of the whip from An Post, that party can appeal to the commission to intervene. The commission shall resolve a dispute “in accordance with procedures established and maintained by it”. In order to ensure everyone will act honourably and fairly, I suggest the inclusion of the words “including the use of Independent Mediation”. There should be an independent mediator as there normally is where there are two sides to an argument.

An Post has invested a major amount of money in sorting offices. The postal network is built around four mail centres, around which An Post has set up a structure in order to become more efficient. The State and the taxpayer have invested heavily in this network during the years. The Minister has mentioned that electricity prices are now the sixth highest in Europe.

They were much higher and I acknowledge they are dropping all the time. We should also acknowledge that An Post——

Deputy Eamon Ryan: This country is the sixth cheapest for large energy users.

Senator Joe O'Toole: We are the sixth cheapest.

Let us acknowledge that An Post is now ranked the seventh most efficient network operator in 29 European Union countries. That is before we introduce any of the proposed changes. I do not say we should rest on our laurels, but let us acknowledge that we have a good system in terms of European standards benchmarked against the rest of Europe. It is right that we should try to improve that. We should ensure we protect what we have as well as improving the service. I presume that must mean reducing charges and costs as well.

We have invested in a system that has created the backbone to the seventh most efficient operator in the 29 European countries. We must ensure we do not undermine that. One way of undermining it would be simply to disregard it. In the case of a dispute between a private operator who is pitching for business against An Post where agreement cannot be reached the matter is sent to the regulator. We have all agreed to that point. I wish to ensure the dispute resolution is carried out in such a way that we can all have trust and confidence. The processes are not included in the legislation, which specifies that the Commission shall resolve disputes in accordance with procedures established and maintained by it.

The process does not even need to be approved by the Minister. I do not like that. It is hardly transparent or in line with the approach of the Minister's party to those matters. If the process had to be improved by regulation or ministerial order at least I would feel there was some input. However, once the legislation leaves us we have no more input into the process. I am trying to make an input at this stage. Independent mediation should be used. In determining access charges the cost of providing the universal service obligation must be taken into account in addition to avoided costs. What does that mean? It means that if one has a mail centre in Athlone which is serving the west — we will return to using Mayo as an example — letters that are——

An Leas-Chathaoirleach: It is great to hear a Kerry man mentioning Mayo.

Senator Joe O'Toole: Indeed. I thought the Leas-Chathaoirleach might have a passing interest in it. If someone was pitching to supply a postal service to Roscommon — this is not a complete example as it is an imperfect argument in one sense but the core of it is correct — at the moment when one posts a letter in Athlone to be delivered in Keel on Achill Island or to Inishturk, it costs the same amount as a letter to be delivered up the street in Athlone. If someone pitches for the delivery of a postal service in Athlone or Roscommon, obviously there is far less cost involved in doing that than the cost on the universal provider to do the whole of that area because it has to go up hill, down dale and cross water where that is necessary. We must ensure the cost is taken into consideration. I do not say how it should be done. That is not something we could do. However, we should ensure fairness and that the cost is taken into account.

Currently, in the case of two letters to be delivered by An Post, one to Inishturk and the other to Tarmonbarry, the first place out the road, or wherever it happens to be, there is obviously a significant difference in cost, but the same universal cost applies to the stamp. I urge the Minister to ensure that valid protection is given to the universal service provider, in this case An Post. We should recognise the investment it has made in the service and take that into consideration in sorting out any disputes between An Post and someone who is not the universal service provider pitching for business in an area.

An Leas-Chathaoirleach: I ask Senator O'Toole to report progress.

Senator Joe O'Toole: We have made very little progress but I will do so in the technical manner that is required.

Progress reported; Committee to sit again.

Sitting suspended at 3.15 p.m. and resumed at 5.30 p.m.

An Leas-Chathaoirleach: I welcome the Minister back to the Chamber. We are discussing amendments Nos. 30 and 31 together. Senator O'Toole was in possession of the floor when he moved the suspension of the House. Had he finished?

Senator Joe O'Toole: For the moment.

An Leas-Chathaoirleach: Did Senator O'Reilly indicate?

Senator Joe O'Reilly: I am fine for the moment.

Deputy Eamon Ryan: It is not proposed to accept these amendments. Regarding the first part of amendment No. 30, section 14 designates the Commission for Communications Regulation, ComReg, as the independent national regulatory authority for the purposes of the directive. Article 22 of the directive requires the designation of a regulatory authority that is independent of postal service providers. Therefore, there is no need to provide for the use of independent mediation to resolve disputes over access. All decisions made by the regulator may be appealed by the persons affected by those decisions.

It is not proposed to accept the provisions on access charges in the amendments. Section 28 places an emphasis on access being granted following commercial negotiations between the universal postal service provider and another postal service provider. Where an agreement cannot be reached, ComReg may resolve the issue and impose certain terms and conditions in respect of access. Section 28(8) provides that, in making a decision, ComReg must take account of the need to ensure and maintain the efficient provision of the universal service. This subsection also requires ComReg, in resolving a dispute, to take the reasonableness of the access request into account. Section 28(9) provides that ComReg, when making a decision as to the cost of access, must take account of the network costs incurred in granting access.

It is not appropriate to legislate for where access should be granted or to prescribe terms under which it is. The postal sector is undergoing sufficient change and must evolve to ensure it meets the needs of its users. An Post may make commercial decisions as to how it should configure its network to meet its obligations and best serve the needs of its users. The challenge for An Post is to recognise the need to re-evaluate its relationship with customers and competitors alike. It must explore the potential offered through competitive partnerships with rival postal service providers and ensure An Post remains the postal delivery company of choice for the foreseeable future.

My final point relates to our overall discussion. Even in the absence of this legislation, the reserved area would no longer be protected. The directive means it would fall. We are legislating, therefore, to restore some sort of protection and certainty. We do not have a plan B. The alternative would be a further weakening of the position of the universal service provider. We are legislating to ensure the directive works for An Post and other providers in the market.

Senator Joe O'Toole: I do not doubt the Minister's good intentions and I hope he sees this issue from our point of view. I accept his point, but we are trying to take it on board and determine what concerns remain. The subject of these amendments is one such issue of concern.

There will be no ministerial oversight or intervention. ComReg is not answerable. The idea behind introducing independent mediation was to assure us ComReg would not be judge and jury, only one or the other.

As to the amendment on charges, the Minister made copious references to subsection (8), but it does not cover the issue. Perhaps there is an intention to do so, but I do not see how the subsection deals with the issue of people cherry-picking which services to tender for. How can we be assured the rights of everyone, including the taxpayer, will be treated fairly by that approach? This issue has not been addressed.

Under section 28(8), ComReg shall:

take into account—

- (a) the reasonableness of the terms and conditions relating to access to the postal network concerned,
- (b) the interests of postal service users,
- (c) the need to ensure and maintain the efficient provision of a universal postal service,
- (d) the availability of alternatives to the access sought,
- (e) the development of competition in the market for postal services,
- (f) the feasibility of granting the access sought, and
- (g) any requirements imposed by any enactment.

None of these provisions addresses the issue. I do not know how ComReg deals with the question of balancing costs. I accept the Minister's point and, in a perfect world, I would not need to make this argument, but every time we have removed authority from a political head, namely, a Minister, and given it to some other group, such as the HSE, we are sorry some years later that we did not leave more room to become involved. Not that there is any great value in consistency, but I have been consistently worried about removing responsibility from a Minister. I have never liked it. Ministers should deal with issues and people should respond to that politically. The HSE is off on its own and we are doing the same in the context of this Bill. In two or three years time, people will undoubtedly be standing in this Chamber and making speeches about how ComReg can do what it wants, that no one can talk to it or tell it what to do and that it is not answerable to anyone. The Minister knows the speech. I am not saying this with any negativity towards the current incumbent. Rather, I am considering how to deal with what could go wrong.

I share the Minister's point about the protection afforded by the Bill and I have no fundamental difficulty with this transposition of a European position. We must do so and we are getting on with it. I am proposing ways to ensure what we do values and protects that which we want to value and protect. We must also look to the future and try to anticipate the difficulties that might arise.

Senator Joe O'Reilly: I share Senator O'Toole's concern and regret the Minister is not automatically accepting these amendments or at least their spirit, while proposing to come back on Report Stage with similar amendments.

The object of the mediation proposal is that when there are two diametrically opposed positions, as an exercise of last resort, there should be an independent mediation service. We believe that to be eminently sensible. The Minister talks about regulation and we have no

[Senator Joe O'Reilly.]

problem with that, but can he say whether, when unbridled regulation has been in place, it has improved services and made them cheaper? In the case of the ESB, telecommunications, taxis etc. this does not always follow. I do not care whether the Minister seeks to amend our wording, to circumscribe the amendment or insert it ultimately as a last resort, but it should be there, in the event of disputes that require independent mediation. Such an amendment would enhance the Bill rather than undermining its objectives.

Our objective in the second amendment is to save our four automated exchange centres and the €100 million in taxpayers' money that is being put into their creation. It is our objective to save the 2,000 jobs associated with those, and the universal service obligations, to ensure next-day and good service delivery to all parts of the country at a relatively cheap cost. The concern in the second amendment is that a private operator could negotiate a competitive price below the standard An Post price for the delivery of post to a particular area. It could cherry pick a population centre within the catchment area of a particular automated centre, for example Galway city. At local level the mail could be put into circulation there and An Post workers would do the leg work in delivering it, the operator having got into the market at a low price. We are arguing it must go in through the automated centres and accept the overall obligations, and not focus on a targeted population area at a lower level or critical mass to the mail centre.

We accepted the principle on Second Stage and understand that the EU directive must be put in place. However, our objective in all these amendments is that we implement the directive, but temper it in such a manner to fit distinctly Irish conditions and the needs of the Irish people as regards the postal service. The objective studies show this country cannot bear too much competition in this area and that An Post would be relatively unviable at a low margin of profit. Although it is profitable, efficient and exemplary in the way it does its business based on all the objective standards, it is not fit for competition on an uneven playing pitch. We are trying to ensure this is not the case, and it is a question of putting in place a suitable methodology. We believe independent mediation is not an inherently harmful process because anybody presenting before it with a wrong proposition, including wrong pricing data, will not survive. In fact anyone supporting such a false premise would not even get that far, since this would have been dealt with at an earlier stage.

If somebody is not prepared, in relation to the mail centres, to take on the postal service at mail centre level for an entire region, he or she should not be allowed to cherry pick a small densely populated area to optimise profit and place An Post in an unprofitable position. Our objectives, therefore, are straightforward. They seek to comply with the directive, but in a way that will ensure the universal service obligations are in place, that the good sustainable jobs in An Post will be maintained and that the post will be delivered relatively cheaply, while maintaining current efficiencies. In trying to achieve this we believe mediation and the other provision as regards not coming in lower than the four automated mail centres, are addressed in these amendments.

This is not a question of somebody being right, half-right or wrong but about doing the right thing by the consumer and postal workers. I appeal to the Minister to reconsider his attitude to these amendments.

Deputy Eamon Ryan: I argue that the provisions contained in section 28 mean in a sense that ComReg is acting in that mediating role. If the Senator reads the section, it says in effect that two parties may enter into negotiation, the service provider and the universal service provider. If they wish they may let ComReg know that negotiations are starting. If either party requests it, then ComReg could specify how long the negotiations will last, but nonetheless it is a third party to what are primarily negotiations between the two commercial parties.

If agreement is not reached, ComReg under subsection (5) can act in a mediation role, while recognising there are two different commercial world views and determining a solution to the negotiations in the event of none having been found. One could argue that this is a mediation process in ways. If that does not work there is recourse in that any decision within the process may be appealed to the court. Therefore there is a mediation system, in effect, and an appeal system to that to give legal effect.

I understand the Senator's desire for mediation and I believe this to be a much better way rather than getting into expensive litigation, if at all possible, but in a sense that is what we are seeking to do here, as regards the regulator.

Senator Joe O'Toole: Will the Minister please clarify what he means by an appeal to the court?

Deputy Eamon Ryan: In a previous amendment to section 47 we were seeking to implement a new provision which would allow for such an appeal across any of the decisions that ComReg makes. It is an amendment I shall be tabling on Report Stage, although we have been discussing it on Committee Stage. The point is that there is an appeal mechanism in place at any part of the decision making by ComReg, in a mediating role to a court, where appropriate.

In response to the general point, this goes to the heart of it as regards the role of regulators. I understand the certain concern within the political system to the effect that there may be a loss of power to the regulatory system and in certain instances we may have seen some effects which were not ideal. I have close responsibility for three main regulatory areas, ComReg, broadcasting and CER. My sense is that ten years in, they have bedded down and that the turbulence in the earlier years has somewhat reduced. They have greatly benefited, to my mind, in having three regulators, the triumvirate system rather than that of a sole decision maker, *una voce*. Often, the areas involved are complex and very technical with two or three strategic objectives. Having three commissioners, as with ComReg and CER, is a mechanism that works, and there is political oversight.

At no stage, as the Minister with responsibility for those areas, did I not have the ability to talk to a regulator and share my views, while respecting his or her independence at the same time. When very complex commercial decisions have to be made on pricing, access to networks and so on I do not want to be making such decisions as Minister. I do not regard that as appropriate and believe it is better for the regulator to do it. I cannot think of any instances over the last three and a half years where I have been in a position where I believed the policy approach was fundamentally wrong, but in the event, there is provision in the legislation that allows the Minister to issue a policy direction. As such, there is oversight. If one believed the approach being taken was not meeting national policy objectives, one could use that legislative provision. Because one can talk to regulators and work rationally through matters — one can develop a co-operative working arrangement with anyone — I have not had recourse to that provision, but it is in place. In my experience, our regulatory system works. Senator O'Toole is correct that what we are doing is similar to what a regulator does. In that regard, in the case of telecommunications technology, local loop unbundling is probably a good analogy to use.

To my mind, what we are doing is beginning to work. Broadband numbers are improving and costs have come down. There has been a change in the incumbent operator's philosophy in that it now sees the business opportunities that come with co-operation, rather than trying to maintain an existing market position. The same will have to occur in the postal service. If we do not do this, mail volumes will continue to contract and the business case will not stand up, causing serious problems for the large number employed in An Post. I want the business to be re-energised in order that employees' futures are protected, but we cannot do this by

[Deputy Eamon Ryan.]

watching mail volumes decline or maintaining the business as is. The only way we can do this is to allow new access systems and business models to develop, with a commercial return to An Post and other postal service providers. We must provide this flexibility for management and workers of An Post.

I do not believe what is proposed in Senator O'Reilly's amendment No. 31 which would maintain the business as is would be the appropriate approach to take in five or ten years time. I do not know what new mail, parcel or income streams will be developed. If we try to legislate for this, we will get it wrong. It is better to have a regulator and a Minister for Communications, Energy and Natural Resources who constantly reviews the business in terms of how it is evolving and developing and determining from where will come new business opportunities. Therefore, it would not be right for us to legislate now for the structures in this regard, as provided for in the amendment. It is better to allow the regulator, the Minister, An Post management and other market players to come to this through a negotiated process. That is what we have legislated for.

Senator John Hanafin: I ask the Minister to take cognisance of the fact that the access rate available to new entrants in the United Kingdom was too low. This has created difficulties for Royal Mail in terms of its profitability and ability to trade out of the current difficulties. With that in mind, we need to get it right first time around. I, therefore, ask the Minister to allow for an appeals mechanism in respect of the access rate available to new entrants. We must reflect the value available to new entrants, bearing in mind all the time, as I mentioned when the Minister of State was in the House, that there will be a situation where there will be a limited market, with a low profit figure of less than 1%. Unless the new entrants can grow the market, there is no doubt that we will end up subsidising An Post. We must reflect the actual cost, by which I mean we must take into account everything involved in the provision of the service. I, therefore, ask the Minister to take another look at down-stream access costs.

Senator Joe O'Toole: I admit I had not seen the amendment to section 47 which is an important one in that it provides for a right of appeal to the High Court. However, that does not take from my argument. As the Minister stated, if we can spare people going to the courts, we should do so. I note that he did not object in a theoretical or philosophical way to the idea of having an independent mediator. He and I had a discussion on a similar issue on which other legislation was silent.

The Minister is correct that he can issue policy documents. I have been on a number of boards which had to take decisions. Board directors are required to operate on the basis of legislative provisions. There is no direct flow between the Minister's policy statements and the issue about which we are speaking. In other words, if he were dealing with a really bad group of regulators, this would be a more appropriate discussion. However, I take his point. I am not referring to the current regulator's staff, with whom Senator O'Reilly and I have dealt. They are persons of the highest integrity, with whom I have no problems. I am speaking about what could occur in the future.

I accept that the amendment to section 47 includes a reference to section 28(4) and (5). There is an appeals mechanism, but it is an appeal to the High Court which can result in extraordinary costs over a period, something we should try to avoid at all times. I am suggesting there should be independent mediation or arbitration. The Minister does not have an objection to this in principle, but he is not prepared to accept the amendment. In this regard, there is a difference between amendments Nos. 30 and 31. It may be that the Minister is interpreting amendment No. 31 in such a way as to relate to current costs and he may be right. However, amendment No. 30 provides that it could be what the regulator determines should be the cost

were things to be done in the most modern and technical of ways. In other words, what is a reasonable cost would be fairly decided. The only issue — I do not believe the Minister will disagree with this — is that in coming to a determination one would have to take into consideration the overall cost of the service. We should not reach a situation where all of the best bits would be siphoned off to particular private providers, with the universal service obligation to provide a service to remote and distant areas being left to An Post. That would not be acceptable.

When debating the broadcasting legislation, I made the proposal that members of boards be appointed in a particular way, namely, that they appear before a committee at a public meeting. The Minister was not amenable to accepting this proposal, but he did not object to the idea

when I pointed out to him that legislation did not go against it. When I asked him if he would be opposed to it, he said he would not. Time passed and appointments were made by a committee, of which I was a member. We again went to the Minister and asked him if, recalling what we had previously discussed, while this was not provided for in the legislation, he would object to us proceeding in this manner. In fairness to him, he said he had no problem with this and we did it that way.

6 o'clock

If the Minister is not willing to accept amendment No. 30, would he be prepared to, at least, inform the regulator that the use of an independent mediator in such situations should be considered and that overall cost, not necessarily current cost, of a perfect service should be taken into consideration when acting as judge and jury as regards section 28(4) and (5). The Minister does not object to the idea. Rather than having to go to the High Court, this would be an in-between stage that would save everybody money, be more efficient and quicker and a more market friendly approach. I am interested in hearing the Minister's response.

Senator Joe O'Reilly: I subscribe to the latter point made by Senator O'Toole which I commend to the Minister for his consideration. I also concur with the Senator's remarks about the integrity and quality of personnel in the regulator's office having regard to the committee's positive meetings with them.

On amendment No. 31, can the Minister say, based on the advice he is receiving and on his own assessment, cartels will not prosper in a climate such as that as proposed in the legislation? Will he confirm that everyone will be subject to the same delivery price or, if private cartels will be subject to a lower price, that they will not prosper to the detriment of An Post?

I cannot see how that could be the case, although perhaps I am missing something.

Senator John Hanafin: I share Senator O'Reilly's anxieties. New entrants should not be able to access the system below the regional mail centres of Dublin, Cork, Athlone and Portlaoise. An Post is a quality provider and the value and quality of its service is well documented and properly monitored. There was a recent infusion of €150 million in capital funding in the centres which provide 2,000 jobs. The last place the new entrants will want to be involved is the last mile if they are to make a profit and we should impose the correct regulations now while taking cognisance of everything. If jobs are to be lost in An Post and replaced in the private sector, not only will the profits be transferred from An Post to the private operators, the workers will be subsidised in the context of social welfare top-ups on their pay scales and, indirectly, the taxpayer would pay again. We need to get that right and to ensure the cost of the last mile is included every step of the way and that the four regional mail centres will be the access point for the independent operators to the service.

Deputy Eamon Ryan: With regard to Senator O'Toole's contribution, there will always be recourse to mediation. I always recommend mediation to avoid an expensive court case. This would provide for mediation following mediation but I would always keep it open as a possi-

[Deputy Eamon Ryan.]

bility while making legislative provisions and allowing people who wish to seek legal recourse in the courts to do so.

The wording in section 28 does not provide for a cartel arrangement. Individual service providers will enter negotiations for commercial transactions. I refer Senators O'Reilly and Hanafin to section 28(9), which states, "Where the Commission makes a decision with respect to the price of access to the postal network concerned it shall take into account any costs avoided by a universal postal service provider by granting such access and network costs of the universal postal service provider involved in granting such access." This is a clear provision which says that the job of the regulator with expertise built up over time is to provide an independent assessment of those costs and recommend terms if there cannot be an agreed, negotiated or mediated solution. The subsection gives the commission the wherewithal to ensure this is cost reflective both in costs avoided and costs accrued.

Amendment put and declared lost.

Senator Joe O'Toole: I move amendment No. 31:

In page 30, subsection (9), line 12, after "access." to insert the following:

"Having regard to the designation of An Post as the universal postal service provider at *section 17(1)* and the costs associated with same, access to the An Post network will not be below the four automated regional mail centres."

Amendment put and declared lost.

Question, "That section 28, as amended, be agreed to", put and declared carried.

SECTION 29

Question proposed: "That section 29 stand part of the Bill."

Senator Joe O'Toole: The effect of section 29 will be the same as asking a shopkeeper to give up a counter in his shop to his opposition to come in and sell the same products as himself. The Minister has made it clear where he stands. I accept section 28(9) provides that the commission "shall take into account any costs avoided by a universal postal service provider", which is good, "and network costs of the universal postal service provider involved in granting such access". The Commission can take into account savings made by An Post. New entrants can take advantage of An Post's infrastructure and also of savings An Post makes by not having to bear the same costs in the first instance. The Minister is not taking into consideration, however, the overall cost of delivering post to every island between Malin Head and Mizen Head and between east and west.

There is something mean about this. An Post is providing a service through its network but new entrants can take advantage of the infrastructure it has built up. Savings made on the infrastructure can be taken into consideration by the new entrants when making their pitch but they do not have to take into consideration the overall cost of the legally required universal service. There is something wrong, mean and unbalanced about that. That is my problem with the section. We are saying to new providers that they can come into the shop and start selling the same product across the counter but they do not have to pay for the cost of the building, the rates, the insurance and so on. If one was running a large restaurant, it would be as if a sandwich bar merchant could walk in and legally set up a counter in the restaurant to sell sandwiches without having to pay for the building, rates or rent. All the while he would make

money selling sandwiches. It is unfair. Section 29(2) provides that “Subject to subsection (3), the Commission may give a direction to a universal postal service provider requiring it to permit access to other postal service providers to its postal infrastructure”, which includes everything from post boxes, delivery boxes, post code arrangements and so on.

I would not have a difficulty with this section if the earlier sections had been amended. This is not a level playing pitch and the taxpayer will lose. As Senator Hanafin has pointed out, the taxpayer has made a significant investment in building up the postal service to being the 7th best in Europe out of 29 countries. Why can we not continue to gain from that by providing for fair competition and by ensuring any entrant into the marketplace has to take account of that? Section 29 is unfair because of the failure to amend previous sections which will create unfair competition. Everything is tilted in favour of the new arrivals. This means that if I were running An Post as a private operation and I knew that someone was coming in to pitch against me next week and I knew of a saving that could be made, I would delay putting the saving into operation until the current crowd were dealt because under this section if I made the saving, I would be acting against my own best interests. Section 28(9) provides that the Commission can take into consideration costs avoided by the postal provider. The section is counter-intuitive, unfair and unbalanced. It does not provide for a level playing pitch or fair competition and it is not required by the European Commission or any other body. This constitutes allowing the pendulum to swing too far away against An Post.

Senator Joe O'Reilly: I support the deletion of the section. A reasonable criticism the public often makes is that Ireland is overly diligent, overly scrupulous and overly law-abiding in its adoption of every little piece of a directive from Europe. In other words, it is enough to take on the spirit of a directive and its broad objectives. It is sufficient to take on the concept of competition without in the process jeopardising the family silver. An Post is the family silver in this instance and is an expensive collection of silver that has been built up on foot of the investment of €100 million in the automated centres, as well as all the human investment down the years. Members do not wish to put this at risk now or to make it available willy-nilly, at literally no cost, to competitors or private institutions. I accept the principle and reality of competition and as one of the departmental officials told me informally outside the Chamber, this reality is going to visit us in January anyway. Although Members are aware of this, they are trying in the process to protect the national postal services infrastructure. It is a bit much that An Post would be obliged to make available infrastructure in non-physical form as well, such as postcodes, addresses or whatever it has built up in that regard and that it would be obliged to make available its physical infrastructure. Senator O'Toole's analogy with a shop, restaurant or whatever is good, whereby outsiders come in to use the basic material that is available. It would be in the best interests of the legislation, not contrary to the spirit of the directive and yet protective of Ireland's postal services to remove this section. Consequently, I support its removal.

Senator John Hanafin: I also request the Minister to remove the section as were the worst anxieties realised, it would be unthinkable. Over the past couple of centuries, the postal service has built up the best possible locations for its business, including a national monument in the form of the General Post Office in O'Connell Street. It is unthinkable that anyone could have immediate access to such an institution. This goes right through every city and town in the country. I refer to the post offices at the bottom of Oliver Plunkett Street and Winthrop Street in Cork or on Liberty Square, which is right on the bull's-eye in the main centre of Thurles. The same is true for villages, towns and cities nationwide. Consequently, it would be unthinkable, were the worst fears realised. Moreover, it would be against all normal competition. The ESB has not been obliged to provide its facilities to Airtricity or Bord Gáis, except for the

[Senator John Hanafin.]

actual mains network, which eventually will be independently owned. However, it certainly does not allow other entities enter its head office. One of the most dangerous parts of this proposal refers to “or arrangements made with others for the provision of any service”. What business would hand over its database or information regarding companies with which it is doing business? This would be unthinkable in this context. Even if such new independent operators reached the level one wished them to have, they still would have the database and the best information. In the context of cherry-picking, one certainly would find it in this regard. We are leaving ourselves wide open and I ask the Minister to consider deleting this section.

Senator Brendan Ryan: I agree with previous speakers that this section should be withdrawn. It is the promotion of competition gone mad. I certainly am surprised to see such a provision in a Bill that is being promoted by a Green Party Minister. If one considers, for example, the opening of the electricity market in the past, at least then the electricity networks were in separate ownership and the associated charges were common to both competitors. While one could argue realistically that such a measure made sense, this proposal does not make sense at all. I agree with those speakers who have asked for this section to be withdrawn and repeat my earlier comment this is competition gone mad.

Deputy Eamon Ryan: In response to Senators Ryan and Hanafin, the analogy they used is very good, in that Airtricity has access to the ESB distribution grid wires. In the space of a 30-second telephone call, one can change one's customer relation while retaining all the same systems, including metering, local wires and everything else, which are given as access to a competitor. This works well in the public interest to encourage competition and reduce prices. Yes, a Green Party Minister is willing in the public interest to try to keep prices down and to get better services. Moreover, in this instance unless we do this and were we simply to keep to business as usual in the postal service, I ultimately would fear for the workers there because we cannot continue on a business as usual basis. The postal service needs a new business model, new income streams and new enterprise opportunities and they can come——

Senator Brendan Ryan: Not this measure.

Deputy Eamon Ryan: ——through a variety of different means. They can come through An Post directly, through new retail opportunities and through other people seeking to use that network for retail and wholesale opportunities. My instinct is that this enterprise opportunity will be better under this provision than were we simply to leave it be. Were the reserved area to go without a legislative protection, it would be more risky and more damaging to the company. Consequently, this section is to provide a fair procedure for this new operation of the network.

Senator O'Toole makes a point about section 28(9) and whether the full cost is being taken into account. In the context of providing access to the postal network, section 28(9) stipulates that account must be taken of network costs. The definition of “postal network” in section 6 states it “means the system of organisation and resources of all kinds used by a universal postal service provider for the purposes...of” and so on. All the aspects of the business can be taken into account when accessing the network costs.

I must reiterate to Senator O'Reilly and others that while they may be correct that sometimes Ireland is too pernickety in respect of its implementation of European legislation, in this instance we do not have a choice. Article 11a of the directive is very clear. It does not state “could”, “should”, “may be” or “can”, but uses the word “shall”. It states “Member States shall ensure that transparent, non-discriminatory access conditions are available to [the following] elements of postal infrastructure or services ... postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service and return to

sender service" and so on. The directive is explicit in stating that one shall do this. It states that one shall provide this kind of overall access or transparent and non-discriminatory access conditions to a network that includes all these different aspects and not simply a single aspect. This is a protection to the company as well, because it means all of these cost elements can be taken into account when deciding on what is a network cost, whether it is cost accrued or cost avoided. The directive specifies "shall".

Senator Joe O'Toole: The Minister is not being fair. My first statement was that I do not have an objection to access to the infrastructure if everything else is fair. I will prove my good offices in this regard by noting my lack of support, for instance, for the Communications Workers Union when it had a problem with the on bundling of telecommunications lines. I have no problem with access but with fairness or the balance of the access. It is not intellectually fair to respond to me by talking about the importance of access because we agree on that point. The problem is created by how they get in to have the access. The issues raised by my three colleagues have been on the basis of what happens before and after the event. It also is not correct for the Minister to refer back to the postal network definitions because section 28(9) does not refer to the cost of the postal network. One should be clear about this point. It is a complicated sentence, but it refers to the costs "avoided" by the postal service by granting this new service to the applicant, and it refers to "granting such access". It is the cost and the saving related to the access that can be taken into account. The postal network itself cannot be taken into account. Maybe the Minister intended this to mean something else, and if he were to change section 28(9) to reflect what he said, I would withdraw my amendment to the section. If he takes into account the cost of the network, there would still be issues for me such as access to the GPO and various other things that should be part of our culture, but I could live with that. However, it is not fair to say that this is a level playing pitch, because it is not. The commission can take into account the cost that is avoided by the fact that there is a new customer going into the market, as well as the network costs involved in granting such access. The commission can take these two costs into account, but not the total costs, or the average cost, or the cost per letter box, mile, county or whatever.

I am completely in favour of competition. The way to get the best level of service from the public sector is to have competition. My problem is that I believe this is unbalanced as it stands and is not fair.

Senator John Hanafin: Again I support Senator O'Toole. While we were speaking in the House, at all times we accepted there would be access. We are really worried about section 29(2), which states that "the Commission may give a direction to a universal postal service provider requiring it to permit access to other postal service providers to its postal infrastructure on such conditions as the Commission may direct for that purpose". That is *carte blanche* and it could not be contemplated. It certainly would not reflect what happened during the previous deregulation, allowing competition into the electricity and telecoms market.

The question about the database has not been answered. Giving competitors access to databases on the basis of who An Post is doing business with would be unacceptable in any market and I do not think it should be allowed in this market either.

Deputy Eamon Ryan: I might come back to the section to provide absolute certainty on that point, so the wording "and network costs" of section 28(9) could be changed to "and postal network costs". This would reflect the broader cost base that is contained in the original definition. That might reflect the Senator's concerns.

Senator Joe O'Toole: That would be very helpful.

Deputy Eamon Ryan: I will seek advice on that from the parliamentary counsel and try to come back on Report Stage with an amendment on it.

Senator Joe O'Toole: I was going to push this section to a vote, but I hear what the Minister is saying. This would be a pretty significant improvement regarding my concerns.

Question put and agreed to.

NEW SECTION

An Leas-Chathaoirleach: Amendments Nos. 32 and 33 are related and may be discussed together.

Senator Brendan Ryan: I move amendment No. 32:

In page 30, before section 30, but in Chapter 4, to insert the following new section:

30.—A postal service provider that operates a post office shall not close the post office (other than for a temporary purpose) without the consent, by reserved function, of the local authority in which the post office is situate.

This is a proposal to insert a new section entitled “Closure of certain postal infrastructure” in the case of this amendment, and “Closure of post boxes” in the case of amendment No. 33.

I was going to raise the issue of quality of service under section 27. It is an example of the closure of certain postal infrastructure and the withdrawal of services. It relates to north County Dublin, but I am sure it is fairly typical of what might be happening around the country. The Minister is interested in cricket, so he will know the geography of the places I will name and will also understand the difficulties I will outline.

An Post have proposed changes to arrangements for parcel and registered letter recovery, where these have not been delivered by the postman, in areas such as Rush, Lusk, Oldtown and Garrettstown. These changes will result in unnecessary costs and inconvenience to residents in these areas. If a postman or postwoman calls to a house in these areas to deliver a registered letter or a parcel but there is nobody at home, the postman or postwoman leaves a note to the effect that the letter or parcel may be collected at the post office in the places I referred to above. An Post is currently restructuring the delivery system in these areas and is in negotiation with the unions on these matters. However, as part of the restructuring being proposed, An Post is trying to implement changes to the collection system for failed deliveries of packages and registered letters, which must be signed for by a member of the family. Instead of a note stating that the item can be picked up at the local post office, the note will indicate that the item should be picked up at the Balbriggan depot. This is unacceptable and will result in unnecessary hardship for the people in question.

Garrettstown is about 20 km from Balbriggan and so it would require a 40 km round trip to pick up an undelivered parcel. Oldtown is just 18 km from Balbriggan and collecting a package or letter would mean a 36 km round trip. There is a limited public transport system available in these areas. If people do not have a car available before the Balbriggan depot closes, then they have no option but to take a taxi at great cost, and that can only happen if a taxi is available in these rural areas of north Fingal. Although there is a bus service between Lusk, Rush and Balbriggan, it is a big deal to make the journey there and back.

There is no credible reason for these changes. There is no associated productivity improvement which will deliver savings to An Post. The postman in the area will still return to the local post office every evening to leave the undelivered item in that office so that it is picked

up and transferred from that local post office back to Balbriggan. This proposal makes no sense whatsoever. A further reduction in services provided by rural post offices must be dropped. My fear is that this change may be a precursor to the closure of these rural post offices, and my amendment refers to this.

The customer charter of An Post states “All of us at An Post are committed to offering you high quality services that meet your needs”. The proposed changes do not meet the needs of rural people in Fingal and should be dropped. I raise this issue so the Minister could take a look at this and raise the matter with An Post on my behalf. His colleague in the Green Party, Deputy Sargent, could also be interested in a rethink by An Post on these issues.

Senator Joe O’Toole: I agree with my learned colleague. He and I have tramped those by-lanes and roads and I support his view on this.

Senator Joe O'Reilly: I also support Senator Ryan's amendment. As a general principle I would be against such closures and such a diminution of services. It goes against the arguments that we had been making on Second Stage and in earlier amendments on Committee Stage, when we were saying the big objective was to get to everybody in this country on an equal basis, as quickly and as competitively as others, so there was no discrimination in our postal services. I see a diminution in services in what Senator Ryan cites. I would be similarly concerned that this might apply in Cavan and Monaghan, where the rural post office and the rural post box are of critical importance. It is important throughout Cavan and Monaghan that local post offices are preserved in their present form and that post boxes, which are very important, are preserved in order that people are not asked to travel for miles to post items or have them delivered. This is a concern for people. There have been post office closures in County Cavan over the years. When that happens it is sad for the communities and it knocks the heart out of the area. It is like the closure of a local primary school or Garda station. It is part of the death by a thousand cuts. It damages local pride and confidence. The Fleadh Cheoil was a successful boost to the county this year and I could see the difference it made to people. I could see the opposite in some instances, however, when I attended public meetings about post offices closing. I saw the gloom and depression it can cause. Even the loss of a post box might not seem much to us but to someone living nearby with no transport, it is a great deal. We are in such a fortunate situation that we might forget about others, not out of malice but because we are too removed from reality and are living in a bubble. This is a worthy amendment and I support it strongly.

Deputy Eamon Ryan: I know well the area Senator Brendan Ryan referred to and I understand his concern as a local representative about any diminution in service. That is a matter that can be brought up by representatives with An Post directly but it is a commercial matter for the company and as Minister I cannot get down to directing or managing on a local area basis. That would be an impossible situation. We are trying to maintain certain standards in the Bill, with certain levels of service per population area. In the legislation we are providing for all communities to ensure there is a protection of universal service, quality and standards.

The provision of post offices is not affected by the directive. An Post's responsibility pursuant to the Posts and Telecommunications Services Act 1983 to provide counter services for the company's own and the Government's business is not being amended in this Bill. The majority of post offices are operated by postmasters under commercial contract with An Post and the closure of a post office is a contractual matter between An Post and the individual postmaster in question. Post offices are only closed where An Post has been unsuccessful in recruiting a replacement postmaster to take on a particular vacancy.

[Deputy Eamon Ryan.]

I cannot accept amendment No. 33 which relates to the closure of a post box or similar access point. As regards a designated universal provider, section 16(10) provides that ComReg may, following a public consultation process, direct the provider, for the purpose of ensuring the density of access points and the provision of points of contact for users with universal service postal providers, to take account of the reasonable needs of postal service users. ComReg already had this direction under the current regulation and section 16(10) restates it in primary legislation.

For commercial service providers other than the designated universal service provider, establishing or removing access points to their networks are purely commercial decisions. I understand and accept the point the Senator made. It is a good example. The Bill, however, will provide a guarantee on certain access levels and conditions of service. The strength of the postal service is its distributive nature, that it has an access network that runs throughout the country. We must protect and maintain this. I am committed to doing that because it provides a huge social as well economic resource to the State.

Senator Brendan Ryan: Senators on all sides are aware of the social damage caused by the closure of the post offices. It is not an issue we should leave to commercial interests. We should take a stand on this by asking for some control beyond commercial interests. The Minister should reflect on these amendments. I will not press them today but I will resubmit them on Report Stage and I hope the Minister will reconsider his position between now and then.

Senator Paddy Burke: I also ask the Minister to reconsider. It goes back to Senator O'Toole's point. I am opposed to the closure of rural post offices. They are at the centre of some communities. Senators O'Toole and Hanafin mentioned the other facilities that can be used because rural post offices are often privately owned. Closing a rural post office is often the death knell for a rural community.

Amendment, by leave, withdrawn.

Amendment No. 33 not moved.

Section 30 agreed to.

SECTION 31

Government amendment No. 34:

In page 32, subsection (1), lines 13 and 14, to delete "among postal service providers" and substitute "among providers".

Deputy Eamon Ryan: This is a drafting amendment which replaces "among postal service providers", which is qualified by "of postal services", with "among providers" to remove repetition of the term "postal services".

Amendment agreed to.

Amendment No. 35 not moved.

Government amendment No. 36:

In page 33, subsection (7)(b), to delete lines 22 to 24 and substitute the following:
"may be, under section 30(5)(b), and".

Deputy Eamon Ryan: This amendment deletes the requirement for ComReg to publish the financial contributions an individual postal service provider makes to a sharing mechanism established to share any unfair and financial burden from meeting the universal service public obligation. The reason for the amendment is the publication of information at the level of the individual provider could result in the release of commercially sensitive information. Paragraph (7)(c) provides that ComReg provides the total funds collected and deals adequately with the accounting requirements for the sharing mechanism.

Amendment agreed to.

Amendment No. 37 not moved.

Section 31, as amended, agreed to.

Section 32 agreed to.

SECTION 33

Senator Joe O'Toole: I move amendment No. 38:

In page 36, between lines 32 and 33, to insert the following subsection:

“(10) Postal service providers will be licensed only in circumstances where they are able to prove capability of providing an end to end service.”.

I wanted to hear the Minister's views on this. People believe that bringing private operators into the service will mean handing them a letter that will then be delivered, but that is not quite what the Minister has in mind.

What I am proposing is that the operator should be able to show it can operate the service from start to finish, all the way through to total delivery, before it is given access to the system. I have tabled this amendment to hear the Minister's views.

Senator Paddy Burke: I support Senator O'Toole. It has been interesting to listen to the debate over the last couple of days. When a person posts a letter, how will it arrive at its destination? We are used to a system under which the postman takes the parcel or letter from the outset and another postman delivers it to its destination, and we can follow how this happens. Perhaps the Minister will explain how this will work under a new system. This goes to the core of the issue. The Minister has said that the regulator will be able to adjudicate on the prices charged, and will have access to all of the costs and so on, but how can a regulator operate in such a system? We saw what happened with the ESB, when the regulator increased the price of electricity before competition was introduced so the companies coming in to provide competition would be able to make money and would not leave the market.

Senator O'Toole has quite rightly tabled this amendment so we can have a discussion on how post will go from point A to point B. I find it intriguing to contemplate how the regulator will give guidelines on the prices to be charged. We have an efficient service at the moment, and any other system would come at a cost to the ordinary person using the postal service. Prices would have to go up. This is a load of baloney, to be honest. The service we have at the moment by An Post should be benchmarked against another small country with a large rural base and the regulator should be able to tell the company to reduce its prices or point out inefficiencies. That is my view of what should happen, although it may be the wrong view. Senator O'Toole's amendment is most interesting.

Senator John Hanafin: I agree with the previous speakers. What we are considering here is a question about the delivery of service and cherry picking. If we are to avoid increases in prices and a zoned method of payment, we will need to ensure there is some commitment from new entrants to provide a service, particularly in recognition of the unique demographics and spatial dispersion of rural Ireland. As we said before, Ireland is not like France, where the local farmer lives in the local village; here, the farmer lives out on his farm. Such extra costs must be borne in mind. If we are to have a viable postal service we must be vigilant at every step along the way.

Deputy Eamon Ryan: The vision I have is of a new, renovated postal service that addresses in particular the needs of rural Ireland, including the 40% of houses which are one-off houses. A whole range of new services can open up, if we have the right system, to get products to those houses in a cost-effective, customer-friendly way. The development of Internet technologies is particularly relevant to this. A slow but inexorable change is occurring, which we should not resist but should be grasping. We should ask ourselves how we can use new technologies to deliver services, particularly in areas that do not have the advantage of scale that exists in Dublin city or Cork city.

I should not use this analogy, but people were being very lyrical earlier. One of the songs my father sings is “There’s Only One Street in Dromcolliher”, which many people know. I took this to heart, asking myself why Dromcolliher should not have access to everything in the world through a physical access system that allows it to rival high-street London. The task is to create a distribution system, particularly for rural Ireland, that is suitable for the 21st century and reduces isolation, and in turn creates business opportunities for whichever companies provide part of the new access network.

On the question of how the new system would work, I do not think we should be prescriptive, because everything is evolving, including Internet technologies and new markets and processes. More than 30 companies are already authorised, some of them from end to end and some of them dealing with specialised processes within certain sections of the access system. Rather than being prescriptive, as this amendment is, we should provide a fair and independent oversight of any new commercial arrangements so we can prevent cherry picking, which would undermine the ability of An Post to do its business, while allowing new business opportunities to evolve. I am sorry if that is a long-winded and somewhat lyrical explanation, but we must come at it this way. We must see this as an opportunity to be grasped rather than something to resist.

A number of months ago we brought together workers in this area, people from other businesses, people with an interest in An Post, regulators, and people from my Department for a full-day round-table discussion in which we considered various scenarios. For example, we considered what would happen if mail volume dropped by 50%, which is not such an incredible scenario in view of the continuing expansion of e-mail. It was interesting to hear the views of people who worked in the industry. When I was a young person, postal workers did a whole range of things for the local community. People would ask Paddy Joe to bring something back for them the next day, and it worked in an effective way. We need to commercialise a distribution system such as this to provide a real revenue stream for An Post. However, it is not just for An Post; it will work better when there is a range of different players operating in an evolved and complex new postal system which provides a whole range of business services.

Staying where we are is not an option; that would just lead to a contraction which would make businesses unviable and would not serve the public in the end. There is a certain urgency to this change, particularly for the 40% of houses in rural Ireland that are one-off houses. We may be able to create a new access system that overcomes some of the isolation of such housing.

Senator Paddy Burke: Have new types of business been introduced to postal services in other jurisdictions? Are there postal services which deliver more than letters and parcels? What other types of business is the Minister speaking about? I fear this will make us more uncompetitive against the rest of Europe. There is no doubt our costs will go up. The Minister put considerable emphasis on the role of the regulator, saying he or she would have information about the cost of providing such services and would gain expertise in this area over time, enabling him or her to make determinations about the price a provider could charge. If that is the case, it is competition only in name. It is not real competition such as occurs in the world of retail or business.

Deputy Eamon Ryan: I do not think anyone has cracked this yet. We will have to suit the system to our needs, particularly those of the rural population. There is probably no model comparable to Ireland because few countries have such a widely distributed population with many one-off houses. Anyone I have spoken to in the past three or four years recognises that change is coming and that it is likely to be connected to Internet technologies because this allows for a tracking of information and data. I envisage this will involve the provision of social, banking and other services by the post offices. It will ensure a volume of transactions sufficient to make it pay. I assume this will include parcel delivery, shopping and a range of other services which help to widen the choices available, especially in rural Ireland. It remains for the operator to work out exactly how it will and where the commercial opportunities lie.

Amendment, by leave, withdrawn.

Section 33 agreed to.

Sections 34 and 35 agreed to.

SECTION 36

An Cathaoirleach: Amendment No. 41 is related and alternative to amendment No. 40 and amendments Nos. 40 and 45 are related. Amendments Nos. 39, 40, 41 and 45 may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 39:

In page 38, lines 8 to 14, to delete subsection (3) and substitute the following:

“(3) Where the Commission, having considered the representations (if any) made by or on behalf of the postal service provider in accordance with *subsection (2)*, decides to suspend or withdraw the authorisation, the Commission shall notify the postal service provider in writing of the decision.”.

Deputy Eamon Ryan: I accept the principle underpinning amendment No. 41, that is, the introduction of a new section providing for appeals to ComReg decisions. I have also tabled amendments to section 36 to ensure greater consistency with the directive. Section 36 provides that ComReg may suspend or withdraw an authorisation to provide postal services where there is serious or repeated non-compliance with obligations under the framework. Amendment No. 40 deletes the final three subsections which enabled a postal service provider affected by ComReg’s decision to appeal to the High Court.

The new section 47 proposed by amendment No. 45 provides for an appeals mechanism in respect of this decision and others made by ComReg. It is not necessary to retain these subsections.

[Deputy Eamon Ryan.]

Amendment No. 39 revises section 36(4) which provides that ComReg's decision should stand suspended pending the outcome of the appeal. This has been revised. The amendment now aligns this section with article 22 of the directive, which states that any decision that ComReg makes should stand pending the outcome of the appeal.

Amendment No. 45 proposes the inclusion of a new section 47 and an appeals mechanism for decisions made by ComReg. Following consultation with the Parliamentary Counsel during drafting, I propose the inclusion of this amendment. The proposed section 47 provides for an appeals mechanism to enable persons affected by ComReg decisions to appeal those decisions to the High Court. This mechanism is in addition to an individual's right to judicial review. The directive in article 22.3 requires member states to ensure that effective mechanisms exist at national level, under which any user or postal service provider affected by a decision of a national regulatory authority has the right to appeal to an appeals body independent of the parties involved. The proposed amendments provide for a similar mechanism for appeal of ComReg decisions on postal issues as those available with regard to ComReg decisions under the EU regulatory framework for electronic communications under SI 271 of 2007.

I will outline the details of amendment No. 45. The new section 47(1) lists, section by section, the decisions made by ComReg, including determinations and directions which can be appealed to be High Court. These include decisions made on the price cap, the withdrawal of a postal service provider's authorisation to provide a postal service or the designation of a universal postal service provider. The new section 47(2) provides that a user or postal service provider affected by a ComReg decision may appeal to the High Court within 28 days of the appellant being notified of ComReg's decision. The new sections 47(3) and 47(4) provide that the rules of the High Court shall be followed when an appeal is made under this section and when the appellant gives notice on the grounds of appeal to ComReg.

The new sections 47(5) and 47(6) provide that the High Court may hear an appeal and make such orders as it considers appropriate, including orders to affirm or set aside ComReg's decisions or to resubmit the matter to ComReg for it to decide on again. The new section 47(7) provides that a decision stands pending the outcome of the appeal while the new section 47(8) provides a mechanism for the staying of a decision by the court pending the outcome of the appeal. The new section 47(9) provides that the High Court's decision on the appeal is final, except in the case of a specific point of law which shall lie with the Supreme Court.

Senator Joe O'Toole: These are important amendments. I seek clarification on certain issues. My understanding is that this amendment deals with the issue I attempted to deal with in amendment No.41. In other words, the decision of the commission would stand rather than stand suspended. In that case I take the view that the provisions of amendment No. 41 have been met by the Minister, which I appreciate. My concern was that people could submit an appeal to stop the implementation.

Two legal questions arise from what the Minister said. Generally, I support these amendments and I will not push amendment No. 41. I value the addition of the new section 47(4) regarding "notice of an appeal and the grounds for it". This is important. I listened to what the Minister said. This provision does not deny an applicant the right to a judicial review. I would like to hear more about this. I thought the High Court would not look kindly on someone seeking a judicial review when the Bill provides for a direct appeal to the High Court rather than the possibility of taking the judicial review route. We should not encourage the judicial review route. I have been the subject of some judicial reviews myself and I know what it means. It is important all the issues are dealt with here by the Minister.

I am uncomfortable with the new section 47(9) regarding the determination of the High Court on the hearing of the appeal being final except that, by leave of the High Court, an appeal on a specified question of law shall lie to the Supreme Court. I hate anything in legislation which is unnecessary and this seems unnecessary. It is not our business and it is up to the High Court to decide. Whether we have this included an appellant may go to the Supreme Court on the conditions outlined. This is nothing new, it is the law and it is in the Constitution. This is how it stands at the moment, unless I am completely wrong. I am quite happy to say “the determination of the High Court of an appeal under this section is final”. However, I would be happier to get rid of the new section 47(9) because I do not think it is necessary. I do not want to be inviting people to go to the Supreme Court. Let their lawyers advise them to go there if they so wish. There are plenty of them to do so. It is not as if this gives any extra powers.

The amendment provides that the power of someone to appeal on a specific question of law shall lie to the Supreme Court. This is the position of the moment and would remain the case had we remained silent on the matter. There is no reason to add anything to it. In the main, I believe the amendment has addressed some of the issues I have raised. This amendment provides for an appeal structure. I have a problem with the possibility of creating more High Court appeals. I acknowledge, accept and appreciate an appeals structure is in place, which is important.

7 o'clock I will move another amendment shortly, amendment No. 44, relating to binding arbitration. The reason I raise the matters of mediation and arbitration is to try to avoid people going to the High Court. However, I anticipate the response of the Minister's advisers in this regard, that is to say, this is the Irish way of doing things and that immediately following mediation one goes to the courts in any case. Perhaps I am wasting my time making the point.

I recognise what the Minister has done and I welcome the deletions of section 38(4) to 38(6) inclusive. I intend to withdraw amendment No. 41 as a result. I fully agree with the Minister's other amendments. I recognise that amendment No. 39 is simply a tidying up exercise. Therefore, two questions remain. First, I am unsure whether the notion of a judicial review is a good idea. Second, should the reference to the Supreme Court be included?

Deputy Eamon Ryan: The Senator is correct that the main intent of the amendment is to do the same as he has proposed in amendment No. 41. The Senator's logic is correct in respect of the need to avoid vexatious claims which would merely lead to a delay in a decision or where it would be suspended that the decision stands.

Our amendments are similar in that respect.

I will have to refer this matter to the Attorney General on advice about the other legal issues Senator O'Toole raised. I have received legal advice that there is a right to a judicial review and recourse to the High Court. In this instance, however, it is not on the substance but on the specific point of law. I must discuss the legal reason for that with the Attorney General's office. I will take the Senator's points into account. Subject to legal advice to the contrary, that is the reason this provision was inserted.

Senator Joe O'Toole: I am happy the Minister will get back to the Attorney General's office on this matter. However, I caution him that attorneys make work for other attorneys. I hope the Minister will listen to his advice and then make his decision. Unless the Minister is convinced that this provision is necessary, will he take it out of the legislation?

Deputy Eamon Ryan: I will pass on the Senator's views on attorneys to the Attorney General.

Amendment agreed to.

Government amendment No. 40:

In page 38, lines 15 to 25, to delete subsections (4) to (6).

Amendment agreed to.

Amendment No. 41 not moved.

Section 36, as amended, agreed to.

SECTION 37

An Cathaoirleach: Amendments Nos. 42 and 43 are related and will be discussed together.

Government amendment No. 42:

In page 38, subsection (1), line 26, to delete “A postal service provider” and substitute the following:

“Subject to *subsection (5)*, a postal service provider”.

Deputy Eamon Ryan: Section 37 provides that the postal service provider should give three months notice of its intention to withdraw a service. This applies to postal service providers providing services within the scope of the universal service only and not to the universal service provider itself. A designated universal postal service provider may not withdraw postal services within the universal service. To avoid doubt about this, I propose to insert a new subsection which will restate this explicitly.

Amendment agreed to.

Government amendment No. 43:

In page 38, between lines 39 and 40, to insert the following subsection:

“(5) This section does not apply to a universal postal service provider in the provision of a universal postal service.”.

Amendment agreed to.

Section 37, as amended, agreed to.

Section 38 agreed to.

SECTION 39

Senator Joe O’Toole: I move amendment No. 44:

In page 41, between lines 4 and 5, to insert the following:

“(c) Where there is a dispute in relation to a levy drawn up by the Commission either party will be referred to binding arbitration.”.”.

This amendment proposes an appeal against a levy can go to binding arbitration. This will tidy up what I consider a loose end.

An Cathaoirleach: I call on the acting leader to propose a suspension of the sitting for 15 minutes to facilitate the Minister to attend a division in the Lower House.

Senator James Carroll: I so propose.

Sitting suspended at 7.05 p.m. and resumed at 7.20 p.m.

An Cathaoirleach: We are resuming on section 39, amendment No. 44. I call Senator O'Toole.

Senator Joe O'Toole: I spoke on this amendment earlier. My point is that, rather than running to the courts about everything, binding arbitration would allow matters to be sorted out pretty quickly. I am raising this suggestion, as I have done in a number of other instances, although the Minister was not amenable to it earlier. Amendment No. 44 states that "Where there is a dispute in relation to a levy drawn up by the commission either party will be referred to binding arbitration" and will have to accept the outcome at that point.

An Cathaoirleach: Is the amendment being pressed?

Senator Joe O'Toole: I would like the Minister to respond to it.

Deputy Eamon Ryan: Further to the discussions we had earlier, I do not propose to accept the amendment. Levies on postal service providers and communications providers are imposed pursuant to section 30 of the Communications Regulation Act 2002. There is no appeals mechanism in place for either of these sectors. The Bill does require, however, that ComReg in imposing a levy under section 30, ensures that it is done in an objective, transparent and proportionate manner. As we discussed earlier, the use of judicial review is there should parties be unhappy about a particular levy order.

Amendment, by leave, withdrawn.

Section 39 agreed to.

Sections 40 to 46, inclusive, agreed to.

NEW SECTION

Government amendment No. 45:

In page 45, before section 47, but in Chapter 9, to insert the following new section:

47.—(1) In this section "decision" means—

(a) a decision made by the Commission under section 17(2), (3) or (4), 23(2), 25(2), (5) or (9), 28(4) or (5) or 36(1),

(b) a determination made by the Commission under section 16(1)(a)(ii), 17(5), 27(9) or 30(4) or section 30(11A)(b)(inserted by section 39) of the Principal Act, or

(c) a direction given by the Commission under section 16(10), 19(7), 26(1), 27(7), 29(2), 37(3) or 38(3) or (6).

(2) A user or postal service provider (in this section referred to as the "appellant") whose interests are materially affected by a decision may, not later than 28 days after the user or postal service provider has been notified of the decision, appeal to the High Court against that decision.

(3) An appeal under this section shall be made in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(4) Notice of an appeal and the grounds for it shall be given by the appellant to the Commission in such manner as is prescribed by rules of court of the High Court or as the High Court may direct.

(5) The High Court shall hear and determine an appeal under this section and may make such orders as it considers appropriate.

(6) The orders that may be made by the High Court on the hearing of an appeal under this section include—

(a) an order affirming or setting aside the decision in whole or in part, and

(b) an order remitting the matter to be decided again by the Commission in accordance with the directions of the Court.

(7) Subject to subsection (8), an appeal under this section does not—

(a) affect the operation of the decision appealed against, or

(b) prevent the taking of action to implement the decision, unless the High Court otherwise orders.

(8) (a) Where an appeal is made under this section against a decision, the High Court may make such order staying or otherwise affecting the operation or implementation of the decision, or a part of that decision, as the Court considers appropriate, pending the hearing of the appeal.

(b) If an order is in force under paragraph (a) (including an order that has previously been varied on one or more than one occasion under this paragraph), the High Court may make a further order varying or revoking the order.

(c) An order in force under paragraph (a) (including an order that has previously been varied on one or more than one occasion under paragraph (b))—

(i) is subject to such conditions as are specified in the order, and

(ii) has effect until—

(I) if a period for the operation of the order is specified in the order, the expiry of that period or, if the appeal is determined before the end of that period, the making of the determination, or

(II) if no period is so specified, the giving of a decision on the appeal.

(9) The determination of the High Court on the hearing of an appeal under this section is final, except that, by leave of the High Court, an appeal on a specified question of law shall lie to the Supreme Court.

An Cathaoirleach: Amendment No. 45 is consequent on amendments Nos. 46 and 47 and all may be discussed together by agreement.

Deputy Eamon Ryan: Section 47 relates to the prohibition on opening postal packets and mailbags. Subsection (4) provides for exemptions to this prohibition and these exemptions include anyone who is acting on foot of a direction issued by the Minister under section 110 of the Post and Telecommunications Services Act 1983.

Amendment No. 46 clarifies that section 110 of the 1983 Act, as listed in section 47(4)(b) is amended by the new section 48 of this Bill, which I am now proposing in amendment No. 47.

Amendment No. 47 proposes a new section which will enable the Minister for Communications, Energy and Natural Resources to issue directions in relation to the interception of postal packets carried by postal service providers to all postal service providers. This power has previously been confined to packets carried by An Post. While this provision is not a requirement of the postal services directive, the Department of Justice and Law Reform has advised my Department that it is essential, from a law enforcement and security perspective, to ensure that all operators in the market are subject to directions in order to comply with the interception authorisations. Government approval was given in July to draft this section and I am proposing to insert this section as an amendment to the Bill.

The current regime for the interception of postal packets operates on the basis of the complementary interaction of provisions in the Post and Telecommunications Services Act 1983 and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993. As Minister for Communications, Energy and Natural Resources, I may issue directions to An Post to comply with an interception authorisation under the 1993 Act. An Post must then comply with an authorisation given by the Minister for Justice and Law Reform in response to an individual application from the Commissioner of the Garda Síochána or the Chief of Staff of the Defence Forces.

The new section provides for an amendment to section 100 of the 1983 Act to extend the power to issue directions to all postal service providers, and not only An Post, for the purpose of intercepting postal packets. The approach adopted in this section is similar to that taken in relation to the interception of telecommunications messages in 1999.

The proposed amendment is necessary in order to prevent a gap arising in the law as in the liberalised postal packet market it will be carried by operators other than An Post. It is important that all operators in the market be subject to directions to comply with interception authorisations.

Section 48(3) contains the necessary consequential amendments to the 1993 Interception of Postal Packets and Telecommunications Messages (Regulation) Act to reflect the amendments to the Post and Telecommunications Services Act 1983.

The Minister for Communications, Energy and Natural Resources has power to issue directions of a general nature to An Post, which is appropriate as 100% of An Post's shareholding is held by the Minister. The Minister for Finance will remain unaffected.

It is currently an offence under section 110(6), as inserted by the Criminal Justice (Mutual Assistance) Act 2008, not to comply with the ministerial direction under section 110. Section 48(4)(b) clarifies that such an offence applies to An Post only in regard to non-compliance with a direction concerning interception under the 1993 Act.

Senator Joe O'Toole: I support both amendments, as well as the contents of both sections, but I wish to raise one question. The United States has a clear law that anybody who uses the mail in pursuance of any crime is guilty of a crime. These two sections are trying to do that but are also trying to anticipate the actual actions. Has the Minister considered putting in place a provision making it illegal for anybody to use the postal services or postal infrastructure in any way in pursuance of a crime? Many crimes are committed through postal services, including scams. Criminals have become very sophisticated in this day and age, so it is sometimes difficult to catch them. Such a provision, however, would be a catch all for people who use the postal services in pursuance of criminal activities. Should we not examine that matter in a more generalised way? Perhaps there is a general or fail-safe clause, but I have not seen it. I would like to hear the Minister's views on that point. In the meantime, I completely support both amendments.

Senator Joe O'Reilly: I wish to make a brief observation on the latter point. Postal scams which fool people into believing they have won money or are the beneficiaries of trusts or wills, have caused immense trauma and difficulties for vulnerable people. There are some glaring examples that we have all come across. I came across one case of a person who was very street-wise in every other respect, but they got caught by such a scam. Any measure that would help to catch the perpetrators of such scams would be worthy of consideration. It is a sinister and dangerous matter.

Deputy Eamon Ryan: These amendments deal purely with interception and the ability of the judicial system to do that. I will confer again with the Attorney General's office as to whether there are wider provisions in terms of illegal activities which use mail services. I agree with both Senators that one must be vigilant towards such activity, but that is not the intent to these two amendments.

Senator Joe O'Toole: I accept what the Minister has said but, nonetheless, there is a wider issue in sections 47 and 48 and it is in that context that I am raising this matter. I do not require the Minister to reply, but I am happy that he has said he will examine the matter from that point of view.

Amendment agreed to.

SECTION 47

Government amendment No. 46:

In page 46, subsection (4)(b), line 25, after "1983," to insert "as applied by section 48,".

Amendment agreed to.

Section 47, as amended, agreed to.

NEW SECTION

Government amendment No. 47:

In page 46, before section 48, to insert the following new section:

"48.—(1) Subject to subsection (2), references to the company in section 110 of the Act of 1983, in so far as that section relates to An Post, shall be read as references to a postal service provider.

(2) Without prejudice to the application of section 110 of the Act of 1983 to An Post, that section applies, in respect of other postal service providers, only for the purposes of section 47 and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.

(3) The Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993 is amended—

(a) in paragraph (a)(ii) of the definition of "interception" in section 1 by substituting "an offence under section 47 of the *Communications Regulation (Postal Services) Act 2010*" for "an offence under section 84 of that Act",

(b) in section 9(3) by substituting "a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*)" for "An Post",

(c) in section 10(1)(a) by substituting “*section 47 of the Communications Regulation (Postal Services) Act 2010* or section 98 of the Act of 1983” for “*section 84 or 98 of the Act of 1983*”,

(d) in section 10(2)(a) by substituting “*section 47(4) of the Communications Regulation (Postal Services) Act 2010* or section 98(2) of the Act of 1983” for “*section 84(2) or 98(2) of the Act of 1983*”, and

(e) in section 10(2)(d)(ii) by substituting “a postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*)” for “An Post”.

(4) Section 110 of the Act of 1983 is amended—

(a) in subsection (6) by substituting “Subject to subsection (8), a person who” for “A person who”, and

(b) by inserting the following after subsection (7):

“(8) In the case of An Post and any other postal service provider (within the meaning of the *Communications Regulation (Postal Services) Act 2010*) subsection (6) applies only in respect of non-compliance by An Post or any such postal service provider, as the case may be, with directions issued under this section for the purposes of *section 47 of the Communications Regulation (Postal Services) Act 2010* and the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.”.

Amendment agreed to.

Section 48, as amended, agreed to.

Sections 49 to 51, inclusive, agreed to.

SECTION 52

Government amendment No. 48:

In page 48, lines 21 and 22, to delete “Act, or” and substitute the following:

“Act,

(ii) section 13 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, or”.

An Cathaoirleach: Amendment No. 49 is consequential on amendment No. 48 and both may be discussed together by agreement.

Deputy Eamon Ryan: Section 52 provides that summary proceedings for offences under this Bill can be taken within 12 months of the offence being committed, rather than six months. This proposed amendment includes a further offence under this section. The relevant offence is contained in section 13 of the Communications Regulation (Premium Rate Services and Electronic Communications Infrastructure) Act 2010, whereby a premium rate service provider is prohibited from overcharging or charging for services not supplied. This amendment brings the offence in line with other summary offences under the 2002 to 2010 Acts.

An Cathaoirleach: As it is now 7.30 p.m. we must adjourn the debate.

Progress reported; Committee to sit again.

An Cathaoirleach: When is it proposed to sit again?

Senator James Carroll: At 10.30 a.m. amárach.

Adjournment Matters

Teacher Training

An Leas-Chathaoirleach: I welcome the Minister of State but point out that he may have to leave the Chamber to attend a vote in the Dáil.

Senator Fidelma Healy Eames: I apologise for being late. I thought the Seanad was going to have a vote so I was waiting for the bell. I ask Members to excuse me if I am out of breath.

I ask the Minister for Education and Skills, through the Minister of State, to require teacher education colleges to include a component for pre-service teachers on awareness of fatal allergies. An example of this is nut allergies, which can lead to an anaphylactic shock in children. This has happened in schools and unfortunately the teacher may not be prepared or trained to cope with it.

Anaphylaxis is the medical term given to a severe allergic reaction that affects the whole body. In its most extreme form, the reaction results in a person going into anaphylactic shock, which can be fatal. I have seen someone suffer anaphylactic shock. It is quite deforming and the whole face can twist as if it was a stroke. The whole body comes out in a severe rash. There is a growing list of everyday items that can give rise to anaphylactic shock for some people, including foods such as nuts, kiwis and sesame seeds, insect stings and drugs. If people become allergic to antibiotics, the overuse of antibiotics can induce anaphylactic shock. The life-threatening nature of this type of severe allergy makes it a very serious condition to live with for those at risk. The good news is that an anaphylactic reaction can be reversed through the injection of medicine called adrenaline if applied fast enough. Therefore, through a combination of proper diagnosis of those at risk, careful avoidance of the particular cause of the allergy and the constant availability of emergency medication, people at risk can lead a normal life. The major issue is that those caring for such people, such as teachers or special needs assistants, have this information.

The most common causes of anaphylactic shock are nuts, and in particular the very common peanuts; fish, especially shellfish; sesame seeds; dairy products; eggs; soya; wasp or bee stings; natural latex such as rubber; penicillin and other drugs. Severe allergic reactions to fresh fruit, including kiwis and apples, are also increasingly being reported. In some individuals, exercise can trigger a reaction, either on its own or in combination with other factors such as ingestion of a particular food.

What are the symptoms and what would a teacher in the classroom need to watch for? Typical symptoms are swelling of throat and mouth. I know that one carer found a person with the throat about to close, which left the person close to suffocation. Other typical symptoms include difficulty in swallowing or speaking, alterations in heart rate, difficulty breathing due to severe asthma or throat swelling, hives anywhere on the body, especially large hives, generalised flushing of the skin, abdominal cramps, nausea and vomiting, a sudden feeling of weakness and a drop in blood pressure, a sense of impending doom and collapse and unconsciousness. These symptoms could be symptoms of other diseases so it is important to have a real understanding of what is anaphylaxis. The above details are extracts from the information sources available, which includes the website of the Irish anaphylaxis campaign.

I would be grateful if the Minister for Education and Skills would make arrangements to ensure an appropriate system is put in place to highlight the awareness of these conditions to both primary and secondary pre-service students of teaching. As can be seen from what is

outlined above, all the knowledge in the world on child psychology etc. will not matter if a child in the classroom presents with the above symptoms and the teacher fails to recognise them as potentially fatal. I strongly recommend that just one component, class or module throughout the three-year teacher training course would be on anaphylaxis awareness. That is very little to ask for. In effect it might just amount to a 45 minute session. That may be enough to save the life of a child, as awareness of the symptoms can lead to quick action. A very short training course is all that is required. It should also be included in ongoing teacher refresher courses. I accept budgets are tight. I would not envisage that this simple addition to the course would cost anything because one could invite in a health professional to speak to 300 students at a time. I urge the Minister to consider this inclusion. Allergies, unfortunately, are on the increase. Awareness can save lives. We should act on a request such as this that is easy to implement.

Minister of State at the Department of Education and Skills (Deputy Seán Haughey): I am anxious about the position in the other Chamber.

An Leas-Chathaoirleach: We will inform the Minister of State when the division takes place. We can see it on the monitor.

Deputy Seán Haughey: I appreciate that the Leas-Chathaoirleach will monitor the situation for me. I am taking this Adjournment matter on behalf of my colleague, the Tánaiste and Minister for Education and Skills, Deputy Coughlan. I welcome this opportunity to discuss the issue raised by Senator Healy Eames of including a component on potentially fatal allergies, which can cause anaphylactic shock in children, in initial teacher education courses for primary teachers.

In accordance with a school's duty of care to its pupils, each school authority should have in place appropriate practices and procedures to ensure the safety and protection of its pupils in all aspects of its activities. Rules 121(4) and 124(1) of the rules for national schools and section 23(2) of the Education Act 1998 oblige teachers to take all reasonable precautions to ensure the safety of pupils and to participate in supervising pupils when they are on school premises, during school time or on school activities. Accordingly, the responsibility of all teachers individually and collectively to provide a duty of care at all times towards the pupils in the school in which they teach, including periods of supervision, remains.

Anaphylaxis, also known as anaphylactic shock, is an extreme allergic reaction to a substance, such as nuts, that can be severe and potentially fatal. Anaphylactic reactions are treated by prompt administration of adrenaline by injection. It is, therefore, of the utmost importance that parents and guardians immediately advise schools and teachers of children diagnosed with such food allergies.

The Department cannot direct any member of the board of management or teaching staff of the school to administer medical treatment to pupils as they are actions and procedures which are normally carried out by medical professionals such as doctors and nurses. The administration of medicines in primary schools is the subject of an agreement between the Irish National Teachers Organisation and the organisations representing school management at primary level. The Department is not a party to the INTO-CPSMA agreement on the administration of medication.

While this agreement specifies that no teacher can be required to administer medicine or drugs to pupils, it also sets out procedures that must be followed where a teacher or teachers agree to do so. The position is that either the parents of the child should make themselves available to administer medication as required or where they wish the staff in the school to administer it, they should indemnify the school. It is the Department's experience that once the matter has been discussed in detail with the board of management and teachers of a school

[Deputy Seán Haughey.]

and once all parties are clear as to the procedures to be followed, arrangements can normally be made to administer the type of medicine which may be required in each case.

The five State-funded colleges of education for primary teaching aim to prepare student teachers to meet the diverse needs of all their pupils. The content of initial teacher education courses is a matter for the individual colleges of education. The extent to which potentially fatal allergies are covered varies in the five colleges. All the colleges have stated that the issue of medical conditions, including allergies, is covered in the lectures dealing with preparation for teaching practice. Some of the colleges cover the topic more extensively outside of preparation for teaching practice. For example, in the Church of Ireland College of Education, third year students in their final semester attend a session on health and safety which specifically covers life threatening allergies. In Froebel College, the topic is highlighted in professional development lectures and early childhood lectures as part of an awareness of critical incidents in primary schools. The colleges have also stated that a large number of students also complete optional first aid courses which cover the issue outside of the formal course requirements.

The Teaching Council has statutory responsibility for the review and accreditation of programmes of initial teacher education and considers all course content in this context. Reviews of four initial teacher education programmes at primary and post-primary level took place on a pilot basis in the 2009 to 2010 academic year. A further four reviews are under way in the current academic year. Teacher education, however, does not end after initial teacher education. The council's policy on teacher education will cover the continuum of teacher education beginning with initial teacher education and entry to the profession, followed by induction, probation and continuing professional development. The outcome of the pilot reviews is shaping the council's proposals on the teacher education continuum as a whole. I understand the council will shortly publish its public consultation paper on its policy for the continuum.

The Teaching Council has published its code of professional conduct for registered teachers which states: "Teachers work with management, students and parents in establishing and maintaining policies which are necessary for a safe and supportive teaching and learning environment". In the actual code of conduct the first statement is: "Teachers should take care of students under their supervision with the aim of ensuring their safety and welfare in so far as is reasonably practicable." Persons or their representative associations who wish to make proposals on this issue would be most welcome to contact the higher education institutions' teacher education providers with a view to providing them with material for health and safety and dietary lectures in respect of the dangers of anaphylactic shock in children. The Health and Safety Authority, HSA, also runs a dedicated health and safety course for teachers. Further information is available on the HSA's web site. I thank the Senator for allowing me the opportunity to outline the Department's position on this issue. I will raise this matter with the Teaching Council without delay.

An Leas-Chathaoirleach: The Minister of State has to leave the Chamber as there is a division in the Dáil.

Sitting suspended at 7.50 p.m and resumed at 8 p.m.

School Equipment

An Leas-Chathaoirleach: I welcome the Minister of State back to the House.

Senator Maria Corrigan: I thank the Leas-Chathaoirleach for giving me the opportunity to raise this matter. As the Minister of State is under pressure for time, I will be brief.

I refer to Holy Trinity national school, Leopardstown, Dublin, a relatively new school which is housed completely in temporary accommodation. It has 215 pupils and is expanding con-

stantly. It was established to meet a fast growing local need as a result of extensive development in the Leopardstown-Stepaside area.

At the time it was not eligible to apply for any of the curriculum grants available because it was housed in temporary accommodation. However, it was delighted with the recent ministerial announcement of a grant amounting to approximately €3,250 for playground and physical education equipment. Since the school was not in a position to apply for a grant in the first instance, it does not have any old equipment to replace. As such, it will find it difficult to purchase sufficient new equipment with that amount of money.

It is an excellent school that provides good educational opportunities for its pupils. Through fund-raising efforts, particularly those of the parents, it has tried to provide as many extracurricular resources as possible, but these are limited. Given the exceptional circumstances and that the school was not eligible to apply for a grant initially, would it be possible to consider providing it with additional funding on a once-off basis?

Deputy Seán Haughey: I am taking this Adjournment debate on behalf of my colleague, the Tánaiste and Minister for Education and Skills, Deputy Coughlan. I thank the Senator for raising it, as it gives me an opportunity to outline to the House the Government's strategy for capital investment in education projects, including investment in furniture and equipment such as physical education equipment in primary and post-primary schools.

Modernising facilities, including furniture and equipment, in the existing building stock, as well as the need to respond to emerging needs in areas of rapid population growth, presents a significant challenge. The Government has shown a consistent determination to improve the condition of school buildings and ensure the appropriate facilities are in place to enable the implementation of a broad and balanced curriculum. In 2009 the Department spent in excess of €17.7 million on the provision of furniture and equipment in primary and post-primary schools. This investment was used to provide furniture and equipment in new schools and classrooms that opened during 2009. It was also used to provide replacement furniture and equipment in existing schools and classrooms. To date in 2010, the Department has paid out grants totalling in excess of €16.9 million for furniture and equipment.

Physical education provides children with learning opportunities through the medium of movement and contributes to their overall development by helping them to lead full, active and healthy lives. It is distinguished from other curricular areas by its primary focus on the body and physical experience and an integral part of the educational process, one without which the education of the child is incomplete. Through a diverse range of experiences providing regular and challenging physical activity, the balanced and harmonious development and general well-being of the child are fostered. Physical education meets the physical needs of the child and the need for movement experiences, challenges and play. It develops a desire for daily physical activity and encourages constructive use of free time and participation in physical activities in adult life. To fulfil these needs, physical education is built on the principles of variety and diversity, not specialisation. It provides a wide variety of movement activities appropriate to the level of development of the child.

Through physical education, the child can experience the joy of physical exertion and the satisfaction of achievement, while developing skills and positive attitudes that enhance self-esteem. Physical education provides opportunities to develop desirable personal and social attributes, including the concept of fair play, the acceptance of success and failure and the ability to co-operate in group settings. These opportunities contribute to the understanding and promotion of a healthy lifestyle. It is an integral part of the total curriculum and provides vital opportunities for the physical, social, emotional and intellectual development of the child.

At primary level the curriculum in physical education includes six broad strands featuring athletics, dance, gymnastics, games, outdoor and adventure activities and aquatics. While five

[Deputy Seán Haughey.]

of the strands are designed to be implemented each year, where possible, the aquatics strand is outlined for implementation at any level, depending on the availability of facilities in the area. The physical education curricula at primary and second level have been developed on the understanding that facilities available to schools can vary. Consequently, they offer a level of flexibility that allows each individual school to design a programme that can be delivered using the resources and supports available to it.

The recently published research paper from the Economic and Social Research Institute entitled, *Designing Primary Schools for the Future*, placed a strong emphasis on a variety of playground and sports equipment to cater for the needs of different pupil groups. It also noted that pupils acquired social, cognitive and physical skills through play, as well as an opportunity to take a break from school work. Most adults have become increasingly concerned about issues affecting health and well-being and are more aware than ever of the value and pleasure of physical exercise and sport which are essential elements of a balanced lifestyle and develop character, teamwork and leadership. The positive attitudes to physical well-being nurtured in formal schooling can continue to flourish through regular participation throughout life.

The Department has recently provided a playground and physical education equipment renewal grant for primary schools to meet requirements arising in respect of playground and physical education equipment. The grant was allocated on the basis of €1,000 per school and €10 *per capita*. The *per capita* calculation uses the Department's official record of enrolment figures as at 30 September 2009. The grant was added to the allocation to issue under the 2010-11 minor works grant. One of the key purposes of the grant is to aid further the educational arena in which physical education and sport can thrive. Holy Trinity national school, Leopardstown, Dublin 18, received a combined grant of in excess of €10,000 based on the above figures and it is open to the school authority to use the grant to purchase physical education equipment if it believes this is a priority. In addition to the above grants at primary level, schools currently receive in ancillary and capitation grants at least €355 per student. Primary schools may use this funding to support the implementation of the curriculum, including physical education.

I again thank the Senator for giving me the opportunity to outline the current position on the provision of grant aid for the purchase of physical education equipment and the supply of furniture and equipment to schools. I have noted her comments which I will bring to the attention of the Tánaiste.

Senator Maria Corrigan: I thank the Minister of State for stating he would bring my comments to the attention of the Tánaiste. I appreciate the points made and that a grant of €10,000 has been made available, but the school is facing exceptional circumstances. Since it is housed in temporary accommodation in prefabs, it does not have a playground and the space in which children can play is limited. Neither does it have any old physical education equipment. The Minister of State is right about the importance of physical exercise. As the children vary in age, the equipment that is appropriate for use by one group of children is not appropriate for use by other age groups. This places the limited resources available under pressure. As this is an exceptional case, I would appreciate it if consideration could be afforded to the matter.

Deputy Seán Haughey: I appreciate the case the Senator has made and will revert to the Tánaiste on the Senator's opinions to determine whether it is possible to deal with the matter in another way.

The Seanad adjourned at 8.10 p.m. until 10.30 a.m. on Wednesday, 8 December 2010.