
NORTHERN IRELAND ASSEMBLY

Tuesday 10 November 2009

The Assembly met at 10.30 am (Mr Speaker in the Chair).

Members observed two minutes' silence.

EXECUTIVE COMMITTEE BUSINESS

Goods Vehicles (Licensing of Operators) Bill

Consideration Stage

Mr Speaker: Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in my provisional grouping of amendments selected list.

There are three groups of amendments and a debate on opposition to clause 50 stand part and schedule 4's being agreed. I have also received notice from the Minister and some Members that they wish to speak to clause 6.

We will debate the amendments in each group in turn. The first debate will be on amendment Nos 1, 2, 8, 9 and 10 and opposition to schedule 1's being agreed, which deal with matters relating to the definition of "goods vehicles". The second debate will be on amendment Nos 3, 4, 5, 6, 7, 12, 13 and 14, which deal with technical matters. The third debate will be on amendment No 11, which deals with a new power for payment of grants.

I remind Members who intend to speak that during the debates they should address all the amendments in each particular group on which they wish to comment. Once the initial debate on each group is completed, any subsequent amendments in the group will be moved formally as we go through the Bill, and the Question on each will be put without further debate.

The Questions on clause stand part and schedule's being agreed will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 (Operators' licences)

Mr Speaker: We come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2, 8, 9 and

10, along with the associated schedule 1, which the Minister has given notice that he wishes to oppose. Those amendments deal with matters relating to the definition of "goods vehicles". Amendment No 1 is a paving amendment for amendment No 2. I call the Minister of the Environment, Mr Edwin Poots, to move amendment No 1 and address the other amendments in the group.

The Minister of the Environment (Mr Poots): I beg to move amendment No 1: In page 1, line 10, leave out

"within the meaning given in Schedule 1".

The following amendments stood on the Marshalled List:

No 2: In page 1, line 16, at end insert

"(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if—

(a) it does not form part of a vehicle combination and—

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms; or

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and 'relevant plated weight' in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations." — [*The Minister of the Environment (Mr Poots).*]

No 8: In clause 38, page 29, line 11, leave out paragraph (c). — [*The Minister of the Environment (Mr Poots).*]

No 9: In clause 39, page 30, line 10, leave out

"or paragraph 4(1) of Schedule 4". — [*The Minister of the Environment (Mr Poots).*]

No 10: In clause 39, page 30, line 16, leave out

"or paragraph 4(1) of Schedule 4". — [*The Minister of the Environment (Mr Poots).*]

The amendments in this group or, indeed, any of the amendments to be debated at this stage do not involve any change of policy. Rather, as I see it and, I believe, as the Committee for the Environment sees it, they are designed to make what is a good Bill a little better.

The first group of amendments relates to the definition of a "small goods vehicle" in clause 1 and schedule 1 and the requirement for large goods vehicles to carry consignment notes in clauses 38, 39, 50 and schedule 4. As drafted, the definition of a small goods vehicle replicates the definition in the Goods Vehicles (Licensing of Operators) Act 1995 in Great Britain. However, the definition is complex and has resulted in confusion as to what vehicles are deemed to fall within the scope of operator licensing. That is particularly the case in relation to vehicle combinations. I want to simplify the definition, and I want people to know whether their vehicle is in scope

or out of scope. The proper way to do that is through regulations, rather than in the Bill.

Amendment No 1 will remove a reference to schedule 1, which contains the definition. The impact will be that the requirement to hold an operator's licence will not apply to the use of small goods vehicles generally. Amendment No 2 will insert a new subsection (2A) into clause 1 to provide the power to make regulations that will describe vehicle combinations in a simple manner. Schedule 1 will not, therefore, be needed, and I intend to oppose the Question that schedule 1 be agreed to. These amendments will allow the definition of small goods vehicles to be clear and unambiguous. Officials will, at an early stage, present for my approval and that of the Environment Committee proposals on exemptions and in- and out-of-scope vehicles.

The remaining amendments in the group will remove the references to schedule 4 to the Bill from clauses 38 and 39. I intend to oppose the Questions that schedule 4 be agreed to and that clause 50, which refers to it, stand part of the Bill. Amendment Nos 8, 9 and 10 are consequential to the proposed removal of schedule 4 and remove references to it.

I understand that all of the group one amendments have been explained in some detail to the Committee by my officials and that consensus has been reached in tabling them. I thank the Committee for its patience in its detailed scrutiny of the Bill and these amendments, as well as the other amendments, which we will deal with later.

The Deputy Chairperson of the Committee for the Environment (Mr Boylan): Go raibh maith agat, a Cheann Comhairle. I pay tribute to the departmental officials, the Bill Office and the Committee staff and thank them for their assistance in bringing forward the Bill.

On behalf of the Committee for the Environment, I welcome the Consideration Stage of this important Bill, which is needed to deal with all matters relating to the regulation of road freight operators. The Committee recognises that the Bill has the potential to enhance road safety, improve the image of the freight sector and contribute to the fight against organised crime. It has been a long time coming, and I will take the opportunity to say a few words on the key recommendations that have been made during the Bill's Committee Stage.

The Bill was referred to the Committee on 21 May 2008, and members conducted detailed scrutiny in which they made recommendations and prompted amendments, where the Committee deemed necessary. The good working relationship that was established between the Committee and departmental officials paid

dividends when it came to agreeing those recommendations.

The Committee made three recommendations that very much relate to the Bill, although they are not directly linked to it. One recommendation relates to planning, and I will come back to that later when we debate the relevant clause. The other two recommendations are concerned with enforcement.

The Committee discussed effective enforcement of the Bill at length. On the basis of information that many stakeholders gave, the Committee recommends that, in implementing the Bill, enforcement should be delivered separately from the regulation. That happens in England, Scotland and Wales through the appointment of traffic commissioners, who, among their other functions, operate independently to enforce goods vehicle licensing legislation.

None of the members who were present when the commissioner for the North Western Traffic Area in England attended the Committee are likely to forget her evidence, and I pay tribute to Mr Trevor Clarke in relation to that. However, her evidence, along with the support of many stakeholders, persuaded the Committee that the feasibility of the appointment of a traffic commissioner should be looked at more closely. Therefore, the Committee recommends that the Department pursue the feasibility of the appointment of a traffic commissioner who would have statutory responsibility for, among other things, the licensing of goods vehicles here.

I believe firmly that the discussions in Committee between members and departmental officials had the outcome of producing better legislation. All the benefits that should come from the legislation will be enhanced if the Minister takes on board the Committee's recommendations for better enforcement.

I now turn to the first group of amendments. The Minister outlined carefully the nature and purpose of these amendments, and I will give the Committee's position on them. As we heard, amendment Nos 1 and 2 to clause 1 and the removal of schedule 1 aim to make the definition of small goods vehicles clearer and to create less ambiguity about what will be in and out of the scope of operator licensing. The Committee recognised that as a crucial part of the Bill, and it questioned the Department at length on which vehicles would be affected by the Bill and the principles on which exemptions would be decided.

Having heard evidence from the Ulster Farmers' Union and the Horticultural Trades Association, the Committee was particularly concerned about the potential impact of the Bill on the farming sector. It also queried the impact that it would have on emergency services and government vehicles. Therefore, the Committee welcomes these

amendments, which will clarify the meaning of small goods vehicles, and it thanks the Minister for taking its concerns into consideration.

The other amendments in the group are consequential, and I will refer to the Committee's position at a more relevant time, suffice it to say at this point that the Committee agreed to and welcomes amendment Nos 8, 9 and 10 as proposed by the Department.

Mr Speaker: Before I call Mr Weir to speak, on behalf of the Assembly, I extend my warmest welcome to our guests from America. A senior delegation of Congressmen and Congresswomen are visiting Northern Ireland. I know that I speak for the whole House in welcoming you to Parliament Buildings this morning. I wish you well, and I thank you for coming.

Mr Weir: I am sure that our visitors from America will be delighted to see this great moment of democracy in action. I am sure that Congress discusses little other than the Goods Vehicles (Licensing of Operators) Bill, particularly its Consideration Stage and the definition of a small goods vehicle.

With that spirit of friendship across the water in mind, I welcome this group of amendments. As a member of the Committee for the Environment, I attended meetings during the Bill's Committee Stage. The Committee was conscious of the need to ensure that the legislation was right and that the proper balance was struck. The Minister and the Department have acknowledged that the amendments are not the whole picture, and that is an important point. To try to ensure that everything in the legislation is right, the consequential regulations to be put in place will also be significant.

As indicated by the Deputy Chairperson of the Committee, when we scrutinised the Bill in detail, certain areas were of concern to us. Although the amendments will deal with a certain number of those, regulations may be the most appropriate way to deal with some of the issues.

10.45 am

In striking a balance, it is important to ensure that the amendments do not affect the main purpose of the Bill. Although some concerns were raised about the Bill, and that led consequently to the amendments, the Bill, as a whole, has a very useful purpose, as the Minister outlined. It deals with a range of issues. It is important that we ensure — I think that it is the case — that the amendments do not impinge on the central thrust of the Bill, whether in relation to road safety or to ensuring that people are on a level playing field when it comes to the transport of goods.

The vast majority of users of goods vehicles are reputable and operate in a fashion that meets the safety

requirements that exist already. The regulations would be put in place to protect those users and those who are involved in freight transport as much as possible. We have an unfortunate problem in Northern Ireland in that, because of the lack of regulation in the past, our reputation throughout Europe has not been as good on that issue as perhaps it should be. That creates problems for many of our drivers who are fulfilling all the criteria when they go across the water. The Bill is as much about protection of the industry and those who are involved at the front line as it is about regulation. That is why the legislation is welcomed by most of the relevant bodies.

I am glad to see amendments and to see that they do not impinge on but actually protect the central aspects of the Bill. However, the other aspect is that, although that protection and regulation is needed, as was indicated by the farming community and those who are involved in light transport, it is important that the regulations are not unnecessarily onerous on the single operator or on people who are simply moving about, for example, food products or goods relating to the farming industry. The amendments consider the scope of operating licences — the bulk of that will come through regulations — the issue of consignment notes and the definition of a small goods vehicle.

The amendments are an attempt by the Department to meet the concerns that were raised by the Committee and to ensure that what is put in place is fair across the system, so that people can have a level playing field, and does not place a particularly onerous burden on the sector, particularly those who use small goods vehicles. Other issues have been touched on: for example, operator centres. I think that that issue is best dealt with by way of the regulations. Committee members will be looking for provisions on that in the regulations to ensure that we have a level playing field.

The amendments in group 1 provide a degree of balance between ensuring that there is regulation to achieve the aims of the legislation and ensuring that the burden is not onerous. I am, therefore, happy to support the amendments.

Mr Beggs: I am content with the Bill and the amendments. The evidence that we received at the Committee, particularly from the traffic commissioner for the north-western area, ensured my support for moving forward in this area. We have to improve the standard of the vehicles on our roads to improve road safety and the protection of all our road users, including pedestrians who might get caught up in accidents. The owner-account section has, to date, been exempted from this type of scrutiny, and there has, therefore, been a danger of substandard vehicles on our roads; some operators may have been undercutting others who operate to a higher standard.

The Bill is a considerable move forward; it is long overdue and will bring Northern Ireland into line with other parts of the United Kingdom. The operators will have additional costs, but they will also make savings by carrying out preventative maintenance rather than reacting when their vehicles reach a critical stage. The Bill will bring the considerable benefit of increased road safety.

The Committee heard evidence that criminals are using heavy goods vehicles to move goods about and that that has caused difficulties for the police. The new regulation will provide an ability to prevent those who abuse the system by using those vehicles from being allowed to operate them and will lessen that aspect of organised crime.

I also appreciate the manner in which the departmental officials and the Minister, who has acceded to the amendments, have shown flexibility, particularly by using affirmative secondary regulations to finalise exemptions. That will bring about improvements and the flexibility to allow the Department to react. If we do not get the legislation exactly right, we will be able to listen, and, if adjustments are needed, they can be made easily in the future.

I am content with the Bill and the amendments. Support has come from most people in the industry, including the Freight Transport Association and the Road Haulage Association, to improve standards and make operators more professional and better regulated. The Bill will allow the authorities to concentrate on those who are not ensuring that their vehicles are maintained to the highest standard.

Mr Ford: I express my general support for the principles of the Bill and for the amendments. A few months ago, we reached the Consideration Stage of the Taxis Bill, and I remember saying that it was like the penultimate meeting of a rather sad club that had met on many occasions. However, the membership of the club has changed somewhat. In particular, there is a new Minister, who was not subject to all the difficulties that some of us went through. Indeed, time took its toll on the Committee; some of its members did not have the excitement of going through the process. It is good to see that the same smiling faces are sitting in the Minister's Official Box, watching as we debate the penultimate stage of the Bill.

Mr Beggs: Does the Member agree that, perhaps, we were fortunate that there was a change of Minister? The information that came back to the Committee was that the previous Minister was minded not to proceed with the Bill. Is that correct?

Mr Ford: I am not sure whether the Member wants me to join in praising one member of the Democratic Unionist Party or in attacking another. I agree that there seems to have been some delay in reaching this

stage, but, under the current Minister, we have at least reached it. I am glad that the current Minister listened to the Committee, and, in particular, that the Committee was able to agree certain issues with his officials as we examined the detail of the Bill. As the Deputy Chairperson said, some of us have worked on the Bill since May 2008. Perhaps the Committee did not have as many sessions on this Bill as we had on the Taxis Bill, but, at times, it began to seem like it.

A number of improvements has been made, which the amendments recognise. I endorse those, particularly the fact that we have dealt with the definition of a small goods vehicle in a way that reduces the potential for over-onerous burdens on one-man or two-man businesses. Farmers, the horticulture industry and representatives of small tradesmen who use a single vehicle for themselves made that complaint about the original proposals.

I have a slight concern, and the Minister should consider whether there may be some difficulty over the issue of what could be described as large fleets of small vehicles. We have addressed the legitimate concerns of small operators about the size of a vehicle and the size of a business, but a slight difficulty may have been created on that issue. I will be interested to hear the Minister address that point in his summing-up remarks.

The Committee has dealt with a variety of matters that did not occur when similar legislation was introduced across the water, such as the danger that rogue cross-border operators will cut into the business of legitimate operators in Northern Ireland. I certainly hope that we will see — it does not currently seem to be the case — appropriate legislation being passed in the Oireachtas to ensure that operators in Northern Ireland get fair treatment on an all-Ireland basis.

As Peter Weir said, with the eloquence that we expect from someone in his profession, the regulations that we will have to face will, ultimately, be as significant as the Bill itself. We look forward to seeing the Department produce those regulations as quickly as possible, because there is a serious need to deal with the road safety problems being caused by a small number of rogue operators, the people who create difficulties as they proceed to GB or the continent.

It is not too many months since I was driving along a motorway in Wales and saw that a vehicle with a Northern Ireland registration had been pulled in for a check by traffic police. That shows the unfortunate reputation that a minority of bad operators have given the great majority of legitimate Northern Ireland goods vehicle operators. The Assembly must ensure that legislation is passed to defend the reputations of good operators who abide by regulations and deserve to be supported.

Some colleagues have mentioned the evidence that was given by the traffic commissioner for north-west England. I regret that it has not been possible to include provision for an independent traffic commissioner in the Bill. However, the Department must keep the matter under review and may well need to address it in the near future.

At present, the Bill and its proposed amendments represent a significant step forward. I support them fully.

Mr T Clarke: Some Members may wonder why I am speaking in the debate as I am no longer a member of the Environment Committee. I am speaking because I oppose the Bill and, therefore, do not want to disappoint officials by not speaking in the debate. I like my message to be consistent.

(Mr Deputy Speaker [Mr Molloy] in the Chair)

Although I welcome some of the Minister's changes to the Bill, I am still disappointed with certain provisions. Indeed, there are a few on which I seek clarification. I prefer that small operators with 3.5-ton vehicles be exempt from this particular process and that it apply only to operators whose vehicles weigh at least 7.5 tons. I welcome the fact that the Minister has taken on board some of the suggestions that I made in Committee and has made minor amendments in that regard.

Unlike Mr Ford, I am not disappointed that provision for a traffic commissioner has not been included in the Bill: I welcome that fact. I found the commissioner to be overbearing in her role. She put herself on a pedestal.

Mr Ford: I thank the Member for giving way. I wondered whether that represents a further split between Trevor Clarke and his DUP colleagues. It is always interesting to count them up.

Mr T Clarke: The DUP is a democratic party; its members are entitled to their own views. I am taking part in the debate so that I can express my view.

Unlike Mr Beggs, I am not sure that the Bill will reduce organised crime. I still have concerns about that, and I hope that the Department will do more work in that regard. The enforcement team will have work to do, because I do not envisage that many gangsters will apply for operator licences.

Mr Beggs: Does the Member not accept that, if criminal gangs do not have lorries, they will not be able to move goods around illegally? If they attempt to do so using someone else's lorry, that operator will risk losing his or her licence. That will, therefore, make life much more difficult for criminals.

Mr T Clarke: I just do not know how naive Roy Beggs is at times. From my recollection, criminals

steal lorries or buy them at auctions. We have heard consistently about illegal fuel lorries on the roads. However, the criminals do not actually acquire those vehicles by legal means. Therefore, I do not believe that the Bill will deter them from continuing that activity. Officials will have a job to do. I call upon them to do more enforcement work in order to tackle organised crime rather than monitoring legitimate businesses.

I welcome that the purpose of the legislation is to increase road safety for operators in the sector. I thank the Minister for accepting the amendments, and I support the Bill.

11.00 am

Mr McKay: Go raibh maith agat, a LeasCheann Comhairle. I welcome the Consideration Stage of the Bill and the important part that the Bill will play in improving the image of the freight sector. The Goods Vehicles (Licensing of Operators) Bill had been put on the long finger for a number of years by direct rule Ministers. The industry has been crying out for such a Bill, and it is, therefore, important that we get it right.

Ireland, North and South, has some of the worst transport standards in Europe, and although new legislation to bring the North up to speed has been on the table since the 1990s, it was never progressed. As the Deputy Chairperson of the Committee said, the legislation has been "a long time coming". I hope that the Bill marks the start of a process of implementing legislation across the island and that the Southern Administration will introduce similar legislation to ensure a degree of consistency.

The Committee debated the Bill extensively, and it considered that enforcement should remain separate from the legislation to ensure its effectiveness. The possibility of appointing a traffic commissioner should be further considered. I echo what other Members said about the importance of having a clear definition of a small goods vehicle, and amendment Nos 1 and 2 to clause 1 help to provide that much-needed clarity.

Sinn Féin supports the adoption of all the amendments in group 1, as well as those in groups 2 and 3, because it is vital that the reputation of the Irish freight and transport industry be improved. The new Bill provides the opportunity to do exactly that. The legislation is important for the industry's reputation, and for road safety and haulage drivers.

Mr Dallat: I was appointed to the Committee for the Environment only recently so I missed the excitement of its discussions. I apologise on behalf of the Chairperson of the Committee, Dolores Kelly, who is not here this morning because she is dealing with a family bereavement.

The SDLP welcomes and supports the Consideration Stage of the Bill. I was told recently that up to 70% of goods vehicles could have serious safety deficiencies; the legislation is, therefore, important. I underline the fact that good operators deserve good legislation and strong enforcement. The road freight industry is dependent on investment from good operators, but their efforts are undermined by rogue operators who make no such investment. In light of the alarming reports about operators that we hear from time to time, it is extremely fortunate that the number of road traffic incidents has not been higher. That point has become particularly relevant since the expansion of the European Union led to many vehicles from other countries coming here.

I spent more than an hour trying to get through Newry last night, largely because of heavy goods vehicles, so I do not want to miss the opportunity to highlight the fact that the railway line that runs alongside the road is not operational. That is not a matter for today, but we must, at some stage, consider moving much of the freight from the roads to the railways.

In general, the SDLP warmly welcomes today's progress. At the beginning of the debate, Peter Weir said that the matter was not, perhaps, the most exciting, but it is a serious one.

The Minister of the Environment: I thank Members for their contributions. The Deputy Chairperson, speaking on behalf of the Committee, raised several issues, and I hope to deal with those. The Bill sets out the main provisions for the enforcement of the licensing of operators of goods vehicles. In the main, those provisions were reproduced from the Transport Act (Northern Ireland) 1967, which applies to operators who transport goods and passengers by road.

The Department will have the power to stop and enter vehicles and to enter premises in which vehicles are kept. That power does not apply to private homes unless an application for a magistrate's warrant has been granted. If it is believed that an offence has been committed, the Department will have the power to seize documents. The Department may require the owner, driver or user of a vehicle to provide certain information and documents, such as the name and address of the owner, a description of the goods being carried and the journey details.

A person who either wilfully obstructs an officer or fails to produce documents will be guilty of an offence and will face a fine up to level 3, which is a £1,000, six months' imprisonment or both. The Bill will allow the Department to issue a certificate containing certain defined information as evidence for court proceedings.

Schedule 3 contains details of a new power to detain goods vehicles that are used without an operator's

licence. Schedule 3 contains regulation-making powers, which will provide for the following areas: the detention of a vehicle and its contents; fixing an immobilisation device to a vehicle or arranging for it to be moved from the roadside — tampering with or removing a clamp will be an offence that will attract a fine of up to £1,000, and tampering with or removing a notice of immobilisation can carry a fine of up to £500; the arrangements for the return or disposal of a vehicle and its contents; the proceeds of the sale of property; and the procedure to be followed when a dispute occurs over the return or disposal of a vehicle's contents or the proceeds of any sale. Anyone making a false declaration to secure the return of a vehicle will be guilty of an offence that attracts a fine of £5,000, up to two years' imprisonment or both. Therefore, the powers of enforcement are fairly extensive. The issue then comes down to having an adequate number of staff to deal with that.

I welcome the Committee's view on the need to define "in scope" and "out of scope" clearly, and that will be dealt with further in regulations.

Mr Weir rightly identified the issue about protecting the industry, which is why the industry sought for us to introduce the Bill. Operators who carry out their job in a professional manner will no longer be faced with the problem of being undercut by people who operate to lower standards, which is a serious issue. For example, if an overtired driver operates a vehicle that is overweight and has a faulty brake cylinder, there could be dangerous consequences. That is why we need to ensure that operators keep vehicles at the optimum standard.

The issue of operation centres will be dealt with in regulations. In devising those regulations, I will seek to ensure that we are practical, do not create onerous burdens and respond to real issues such as I have just described.

Mr Beggs indicated that the legislation is overdue, and he referred to organised crime. It will always be difficult to pursue criminals who are happy to operate outside the law. Nonetheless, the Bill creates a better licensing and regulation system that will make it easier to catch those criminals.

Mr Ford said that time had taken its toll on the Committee. I understand that the Member looked about 25 years old when the process started, so it certainly has taken a severe toll on him. He referred to the issue of onerous burdens, as did Mr Weir, and that has been taken on board.

The Bill deals with vehicles that weigh more than 3.5 tons, regardless of whether they are large fleets of small vehicles. Therefore, the issue is not about the size of the fleet but about the Bill applying to small or large goods vehicles that weigh more than 3.5 tons.

Trevor Clarke would have preferred the Bill to apply to vehicles that weigh more than 7.5 tons as opposed to 3.5 tons, and we have considered that issue. However, European Union legislation makes it impossible to move away from that 3.5-ton requirement. That is why the Bill has proceeded using that weight and not a greater weight.

As a result of Trevor Clarke's intervention, we dealt directly with the issue of consignment notes. His opposition and agitating in Committee has certainly delivered results.

We see that as beneficial because consignment notes were not operating in the rest of the United Kingdom and would not have brought any significant benefit to the Bill. I thank Mr Clarke for that.

Mr McKay and Mr Dallat made general comments, and I have nothing to respond to in that respect.

Amendment No 1 agreed to.

Amendment No 2 made: In page 1, line 16, at end insert

“(2A) For the purposes of subsection (2)(a) a goods vehicle is a small goods vehicle if—

(a) it does not form part of a vehicle combination and—

(i) it has a relevant plated weight not exceeding 3.5 tonnes, or

(ii) in the case of a vehicle which does not have a relevant plated weight, it has an unladen weight not exceeding 1525 kilograms; or

(b) it forms part of a vehicle combination and complies with such conditions as may be prescribed;

and ‘relevant plated weight’ in paragraph (a) means a plated weight of the description specified in relation to that paragraph by regulations.” — [*The Minister of the Environment (Mr Poots).*]

Clause 1, as amended, ordered to stand part of the Bill.

Clauses 2 and 3 ordered to stand part of the Bill.

Clause 4 (Vehicles authorised to be used under operator's licence)

Mr Deputy Speaker: We now come to the second group of amendments for debate. With amendment No 3, it will be convenient to debate amendment Nos 4, 5, 6, 7, 12, 13 and 14. The amendments deal with a number of technical matters. Amendment Nos 5, 6 and 7 are related, and Members will wish to bear that in mind when the Questions are being put.

The Minister of the Environment: I beg to move amendment No 3: In page 4, line 4, at end insert “(if any)”.

The following amendments stood on the Marshalled List:

No 4: In page 4, line 5, after “fee” insert “(if any)”. — [*The Minister of the Environment (Mr Poots).*]

No 5: In clause 24, page 20, line 36, leave out subsection (3). — [*The Minister of the Environment (Mr Poots).*]

No 6: In clause 24, page 20, line 39, leave out “subsection (3)” and insert “section 26(1)”. — [*The Minister of the Environment (Mr Poots).*]

No 7: In clause 26, page 22, line 17, after “first” insert

“giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and”. — [*The Minister of the Environment (Mr Poots).*]

No 12: In clause 55, page 36, line 19, leave out “commissioners” and insert “authority”. — [*The Minister of the Environment (Mr Poots).*]

No 13: In clause 57, page 38, line 17, after “section” insert “1(2)(d), 12(12) or”. — [*The Minister of the Environment (Mr Poots).*]

No 14: In schedule 3, page 47, line 29, leave out from “for” to end of line 30 and insert

“authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.” — [*The Minister of the Environment (Mr Poots).*]

The second group of amendments is largely made up of technical amendments that are intended to improve the drafting of the Bill. Amendment Nos 3 and 4 relate to clause 4; amendment Nos 5 and 6 relate to clause 24; amendment No 7 relates to clause 26; amendment No 12 relates to clause 55; amendment No 13 relates to clause 57; and amendment No 14 relates to schedule 3.

In common with the amendments in the first group, all the amendments in the second group have been explained in detail to the Committee and a consensus has been reached.

Members will be aware that the Bill is largely a replication of the Goods Vehicles (Licensing of Operators) Act 1995 in Great Britain. Late last year, that Act was amended by the Local Transport Act 2008, and I want to make sure that the Goods Vehicles (Licensing of Operators) Bill is up to date with GB legislation.

Amendment Nos 3 and 4 are minor, adding the words “(if any)” to the existing phrase, “the prescribed fee”. That is necessary to take account of situations in which no such fee is prescribed. Such a situation would arise if an operator were adding a specific vehicle to a licence and a fee for a previously removed vehicle had already been paid. Obviously, in that situation, a further fee would not be required.

Amendment Nos 5, 6 and 7 are interrelated. The purpose of those amendments is to remove an anomaly in the way in which the Department handles disciplinary proceedings against a licence holder. Currently, under clause 26, the Department “shall

not” give a direction to revoke, suspend, curtail or disqualify without first holding an inquiry if a licence holder requests that it do so. The problem is, how does the licence holder know to ask for an inquiry when, except for a standard licence revocation in clause 24(3), there is no requirement on the Department to tell the licence holder? To make clause 26 work correctly, the Department would have to issue such a notice administratively. It is best to provide for that in the Bill, and, in doing so, remove any potential for misunderstanding. Taken together, amendment Nos 5, 6 and 7 will impose a responsibility on the Department to issue a notice on all occasions. The functions relating to those amendments — revocation, suspension, curtailment and disqualification of licences — are all departmental functions under the Bill, whereas, in GB, the same functions are dealt with by independent traffic commissioners.

In its report, the Committee made two recommendations in that regard, which I will now address.

11.15 am

First, the Committee felt that the licensing function should be separated clearly from the enforcement function. At present, both come under the remit of the Driver and Vehicle Agency. I can provide assurance that, when implementing the Bill, the licensing function will be administered separately from the DVA, which will retain the enforcement function.

The Committee also recommended that the Department pursue the feasibility of appointing a traffic commissioner for Northern Ireland who would have statutory responsibility for, among other things, goods vehicles licensing. Given that the powers in the Bill are exactly the same as those given to traffic commissioners in GB and that there will be a separation of the licensing function, my predecessor, Minister Wilson, decided not to pursue the traffic commissioner option. That position will be kept under review, so we are not ruling the option in or out for the future. However, the present task will be to implement the Bill’s provisions as quickly as possible.

Amendment No 12 is a small, technical amendment. I want the Bill to apply to anyone using a relevant vehicle on any road in Northern Ireland. Crucially, that includes roads in harbour estates. The intention of clause 55 has always been to ensure that the Bill applies to harbour areas. However, it appears that the use of the term “harbour commissioners” in a general sense to describe the bodies that control harbour areas is wrong, because a number of harbour areas are not under the control of commissioners and, therefore, will be excluded from the provisions of the Bill. That is why I propose to amend clause 55 by replacing the

term “commissioners” with the more comprehensive term “authority”.

The Committee tabled amendment No 13 to clause 57. I thank the Chairperson and the Committee, and I am happy to accept that amendment, because I agree completely with its proposals. As drafted, the Bill provides for a wide range of regulation-making powers. All but two of those powers will be subject to negative resolution. In oral evidence sessions in the Committee, my Department was challenged to look again at all the Bill’s secondary legislation-making powers. During that process, the Department agreed that the regulations in clause 1(2)(d) on exemptions and in clause 12(12) on the extension of professional competence, which are requirements for restricted licence holders, should be subject to affirmative resolution. Therefore, I agree to the amendment of clause 57(9) to include those two clauses.

Amendment No 14 is the final amendment in the group and relates to paragraph 7 of schedule 3 to the Bill. It will give the Department power to make regulations for a vehicle that is detained under the schedule to be returned to its owner. Further regulations under paragraph 8 require the owner to apply to the Department for the return of the vehicle. The proposed amendment makes it possible for the vehicle to be returned without the owner having to apply for it. That amendment, which is included already in the corresponding GB legislation, will mean that there is a consistent approach across the systems in GB and Northern Ireland.

The Deputy Chairperson of the Committee for the Environment: Go raibh maith agat, a LeasCheann Comhairle. I send the Committee Chairperson’s apologies to the House; it was remiss of me not to mention that earlier.

Departmental officials briefed the Committee fully on all the technical amendments. The Committee had initial concerns about clause 4(4), not least because it is not included in comparable legislation across the water. Therefore, the Committee sought more information from the Department on the reasons for its inclusion. Having been advised by the Department that clause 4(4) would allow for better enforcement of the legislation, provide in law what England, Scotland and Wales have in practice already and provide what is required by EU law, the Committee accepted its inclusion. The Committee also approved amendment Nos 3 and 4 to other subsections of clause 4 to keep the Bill up to date with similar legislation across the water.

Earlier, I mentioned the importance that the Committee attached to vehicles that will be exempt from the Bill. That will be dealt with through a secondary legislation-making power, which the Committee urges the Department to make subject to draft affirmative

procedure so that the highest level of Assembly scrutiny applies to such an important decision.

Similarly, the Committee had concerns about the power to prescribe a date on which stricter requirements could be placed on applicants for a restricted licence. Members felt that such a measure could introduce an element of discretion into the enforcement of the Bill and questioned the risk of inconsistency. The Department tried to allay concerns by explaining how its discretion might be used and noted that an appeals procedure would ensure that inconsistencies could be addressed. Nonetheless, the Committee was keen for extra scrutiny to be associated with that secondary legislation-raising power and urged the Department to make it subject to draft affirmative procedure. The Committee thanks the Minister for taking those concerns into consideration and welcomes amendment No 13, which will bring those procedures into effect. The Committee agreed all other proposed amendments in the group.

Mr Ford: I am pleased that the Minister referred to traffic commissioners, and I thank him for proposing to keep that matter “under review”. However, what does “under review” mean in the context of legislation?

I appreciate his points about the separation of licensing and enforcement functions. The reality is that the DVA is an agency of his Department, and we appear to be creating a situation that is somewhat analogous to that of the Northern Ireland Environment Agency and the Planning Service, both of which are agencies of the Department, and, therefore, it is possible to question the degree of independence between their functions.

With that in mind, will the Minister tell the House how the system will operate, given the practical realities, to ensure maximum possible separation? Moreover, will he outline a timescale in which he will consider whether it is better to move towards the concept of establishing traffic commissioners as an entirely independent body?

The Minister of the Environment: I thank the Committee for its general support of the legislation. It is useful that the Department has worked closely with the Committee to reach this stage of the legislation.

Mr Ford mentioned the traffic commissioner. Legislation would be required to introduce a traffic commissioner in Northern Ireland. The current system allows a degree of independence and flexibility, and DVA carries out the licensing aspect. Therefore, we believe that there can be a degree of independence and separation between the two functions even though they are in the same Department. A commissioner would be funded by my Department, too. Therefore, someone who makes the case that there is no true independence

because those who pay the piper call the tune could do so in relation to a traffic commissioner, although the title “independent” would be added.

I have always been reluctant to remove powers from the Assembly and the House, where people are accountable to elected representatives. I have always been somewhat reticent about giving powers to people who are independent from political scrutiny. Ultimately, politics is, for good or ill, the voice of the people. We are elected by the people to do a job for the people. Therefore, it is always better that the public’s serious concerns about how governance is being delivered can be addressed through challenges to the process from individuals such as Mr Ford. A process that lacks an independent challenge mechanism for politicians creates real difficulties for the public.

Amendment No 3 agreed to.

Amendment No 4 made: In page 4, line 5, after “fee” insert “(if any)”. — [The Minister of the Environment (Mr Poots).]

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5 ordered to stand part of the Bill.

Clause 6 (Operating centres to be specified in operators’ licences)

Question proposed, That the clause stand part of the Bill.

The Deputy Chairperson of the Committee for the Environment: Go raibh maith agat, a LeasCheann Comhairle. From the outset of its scrutiny, the Committee had reservations about the potential effect of the Bill on planning processes. In particular, the Committee was worried about the Bill’s effect on owners of small businesses who are based at home and are required to designate their homes as operating centres. The Committee, therefore, seeks the Minister’s assurance that the designation of a property as an operating centre will not, in itself, have any read-across to planning action, nor will it be used by, or influence any action of, the Planning Service as to the use of the property.

Mr I McCrea: First, I thank the Clerk of the Committee for the Environment and the Committee staff, who had a major task to get everything right for today, including the drafting of the reports. Departmental officials also had a hard task, to say the least, in dealing with some of the issues raised, particularly by my colleague Trevor Clarke. I welcome the fact, as the Minister said, that the Department was able to take on board the issues that were raised and amend the Bill accordingly.

As the Deputy Chairperson said, one of the main issues with clause 6 was the question of planning

permission for operating centres owned by operators of small businesses who are based at home. In his contribution to the debate, the Deputy Chairperson sought clarity on the assurance that the designation of an operating centre will not have any read-across to planning action. I ask the Minister to clarify whether owners of small businesses who operate from home will require planning permission, and, if so, under what circumstances. Will he indicate whether there is a limit on the size of vehicle that can be kept at an operator's home?

Mr T Clarke: Again, I make no apology for being one of those who raised the most concerns about the operating centres. My feelings are similar to those expressed by the Minister in his reply to Mr Ford: I am an elected representative for the people and I want to work for them while I am here.

I can see how the Bill's provisions for operating centres could have caused some difficulties. Although I am glad that the Minister has given us assurances that that will not be the case, I was disappointed when, on more than one occasion, Planning Service officials could not give the Committee clear guidance on how those provisions will work in practice. However, I trust that the Minister will use his authority to make it clear to the Planning Service that it must provide such guidance.

Like my colleague, I still have reservations about how the read-across will be determined. Will it apply retrospectively to people who are already in business? Will it prevent others who want to start businesses from doing so from an operating centre beside their homes? Will the rights that are granted to those who have been in business for several years follow them if they decide to relocate? There are still questions to be answered, and I hope that the Minister will provide some clarity.

11.30 am

The Minister of the Environment: Clause 6 deals with operating centres. I will address the second of the three recommendations on operating centres that the Committee made in its report on the Bill.

Following a designation by the Department of a place as an operating centre under the Goods Vehicles (Licensing of Operators) Bill, the issue of read-across into interest or action by the Planning Service may be of concern to some. I assure Members that the designation of a property as an operating centre will not in itself have any read-across into planning action, nor will it be used by or influence any action by the Planning Service as to the use of the property.

Irrespective of that assurance, it is the responsibility of all landowners to ensure that the use of their property satisfies the requirements of planning laws.

Question put and agreed to.

Clause 6 ordered to stand part of the Bill.

Clauses 7 to 23 ordered to stand part of the Bill.

Clause 24 (Revocation of standard licences)

Amendment No 5 made: In page 20, line 36, leave out subsection (3). — [*The Minister of the Environment (Mr Poots).*]

Amendment No 6 made: In page 20, line 39, leave out "subsection (3)" and insert "section 26(1)". — [*The Minister of the Environment (Mr Poots).*]

Clause 24, as amended, ordered to stand part of the Bill.

Clause 25 ordered to stand part of the Bill.

Clause 26 (Revocation, disqualification, etc: supplementary provisions)

Amendment No 7 made: In page 22, line 17, after "first" insert

"giving the holder of the licence or (as the case may be) the person concerned notice that it is considering doing so and". — [*The Minister of the Environment (Mr Poots).*]

Clause 26, as amended, ordered to stand part of the Bill.

Clauses 27 to 37 ordered to stand part of the Bill.

Clause 38 (Powers of entry)

Amendment No 8 made: In page 29, line 11, leave out paragraph (c). — [*The Minister of the Environment (Mr Poots).*]

Clause 38, as amended, ordered to stand part of the Bill.

Clause 39 (Power to seize documents etc)

Amendment No 9 made: In page 30, line 10, leave out

"or paragraph 4(1) of Schedule 4". — [*The Minister of the Environment (Mr Poots).*]

Amendment No 10 made: In page 30, line 16, leave out

"or paragraph 4(1) of Schedule 4". — [*The Minister of the Environment (Mr Poots).*]

Clause 39, as amended, ordered to stand part of the Bill.

Clauses 40 to 49 ordered to stand part of the Bill.

Clause 50 (Large goods vehicles)

Mr Deputy Speaker: The Minister has given notice of his intention to oppose clause 50's standing part of the Bill and the associated schedule 4's being agreed to. Clause 50 deals with documentation requirements for drivers of large goods vehicles.

Question proposed, That the clause stand part of the Bill.

The Minister of the Environment: I oppose clause 50's standing part of the Bill and the associated schedule 4's being agreed to. Schedule 4 is a replication of schedule 5 to the Goods Vehicles (Licensing of Operators) Act 1995 in Great Britain and was originally included to enable Northern Ireland to remain in line with GB legislation. It contains provision for the carriage of consignment notes in large goods vehicles; namely, a document containing certain details about the nature of goods that are being carried in the vehicle. However, that provision of the GB Act has never been enacted or brought into operation. Furthermore, it appears that the provisions are out of date and would have to be amended before being commenced in Great Britain.

It would be best to remove clause 50 and schedule 4 from the Bill altogether. If the provision is ever needed, it can be made at that time. Removal of the clause and schedule will not affect the remainder of the Bill or the way in which goods vehicles operators are licensed.

The Deputy Chairperson of the Committee for the Environment: Go raibh maith agat, a LeasCheann Comhairle. The Committee welcomes the Minister's opposition to clause 50 standing part of the Bill and schedule 4 being agreed to. The Committee questioned the need for separate additional classification for larger vehicles and the requirement for consignment notes to be carried. The Department indicated subsequently that it could find no justifiable reason for the inclusion of clause 50 and noted that the provision has never been enacted across the water. The Committee agreed that the Bill would be improved by excluding clause 50 and schedule 4.

The Minister of the Environment: I thank the Committee for the views that have been expressed.

Question put and negatived.

Clause 50 disagreed to.

Clause 51 ordered to stand part of the Bill.

New Clause

Mr Deputy Speaker: We now come to the third group of amendments for debate. There is only one amendment, which is amendment No 11.

The Minister of the Environment: I beg to move amendment No 11: After clause 51, insert the following new clause:

“Payment of grants

51A.—(1) The Department may, with the approval of the Department of Finance and Personnel, pay such grants to such persons or bodies as it considers appropriate in connection with any provision of, or the purposes of, this Act.

(2) Grants under this section shall be subject to such terms and conditions as the Department may, with the approval of the Department of Finance and Personnel, determine.”

The insertion of clause 51A will provide my Department with the power to make grants available to individuals or bodies in connection with operator licensing. Inclusion of that power is prudent and reflects a similar power that was included in the Taxis Act (Northern Ireland) 2008. It will give my Department the power to make grants in certain circumstances, although I do not envisage the power having to be used very often. Any grant to be made available would be subject to terms and conditions and the prior approval of the Department of Finance and Personnel.

The Deputy Chairperson of the Committee for the Environment: Go raibh maith agat, a LeasCheann Comhairle. Throughout the Committee Stage, members expressed misgivings about the impact that the Bill may have on small businesses. The Committee very much welcomes the Minister's decision to insert clause 51A, which makes provision for grants to be paid to persons or bodies in connection with the provisions of the Bill. The Committee supports amendment No 11.

Mr Deputy Speaker: I call the Minister to make a winding-up speech.

The Minister of the Environment: I have nothing further to add, other than to thank the Committee for its support.

Mr Deputy Speaker: I am sorry; I forgot to call Mr Alastair Ross. I now call Mr Alastair Ross.

Mr Ross: I am something of an afterthought, but, nevertheless, I welcome the opportunity to speak about this part of the Bill. The purpose of the Bill has been explained in relation to other groups of amendments. A few years ago, I was hit by a McCullough Transport lorry when I was driving my car, so I know from personal experience that those sorts of lorries can be lethal weapons on our roads. Certainly, any legislation to improve road safety is to be welcomed, and we have already heard that Committee members agree.

Many of the concerns have been dealt with in the earlier amendments, but we were concerned about the impact that this legislation will have on the industry as a whole and particularly on smaller operators. We were worried that, if we moved ahead of the Irish Republic, the industry in Northern Ireland would be at a disadvantage. The addition of clause 51A certainly goes some way towards alleviating some of those concerns by creating the power for the Department to make grants available to individuals or bodies in connection with operator licensing. We are aware that similar enabling legislation was included in the Taxis Act (Northern Ireland) 2008. The Minister stated that it

is not envisaged that that power will ever need to be used. We hope that the industry is never at such an economic disadvantage that the Department will need to use the power. However, at least the Department, after approval from the Department of Finance and Personnel, can use that power if the industry needs help in the form of grants. I have no difficulty in supporting the new clause.

The Minister of the Environment: I assure Mr Ross that he is not an afterthought. His contribution is always valued. I thank him for the comments that he made, and I agree fully with them, particularly in the spirit of party unity.

Question, That amendment No 11 be made, put and agreed to.

New clause ordered to stand part of the Bill.

Clauses 52 to 54 ordered to stand part of the Bill.

Clause 55 (Application of Act to harbours)

Amendment No 12 made: In page 36, line 19, leave out “commissioners” and insert “authority”.— [*The Minister of the Environment (Mr Poots).*]

Clause 55, as amended, ordered to stand part of the Bill.

Clause 56 ordered to stand part of the Bill.

Clause 57 (Regulations)

Amendment No 13 made: In page 38, line 17, after “section” insert “1(2)(d), 12(12) or”. — [*The Minister of the Environment (Mr Poots).*]

Clause 57, as amended, ordered to stand part of the Bill.

Clauses 58 to 61 ordered to stand part of the Bill.

Schedule 1 (Meaning of “small goods vehicle”)

Mr Deputy Speaker: Opposition to schedule 1 has already been debated and is consequential to amendment No 2’s having been made. Members are reminded that, if they do not want to agree schedule 1, they should say “No”, and, if they wish to agree it, they should call “Aye”.

Schedule 1 disagreed to.

Schedule 2 agreed to.

Schedule 3 (Detention of vehicles used without operator’s licence)

Amendment No 14 made: In page 47, line 29, leave out from “for” to end of line 30 and insert

“authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.” — [*The Minister of the Environment (Mr Poots).*]

Schedule 3, as amended, agreed to.

Schedule 4 (Large goods vehicles)

Mr Deputy Speaker: Schedule 4 has been debated already, and the Minister has indicated his opposition to it. Members are reminded that, if they wish to support the Minister and do not want to agree schedule 4, they should call “No”. If they wish to agree schedule 4, they should call “Aye”.

Schedule 4 disagreed to.

Schedules 5 and 6 agreed to.

Long title agreed to.

Mr Deputy Speaker: That concludes the Consideration Stage of the Goods Vehicles (Licensing of Operators) Bill. The Bill stands referred to the Speaker.

Members may take their ease for a minute.

Department of Justice Bill

Consideration Stage

Mr Deputy Speaker: Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in my provisional grouping of amendments selected list.

There are two groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1, 2, 3 and 4, which deal with the process by which the Minister is appointed. The opposition to clause 2 notified by Alex Attwood and others will also be debated. The second debate will be on amendment Nos 5 and 6, which deal with the commencement of the Act.

I remind Members who intend to speak during the debates on the two groups of amendments that they should address all the amendments in each group on which they wish to comment. Once the initial debate on each group has been completed, any subsequent amendments in the group will be moved formally as we go through the Bill, and the Question on each will be put without further debate. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 (The Department of Justice)

Mr Deputy Speaker: We now come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2, 3 and 4 and opposition to clause 2, as notified by Alex Attwood and others.

Those amendments deal with the process by which the Minister is appointed. Clause 2 sets out a model for the appointment of the Minister. The amendments would place reporting obligations on the First Minister and deputy First Minister relating to the establishment of the Department and the appointment of the Minister, with implications for that appointment.

Those amendments are also related to amendment No 5 in group 2, which deals both with the commencement and sequencing of the appointment of the Minister. I draw it to Members' attention that amendment No 1 is a paving amendment for amendment Nos 2, 3 and 4. Amendment Nos 3 and 4 are consequential to amendment No 2.

I call Mr Alex Attwood to move amendment No 1 and to address the other amendments in that group and his opposition to clause 2.

Mr Attwood: I beg to move amendment No 1: In page 1, line 2, after "established" insert "upon the designated day".

The following amendments stood on the Marshalled List:

No 2: New clause

After clause 2, insert the following new clause:

"Duty of First Minister and deputy First Minister to report on certain matters

2A. The First Minister and deputy First Minister acting jointly shall make a report orally and in writing to the Assembly within seven days of the commencement of this section—

(a) outlining the functions that the Department of Justice is to exercise;

(b) explaining the provisions of paragraph 8 of Schedule 1 to the 2009 Act and, in particular, in the event that the Department of Justice is dissolved on 1 May 2012, the consequences of such dissolution for the exercise of the functions that the Department of Justice is to exercise, including such functions as may be conferred on the Department of Justice relating to—

(i) the imprisonment of offenders;

(ii) the compensation of victims of crime;

(iii) the provision of services in relation to forensic science;

(iv) the provision of services in relation to youth justice.

(c) explaining that paragraph 8 of Schedule 1 to the 2009 Act does not apply if the ministerial office of the minister to be in charge of the Department of Justice is filled under section 18 of the 1998 Act;

(d) explaining that the ministerial office of the minister to be in charge of the Department of Justice will be filled under section 18 of the 1998 Act if the Assembly fails within seven days of the date of the making of the report to approve a resolution endorsing the arrangement under section 2 of this Act for the appointment of the minister to be in charge of the Department of Justice." — [Mr Attwood.]

No 3: New clause

After clause 2, insert the following new clause:

"Consequences of failure to report or endorse arrangement under section 2

2B. If—

(a) the First Minister and deputy First Minister acting jointly fail to make the report referred to in section 2A within seven days of the commencement of this section, or

(b) the Assembly fails within seven days of the date of the making of that report to approve a resolution endorsing the arrangement under section 2 of this Act for the appointment of the minister to be in charge of the Department of Justice

then section 2 of this Act shall be repealed as of the date of the expiry of that period." — [Mr Attwood.]

No 4: New clause

After clause 2, insert the following new clause:

"Interpretation

2C. In this Act—

'designated day' means—

(a) if the First Minister and deputy First Minister acting jointly fail to make the report referred to in section 2A within seven days of the commencement of this section, the next day following the day upon which that period expires;

(b) if the Assembly fails within seven days of the date of the making of that report to approve a resolution endorsing the arrangement under section 2 of this Act for the appointment of the minister to be in charge of the Department of Justice, the next day following the day upon which that period expires;

(c) the next day following the day of the approval of the resolution by the Assembly referred to in section 2B(b);

whichever is the earlier.

‘the 1998 Act’ means the Northern Ireland Act 1998;

‘the 2009 Act’ means the Northern Ireland Act 2009.” —
[Mr Attwood.]

I thank the Business Office and other Assembly staff who provided significant assistance to me and the SDLP when preparing the amendments, and I thank those who agreed to the amendments being tabled in the form that we have before us. In addition, I thank the First Minister and the deputy First Minister for attending. It will be interesting to see whether at least one of them lasts the pace in the course of the next number of hours.

I will speak to the first group of amendments: amendment Nos 1, 2, 3 and 4 and the opposition to clause 2. Before I get into the detail of the amendments and the reasons that inform the SDLP’s thinking about them, it would be fair to capture, on the one hand, what opposition to clause 2 means and, on the other, what amendment Nos 1, 2, 3 and 4 mean. For the sake of convenience, I shall do that before I get into technical and political details.

Ultimately, the purpose of the amendments is simple and the purpose of opposing clause 2 is simple. If clause 2 falls, the only provision for filling the justice Minister position will be that in the Northern Ireland Act 1998. Since then, under legislation in 2006, 2007 and 2009, there have been various models that, further to negotiation, might be used to fill the justice Minister position. I am not going to rehearse those models, because, subsequent to political negotiations, various Secretaries of State amended that large menu of models in the House of Commons. In the SDLP’s view, opposition to clause 2 captures the fact that those models are not appropriate. The appropriate way to proceed is to revert to the provisions in the Good Friday Agreement for electing Ministers to office. At the end of my speech, I will explain why the SDLP believes that opposition to clause 2 is the right way to proceed from the point of view of the law, the party’s politics and the community’s needs.

Amendment Nos 1, 2, 3, and 4 approach the matter in a different way. In essence, they invite the First Minister and the deputy First Minister to come clean to the Assembly and explain in the course of the debate or, under the proposed amendment, at a subsequent time the consequences in May 2012 if there is no agreement at that time about how the justice Ministry portfolio will be filled. The SDLP has a view about the

procedure that will kick in then. We are asking the Assembly to stand back from the politics and the current toing and froing on the devolution of policing and justice and, as a legislature, create legal certainty and political confidence in what will happen in 2012. The SDLP is saying that, if the Assembly does so, it will be acting in a manner that will avoid damaging public confidence at that time.

The SDLP’s amendments invite the Assembly to consider the true consequences and risks in 2012 of following the route proposed by the First Minister, the deputy First Minister, the DUP and Sinn Féin. We suggest that the Assembly considers those difficult matters afresh and looks on our amendments as a way to navigate through them in order to come to a conclusion that is consistent with and supports the amendments. That is, essentially, the political argument that the SDLP advances for its position on clause 2 and for amendment Nos 1, 2, 3 and 4.

I turn to the consequences of amendment Nos 1, 2, 3 and 4. I will not detain the Assembly in respect of amendment No 1, which inserts the words “upon the designated day” into clause 1 after the word “established”. That can be understood only after consideration of amendment Nos 2, 3 and 4. After my explanation of those amendments, the significance of that insertion will become clear.

Amendment No 2 is the first of our substantive amendments. Its text is on the Marshalled List, so I will not read it out. Some will consider the amendment obscure, as not belonging to the real political world or not of immediate relevance. We say this: we are as close to May 2012 as we are to May 2007. We are 30 months into restoration and 30 months away from May 2012, when a serious risk to the authority of the Assembly and to public confidence may arise. Some see the amendment as obscure, irrelevant or not of the real world. However, when one considers the position 30 months after restoration and what may or may not happen over the next 30 months, it is clear that this is the moment when Members should stand back, create certainty and eliminate doubt and let Members, political parties and the wider community know what will happen in May 2012.

Almost everyone in the Chamber is of good intent, but not all. There are some here and outside who cling to a past that is already dying. However, in the round, Members have made essential political choices about the nature of society and the future of Irish democracy. I welcome that.

It is essential to understanding amendment No 2 and the SDLP’s proposed new clause that one cannot disregard the fact that, 30 months into restoration, it is impossible to divorce all the progress that we have made from the many issues on which progress has

been slower than expected. We have not yet agreed a new shared future strategy; a date for the devolution of justice and important details connected with that; an Irish language Bill; a stadium at the Maze site; how best to manage disputed parades; or how to address the past.

Mr Deputy Speaker: I ask the Member to focus on the Bill that is before the House and the issues associated with it.

Mr Attwood: I concur, and I anticipated your intervention, Mr Deputy Speaker. I made those points because, as a result of the experience of the last 30 months, we should caution ourselves. In May 2012, under the provisions of the Bill, the justice Department will be dissolved. No one disputes that. People say that, between now and then, political agreement will be reached on what will happen in May 2012 so that we can avoid dissolution of the Department of justice.

12.00 noon

The essential political point, and the point of proposed amendment No 2, is that, based on the experience of the past 30 years, no one in the Chamber can say with their hand on their heart and with total confidence and conviction that we will have resolved the issue of the election or nomination of a justice Minister by May 2012, thereby avoiding a situation in which the justice Department will be dissolved. Given what remains unresolved and the tensions and the toing and froing around the current devolution of justice negotiation, how can we be confident that 30 months from now — a hop, a skip and a jump in the lifetime of this country — the issue of the future justice Ministry will be resolved satisfactorily and that a new model will have been put in place to avoid the dissolution?

That is what the SDLP is inviting Members to consider today: it is inviting them to put themselves in the real political world of the moment and consider how that will play out during the next 30 months. We hope that, by 2012, our Assembly will have matured and our parties will have deepened their wisdom to have resolved those matters. However, we cannot have that certainty or conviction. Proposed amendment No 2 invites the Assembly to consider all of that, to work it through and, perhaps, to come to a conclusion, contrary to what orthodoxy suggests, that is consistent with what the SDLP says in the amendment. Essentially, proposed amendment No 2 enables the Assembly to work through the issues with its eyes wide open, aware of all the risks and pitfalls, and to put in place a mechanism to legislate against those issues.

Before I go through what new clause 2A of the Department of Justice Bill will mean if proposed amendment No 2 is accepted, I must explain something to the House. It is a convention and a

standard of law and parliamentary practice in the North that, although direction and control of a Department rest with the Minister, it is the Department itself that holds the legal authority and powers. That is why the Northern Ireland Act 1998, and the various pieces of legislation that deal with the devolution of justice to the North, refer not to a Minister as having authority and power, but the Department. The Department has the power; the Minister has only command and control.

Therefore, let us think through the consequences of what happens in May 2012 when, as everybody agrees, under the current legislation and in the absence of other agreement, the justice Department dissolves. Mr Ford, or any other person who may be forthcoming, may be the Minister of justice, but the Minister for justice will not have a Department. It is a self-evident truth accepted by everybody that, under the current provisions and in the absence of agreement by May 2012, Mr Ford, Mr Kennedy or Mr Maginness — the last named would be my choice — *[Interruption.]* Any of those individuals, or any other individual, would have the ministerial car and may even have a ministerial office and people visiting that office. However, he or she would not have the ability to do anything in that office because the Department of justice will have been dissolved.

However, that is not the real issue about a Department of justice being dissolved in May 2012. Proposed new clause 2A(b) in amendment No 2 deals with that, as it would oblige the First Minister and deputy First Minister at a certain time — I will return to that in a minute — to come to the Floor of the Assembly and explain what will happen in 2012.

According to our view of the world and to our lawyers' advice, in the absence of agreement in May 2012, there will be dissolution. The consequence of that would be the criminal justice system not just grinding to a halt, but being put in potentially grave risk. Although a Minister may be in office, what happens when a Department does not exist? What happens to the management of the Prison Service, the payment of compensation to victims, police forensic science work, and youth justice provisions?

All those functions are mentioned in amendment No 2, because they are all functions of a Department of justice. They would not necessarily be handled by a Minister for justice, but they would, nonetheless, be the Department's responsibility. What happens with all those services and needs in the event of the Department not existing? What will be done about the risk to the public? Come May 2012, we face the potential of a Department no longer existing and, as a consequence, the criminal justice arrangements of which I spoke, and much besides, not being able to function and maintain good authority.

Mr O'Dowd: I am sorry for not having been here for the start of the Member's speech, but I have been in the Chamber for about 15 minutes, and in that part of the Member's contribution, he talked about when we reach failure, if we do not reach agreement, and the Armageddon that will happen in May 2012. Perhaps all our energies should be directed towards ensuring that we do reach agreement.

We all have a collective responsibility to ensure that 2012 is a date when the justice Ministry continues, local politicians continue to hold control of justice and policing powers and we have an effective system in place. Perhaps the Member should come round to that way of thinking, instead of doing what the SDLP has done thus far in not only this debate but in the entire debate about policing and justice, which is to focus on its negative role in politics rather than finding a positive and constructive role.

Mr Attwood: Perhaps if the Member had been here for the beginning of my speech — although I am sure that his absence was for reasons beyond his control — he might have been minded not to make that intervention. I remind the Member that there was nothing negative about what the SDLP did in those difficult years up to 2007, when it went on the Policing Board to fulfil the mandate of the Good Friday Agreement that the devolution of policing and justice would happen in the context of ongoing implementation of policing and justice change.

We are having a debate today about the nature, character and timing of the devolution of justice and policing because the SDLP and others went about the task of implementing justice and policing change. If that job had not been undertaken by the SDLP and others — I have spoken in this Chamber and elsewhere about the fine and brave work that was done by the Ulster Unionist Party, the Democratic Unionist Party and the community members of the Policing Board — in very difficult circumstances, when there was suspension, when there were still people stealing information not far from here, robbing banks not far from here and demonising those who were in the police and those who were trying to endorse the policing arrangements —

Mr A Maskey: On a point of order, Mr Deputy Speaker. I wonder when Mr Attwood will go back to talking about the Bill.

Mr Deputy Speaker: I think that the previous intervention led Mr Attwood into that particular angle. I am sure that he will get back on track.

Mr Attwood: Thank you for that ruling, Mr Deputy Speaker. I will return to the Bill and to the other pieces of legislation that surround and govern the Bill.

We are able to have this debate because of the twilight struggle — for want of a better term — during

those years when members of the SDLP and other parties on the Policing Board and in the district policing partnerships made their choices about policing. Nationalists would be opposing the devolution of justice and policing today, were it not for the work that was done and for the heavy lifting and big issues that were dealt with in the years up to 2007, before other parties joined the Policing Board.

There is an utter contradiction in what Mr O'Dowd has outlined. He rightly suggests to me and to everybody else that we should work to avoid a default situation in 2012. However, who endorsed the dissolution of the Ministry in 2012? Which party argued and supported that provision? It was Mr O'Dowd's party. In order to get out of the hole into which it dug itself and the dead end that it faced when it was outmanoeuvred and out-thought by the First Minister on the need for cross-community support at all times for all times, Sinn Féin, in its desperation, signed up to, endorsed, supported and, no doubt, negotiated for, a sunset clause for the dissolution of the justice Ministry in 2012. Sinn Féin need not argue with us about the obligation to get new arrangements in place by 2012 and berate us for saying that there might not be new arrangements by then, when it was the architect of that political dead end. It was Sinn Féin who worked with others to put into law the issue that amendment No 2 deals with.

Ms Anderson: I am confused. Will the Member clarify whether he and his party are against the principle of sunset clauses? The SDLP claims credit for securing a sunset clause in the St Andrews Agreement. I want some clarity on whether the SDLP is against the principle of establishing a sunset clause.

Mr Attwood: I ask the Member to bear with me, because I will give her absolute reassurance. I intend to read into the record the pedigree of the sunset clause that Sinn Féin endorsed and the SDLP's views on sunset clauses, later in my contribution. I will come to that when I go further into amendment No 2 and to amendment No 3.

Under the legislation as drafted, the Department will dissolve. Through amendment No 2, we are saying that, given the grave risks that will arise in that regard, an obligation on the First Minister and the deputy First Minister to report to the Assembly on certain matters will get to the heart of what will happen in 2012, legislate against worst practice and avoid excess. Amendment No 2 calls on the First Minister and the deputy First Minister to do that.

I will go through amendment No 2 in some detail, because it needs to be understood. Sinn Féin and the DUP's view is that once the Ministry is dissolved, there will be a vacuum and, in the absence of political agreement, nothing will be able to be done about it.

12.15 pm

The SDLP's essential point is that Westminster, sometimes referred to as "the mother of all Parliaments", with its knowledge of drafting Bills and legislating for certainty, does not legislate for a vacuum. Contrary to what departmental officials and the First Minister said in Committee and in the Chamber, the SDLP believes that, in the event of the dissolution of the Department in May 2012, even though the sunset clause will kick in, there will be provision in legislation, by design or by default, for what happens next. Given all the toing and froing and the merry-go-round in respect of the devolution of justice and policing, we deserve to know, and the public needs certainty about, what will happen in those circumstances in 2012, namely in the absence of the political agreement that Mr O'Dowd rightly encourages us all to meet.

The SDLP believes that a sunset clause would not dissolve the Department; instead, the Secretary of State would intervene, and I will explain why. The amendment requires the First Minister and the deputy First Minister at a certain time, which I will come to shortly, to come to the Chamber to fulfil a number of reporting functions, including informing us of the circumstances that will arise after May 2012. That is the SDLP's argument for what will happen in 2012, and why there is such an urgent obligation on the First Minister and the deputy First Minister to make that report to the Assembly.

Under the Northern Ireland Act 2009, which is the relevant Westminster legislation, the Department will automatically be dissolved on 1 May 2012, unless the Assembly — this goes back to Mr O'Dowd's point — votes by cross-community support before 1 May 2012 to keep it. Alternatively, the Northern Ireland Act 2009 provides for another Act of the Assembly to provide for the justice Department to continue after 1 May 2012, provided that that Act uses a specific model, and it goes on to outline two models under the 2009 Act or under another authority. However, the critical point is that if no second Act is passed or if no cross-community vote is made in 2012, the Department will be dissolved, even though, as Mr O'Dowd indicated, Mr Ford would remain in post.

The dissolution of the Department would mean that the civil servants who are responsible for the justice system, including all those in next-step agencies, could not act as such. That includes the Prison Service, with obvious startling consequences. All of that is explained in paragraph 8 of schedule 1 to the Northern Ireland Act 2009. However, the critical point is that, owing to the extraordinary if not dangerous implications of the dissolution of the Department, we believe that that Act also provides for fallback arrangements, contrary to what the First Minister and the deputy First Minister

said in their letter of 18 November 2009 to the Assembly and Executive Review Committee, which explicitly stated that there would be no fallback arrangements.

To avoid the total crash of dissolving the Department and all the consequences for the Department and the next-step agencies, paragraph 5(2)(b) of schedule 1 to the 2009 Act states:

"they are not to apply at all if an Order in Council has been made under section 21A(7C) of the 1998 Act."

That provision in the 1998 Act was inserted as a result of the Justice and Security (Northern Ireland) Act 2007, which, along with other provisions, allows the Secretary of State to impose the model for the devolution of justice, namely the appointment of a senior and a junior justice Minister, and that is what we believe will happen. Therefore, contrary to all the reassurances that the Department will be dissolved and that no Minister will be in place in May 2012, the fallback arrangements will be that, under the 2009 Act, the First Minister and the deputy First Minister will appoint a senior and a junior justice Minister by cross-community vote.

I will return to the relevance of that to the proposed clause 2A. We are calling on the First Minister and deputy First Minister to come to the House within seven days of the commencement of the section and outline, orally and in writing, the functions that the Department is to exercise. That is important as a matter of principle. After all the debate and discussion about the devolution of policing and justice, it seems to us appropriate and relevant that the First Minister and deputy First Minister should come to the Floor of the House at that stage and explain in full detail what the full functions of the Department of justice will be when it is established.

The First Minister and deputy First Minister should explain to the House — if our analysis is correct about what happens in 2012 — what happens, under the relevant legislation, when dissolution arises, to all the work and functions of the Department of justice. At that stage, it will be left in a vacuum, without appropriate legal authority, and with a Minister without a Department. They should go further and explain that — sorry, I have lost my thought — as the proposed clauses 2C and 2D explain.

The real importance of our amendments is not just in relation to clause 2. The cutting edge of amendment Nos 1, 2, 3 and 4 is amendment No 3. I am sure that the deputy First Minister and others appreciate that. We are saying that there should be consequences if the report from the First Minister and deputy First Minister to the House is not tabled, or if certain actions are not taken by the Assembly arising from that clause. I will explain what all that means.

The new clause 2B does the important work. It provides that clause 2 of the Bill — which triggers the Northern Ireland Act 2009, and sets the clock on the May 2012 deadline — will be repealed if the First Minister and deputy First Minister do not make the report within seven days. It also provides that clause 2 will be repealed if the Assembly does not, within a further seven days, approve the triggering of the 2009 Act. Clause 3 provides for commencement, which I will speak about later.

The importance of that is as follows. The First Minister and deputy First Minister should come to the House and explain what they believe will happen in 2012. As I have said, we consider the consequences of dissolution to be grave, if not acute. We are suggesting that, in the event that the First Minister and deputy First Minister do not come to the House within seven days, as provided for in the amendment, the allocation of the justice Minister falls back to the provisions of the Northern Ireland Act 1998 and to the d'Hondt provisions.

We go further and propose that, in the event that the Assembly does not endorse the arrangements and the report given to the Assembly by the First Minister and deputy First Minister within seven days, including the consequences of dissolution in May 2012, the allocation of the justice Minister should be governed by the d'Hondt provisions of the Northern Ireland Act 1998.

We are giving responsibility, ownership and authority to this Assembly to make the judgment call that, if the consequences of dissolution in May 2012 are so severe and grave, and the people of Northern Ireland would not tolerate a situation where the justice Department did not exist — with all the consequences for the justice services and the people in the North — this Assembly should have the ability to say no.

In those circumstances, the Assembly should be able to say that those consequences are of such gravity that it would rather choose to go back to the d'Hondt model for the allocation of the justice Ministry than for the provisions that are outlined in clause 2. That is the essential political argument, and that is the choice that the Assembly must make.

If our argument about what will happen in 2012 is correct, the Assembly should caution and warn itself, and, in doing so, it should call on the First Minister and deputy First Minister to explain orally and in writing to the Assembly the consequences of that. The Assembly should call on the First Minister and deputy First Minister to do that within a month from today, in December 2009, which is when clause 3, as amended, would go live. If those consequences are so grave and acute, a different direction should be taken.

It may be, as we anticipate, that the First Minister and deputy First Minister will not make any oral or

written report on the consequences of what will happen in May 2012. If that were to happen, so be it; d'Hondt would prevail. However, if that provision were accepted and the First Minister and deputy First Minister were to make that report, it would be up to the Assembly to endorse it. If the Assembly were to feel that the consequences of dissolution in May 2012 were too grave and severe, it would not choose to endorse the report of the First Minister and deputy First Minister. In that event, the provisions of d'Hondt would prevail. That is the consequence of proposed new clauses 2A, 2B and 2C.

That is what we are asking as we approach the lunch break. *[Interruption.]*

Mr Deputy Speaker: Order. The Member has the Floor.

Mr Attwood: I hear jeering from my right and laughter from my left, and neither is appropriate.

The essential political issue of this week, recent weeks and, no doubt, coming weeks has been the nature and character of the devolution of justice and policing. We have struggled for a long time to bring about the devolution of justice and policing, and having those powers will be important for the community to deal with crime, the fear of crime and the unresolved matters of the Public Prosecution Service and to bring about the further reform of the Prison Service. If we believe that having custody and stewardship of those issues, responsibility to legislate and policy that better informs how society develops in future, it is reckless and naive, 30 months away from May 2012, for the Assembly not to have its eyes wide open. Given our experience of the past 30 months, we must go into the next 30 months fully aware and informed of what the consequences of what we are doing might be. That is the significance of a report from the First Minister and deputy First Minister going to the Floor of the Assembly, as is proposed in amendment No 2. It would compel the First Minister and deputy First Minister to inform the House of their best advice on what would happen in 2012.

If we are serious about being legislators, and if we value the devolution of justice and policing so much, we owe it to ourselves, never mind our constituents and the wider public in Northern Ireland, to ensure that there is no doubt about what will happen in 2012. There must be certainty so that people can go forward confidently and know that what I trust will happen in the next number of weeks will not be reopened and revisited in May 2012.

Do we not owe it to ourselves and to all the people who have observed, over the past weeks and months, the discussion on devolution of policing and justice to have certainty about what will happen every day between now and 30 months' time, and, crucially, what

will happen on 1 May 2012? Amendment No 2 argues for that certainty. The Assembly must consider it.

We cannot fly blindly. We must go forward with our eyes wide open. There must be legal certainty. We cannot jeopardise the hard-won gains of the devolution of justice powers, if that transpires over the next 30 months, by allowing it to disappear in a puff of smoke. The essence of the amendment, and its political and legal significance, is its ability to build community confidence.

The First Minister has spoken about community confidence eloquently and at length. However, I have certain differences with him in that regard. How will it affect community confidence if the Assembly cannot say with certainty what will happen in May 2012, and if it tells the Northern Ireland public that the Department of justice will be dissolved? How does that add one iota of confidence about the administration of policing and justice, and about the certainty and stability of those political arrangements until May 2012, never mind in and around that date? I suggest that it does not.

Mr Deputy Speaker, I will be guided by you on whether I can continue to speak. I still have to speak to other amendments in the group.

Mr Deputy Speaker: We can resume the debate after lunch. The Business Committee has arranged to meet upon the lunchtime suspension. I, therefore, propose, by leave of the Assembly, to suspend the sitting until 2.00 pm, when Mr Attwood will continue.

The sitting was suspended at 12.30 pm.

On resuming (Mr Speaker in the Chair) —

2.02 pm

Mr Attwood: I have some concluding remarks to make on amendment Nos 1, 2, 3 and 4. Proposed new clause 2B simply legislates for the grave, perhaps catastrophic, circumstances that may arise in May 2012. I understand that some Members may not want to talk about that, because they hope that, given the potential for political negotiations between now and then, such circumstances will not arise. Nonetheless, such a grave situation could arise.

Mindful of that backdrop to the debate, amendment No 3 would create a responsibility, initially for the First Minister and the deputy First Minister, and subsequently for the Assembly, to manage that situation. Under amendment No 3, if the First Minister and the deputy First Minister were minded not to table a report, as required by amendment No 2 — perhaps in recognition of a situation that may arise in 2012 — d'Hondt would be run. Alternatively, the First Minister and the deputy First Minister may be minded to table a report orally and in writing, but the Assembly may choose not to endorse it within seven days because of concern about what the First Minister and the deputy First Minister were advising it to do. In such circumstances, authority would pass to the Assembly, clause 2 would be repealed, and d'Hondt would apply.

I appreciate that other parties have chosen not to use d'Hondt to allocate the Department of justice. However, they would share an equal responsibility with all other parties and Members to make a judgement about the circumstances that may, in the absence of political agreement, arise in 2012 and assess whether not using d'Hondt is a credible position.

Before dealing with whether clause 2 should stand part of the Bill, I will address amendment No 4, which outlines the time frame for amendment Nos 1, 2 and 3. Those three amendments have such substance and weight that the Bill must show how they would be managed should they become law. Amendment No 4 proposes a new clause, 2C, which is crucial to the eventual appointment of a Minister. Circumstances may arise that may govern the timing of the amendments.

The day after Royal Assent is granted — whenever that may be after the likely agreement to this legislation — time will run for the First Minister and deputy First Minister to report to the Assembly, and seven days thereafter, time will run for the Assembly to either endorse or not endorse that report. The interpretation clause in amendment No 4 outlines the relevant timing features.

The amendments will mean that the day following the day that the report is due is the designated date for the appointment of the Minister. In the event that no report is made, that appointment will not happen. The report may be made but not adopted, or the report may

be made and adopted by resolution of the Assembly, the day after which the Department will go live. That is how amendment No 4 relates to proposed new clauses 2A and 2B.

Ultimately, a political judgement must be made in respect of the four amendments. Members must make one of two choices in respect of those amendments. Members may concur that doubts may, even residually, exist about the situation that might arise in 2012, because the DUP and Sinn Féin believe, on balance if not more than that, that there will be a vacuum if the Department is dissolved in 2012. During today's debate and debates at the Bill's Second Stage and Committee Stage, I have said that there is some doubt about what will or will not happen in 2012. Even the First Minister and departmental officials are beginning to acknowledge that. Indeed, departmental officials said — it is recorded in the Hansard report — that, if there were a legal issue about the interpretation of what will happen in 2012, that would be a matter for the courts.

If, after all the sound and fury about the nature, character and timing of the devolution of justice, we are left a situation in which we have to rely on the courts to decide what should happen in May 2012, we will not have served the overall project of the devolution of justice, nor will we have achieved its potential for the people of Northern Ireland.

Officials are beginning to acknowledge that there may be a need for legal interpretation by the courts. In fact, departmental officials told the Committee that they had spoken to people with knowledge of the legislation that was tabled and passed by the Westminster Parliament in 2009 and they indicated that it was not the intention of the legislation to create a fallback position in 2012. Consequently, we cannot rule out the possible need for legal interpretation. Given that the First Minister has said that this matter may be open to interpretation and given that departmental officials, acting on behalf of the First Minister and deputy First Minister, advised the OFMDFM Committee that this might be a matter for the law and that it was not the intention of the original legislation to create a fallback in 2012, Members should consider whether the Bill, as currently drafted, provides certainty about what will happen in 2012 and will allow us to legislate in a way that satisfies the needs, concerns and fears of the communities that we represent.

I suggest to all parties — perhaps more to one or two parties than to others — that they should consider whether this is a better model for taking the matter forward in order to satisfy themselves and the wider community about the situation that might arise in 2012. Essentially, that is the political choice. However, that is the imperative choice that we, as a legislature, have to make when we vote on the amendments.

If it is the view of the First Minister and deputy First Minister and their respective parties that there is certainty around the devolution of policing and justice, the new clause proposed by amendment No 2 is a defence of their position, not a sword to attack it. Even the First Minister and deputy First Minister may feel that they should be creating that level of certainty on those matters for their purposes and for the purposes of the wider community.

Alternatively, it may be that the First Minister and deputy First Minister are minded not to go in that direction. In that case, some people may acknowledge and accept, deep in the recesses of their minds, that there is a fallback position. Although one party may be coy about acknowledging that, another party may be worried on the basis that it has relied upon a sunset provision and there will be no fallback position in May 2012. Those are the options that all parties must choose between. When it comes to the vote, I urge Members to make the choice that the SDLP is putting forward.

The SDLP opposes clause 2 standing part of the Bill. Amendment No 6, which will be debated subsequently with amendment No 5, under timing issues, relates to clause 2.

Throughout the consideration of the devolution of policing and justice on the Floor of the House, in Committee and elsewhere, the SDLP has argued for a position of principle. Given what I have just said about the other amendments, about the degree of uncertainty, about what could happen in 2012 and about the potential chaos that might arise in those circumstances, is it not a better and sounder position — independent of our views around the form and nature of the devolution of policing and justice powers and who can or cannot become a justice Minister — to go back to the d'Hondt provisions? Even at such a late stage, we urge people to consider that as the position of principle and certainty. That is what our opposition to clause 2 does. If we reject the clause, the provisions of the various pieces of legislation from 2006, 2007 and 2009 will not prevail. Further, the Northern Ireland Act 1998 and the d'Hondt provisions of section 18 therein will prevail. Given what we said about amendment Nos 1 to 4, that is a better position and one of principle and strength. That is a better basis on which to move forward with the devolution of policing and justice powers, avoiding the pitfalls, avoiding a rerun of negotiations and avoiding the risk of what could happen in 2012.

The DUP is using clause 2 as a test of public confidence. I am not going to tell the DUP or any other unionist party its business. I accept that the DUP should know, much better than the likes of me, the nature and the mind of unionism. However, when it comes to clause 2 and the public declarations that have been made about who would or would not be acceptable,

according to party affiliation, as justice Minister, I have two things to say to Sinn Féin and the DUP.

We understand and acknowledge why some Members from some parties would find it difficult to endorse a candidate from another party. We all carry baggage — emotions and fears from the past — and I will not diminish or deny that fact. The SDLP held an event in west Belfast last night that was relevant to the past. Alan McBride spoke at it. One cannot listen to him without realising how he learned from his pain and gained wisdom on how to engage with other communities, even though he still finds it difficult to have sympathy for some of the people who may have been involved in the circumstances that led to his wife's death. Like him, none of us should deny or diminish the fact that people will have doubts, hesitations, concerns or even fears about who may become justice Minister.

2.15 pm

The SDLP has reached a point in its political development at which it can see more than the principle of d'Hondt governing what party receives the ministerial portfolio. The SDLP has such levels of confidence that, whatever party takes up the justice portfolio from those entitled to it under the principles of democratic inclusion, it believes that the Minister will be competent and balanced. There are plenty of checks and balances in the Assembly and the Executive. At this morning's Assembly and Executive Review Committee meeting — I am not talking out of turn by saying this — the First Minister mentioned some of the additional checks and balances that might be needed to govern how a Minister of justice would conduct his or her affairs. There may be a point in that.

Mr A Maskey: On a point of order, Mr Speaker. I remind the Member that the meeting to which he referred was a private meeting. I seek your guidance on that, Mr Speaker.

Mr Speaker: It is important that, as far as possible, private Committee meetings on ongoing matters stay private.

Mr Attwood: I did not breach that convention too badly, given that the Assembly and Executive Review Committee has spent quite some time discussing the entitlements of a justice Minister and how some difficult, sensitive and urgent matters might be handled. That is germane to the business of the Committee, and my passing reference, in the context of this morning's meeting, did not stray too far from the agreed confidentiality. I accept your ruling, Mr Speaker, but I did not offend too badly.

The SDLP has reached a point in its development at which, regardless of personal views or political reservations, it accepts that whoever becomes justice Minister will be competent and balanced. Regardless

of doubts in parties, we like to think that the wider community, including our community, has reached that point. That is why we support the principle of d'Hondt and why we support the principle that a person from any party, regardless of any reservations, is entitled to be put forward for the post. However, mindful of that wider context and principle, we find it very difficult to accept that the First Minister can declare that an SDLP candidate for justice Minister would not be acceptable. Some people may regard someone from a certain background as an unacceptable candidate for justice Minister. However, over and above the fact that the eleventh Ministry should, under the rules of democratic inclusion, fall to the SDLP and although we resent the breaching of that principle in clause 2, we do not believe that broad swathes of unionism continue to harbour such doubts and fear about an SDLP candidate for justice Minister.

What was the SDLP doing during all its years in the district policing partnerships? We were demonstrating, in a way that we had not fully done before, our view on the future and nature of policing and expressing our support for and confidence in policing. The SDLP took risks for policing, as it had previously taken risks for peace. How has that contribution over the past seven or eight years resulted in a situation in which a member of our party is disqualified from the role of justice Minister? The SDLP is, in so many ways, a party with integrity and principles and one that has stretched itself. Given that, why has one party in the Chamber said that, under clause 2 of the Bill, my party will not qualify to be considered favourably for the justice Ministry?

My offence at clause 2 does not arise solely from the fact that the Good Friday Agreement has been rewritten. Nor does it simply arise because d'Hondt has been abandoned, because democratic inclusion has been jettisoned or because guarantees on how we conduct our political affairs have been sidelined. I am concerned at how casually and willingly those matters seem to have been signed off by the party to my right.

Mr O'Dowd: Will the Member give way?

Mr Attwood: I will give way in a second.

That approach leads to a situation where a party, under democratic inclusion, is denied its entitlement to a Ministry in the Government, whatever that Ministry may be. My party has tried to behave responsibly; nobody can deny that, regardless of our differences on policing and justice matters or our appetite for reform and change, which may be greater than others'. I do not understand how the First Minister can say that because Sinn Féin will stop a unionist gaining the justice Ministry, the DUP must stop a nationalist doing so. Would it not be a measure and recognition of how far the nationalist community has travelled in the past

10 years, having already travelled a long road in preceding decades, for the First Minister to make a bigger, braver and more courageous statement, rather than using clause 2 of the Bill to say, "Because we will not get our one, you will not get yours"? Is that the level of political debate, discourse and insight that we are at?

Those are some broader reasons why we will oppose the Question that clause 2 stand part of the Bill. We recognise the areas in which the First Minister has stretched himself and demonstrated good leadership and good authority. We do not like the terms of the devolution of justice; we believe that they are substantially, if not exclusively, in the image of the DUP's needs. We again warn the British Government that unpicking the institutions and elements that have created cohesion and stability in our society — the Good Friday Agreement provisions, the parades provisions and the Patten provisions — as part of a broader approach and strategy is not the way to deepen stability. However, that is what clause 2 does.

The First Minister may be looking to the unionist community and perhaps particular elements of it to decide what to do next. The bravest step that he could take would be to say that we need devolution of justice now, because it will deepen confidence in our institutions and deal with the issues that affect so many unionist and nationalist communities that are at risk. He should go further and define the new order of things and differentiate it from the fog that surrounded the previous months and weeks and all the difficulties with a shared future, the workings of the North/South institutions and other unresolved issues in government. The DUP should say that it will clear all that fog. It should also say that nationalism has an entitlement under the provisions of democratic inclusion. Furthermore, if that party insists on the cross-community support mechanism for the selection of a justice Minister, the SDLP candidate should be endorsed.

Mr Deputy Speaker, I thank you, the Speaker and Members for your indulgence today and over the past while.

The Chairperson of the Committee for the Office of the First Minister and deputy First Minister (Mr Kennedy): Although I am the Chairperson of the Committee for the Office of the First Minister and deputy First Minister, which is the Department that has responsibility for the Bill, I am also a member of the Assembly and Executive Review Committee, and I intend to make some remarks in a party political capacity.

I will refer to the first group of amendments and mention briefly the Committee for the Office of the First Minister and deputy First Minister's scrutiny of the Bill. The Committee received a pre-introductory briefing from departmental officials on 9 September 2009. A public notice was placed in the 'Belfast Telegraph',

'The Irish News' and the 'News Letter' on 18 September 2009 seeking written evidence on the Bill.

The Bill was referred to the Committee on completion of its Second Stage on 22 September 2009, and, in response to its call for evidence, the Committee received written submissions from the Assembly and Executive Review Committee and a late submission from Mr Jim Allister QC, leader of Traditional Unionist Voice. The Committee considered the Bill and the submission from the Assembly and Executive Review Committee on 7 October 2009. We discussed and noted the late written submission from Mr Jim Allister QC on 14 October 2009 and agreed to include that submission in the Committee's report.

The Committee undertook its formal clause-by-clause scrutiny of the Bill on 14 October 2009. I will now relate the outcome of that scrutiny. The Committee agreed that it was content with clause 1 and the relevant schedule as drafted. The Committee considered clause 2, and Mr Elliott proposed that the Committee seek advice from the Assembly's Legal Services about the potential consequences of the sunset clause. The Committee divided on Mr Elliott's proposal, which fell. Mr Attwood proposed to leave out clause 2; the Committee divided on Mr Attwood's proposal, which also fell. The Question was put that the Committee was content with clause 2 as drafted; the Committee divided on the Question, which was agreed.

The Committee considered clause 3, and Mr Attwood proposed an amendment to clause 3(2) to replace the words:

"such day or days as the First Minister and deputy First Minister, acting jointly, may by order appoint."

with the date "7 December 2009." The Committee divided on the proposed amendment, which fell. The Question was put that the Committee was content with clause 3 as drafted; the Committee divided on the Question, which was agreed.

That is the entirely factual description of the positions that the Committee for the Office of the First Minister and deputy First Minister took on the Bill. I will now make some brief remarks — they will be substantially briefer than the previous contribution — on behalf of the Ulster Unionist Party.

2.30 pm

There is an 'Alice in Wonderland' feel to aspects of the proceedings today. The amendments in group 1 concern the appointment of a justice Minister, a role known in this House, in past decades, as the Minister of Home Affairs. A new process for the appointment of such a Minister has now been devised by the DUP and Sinn Féin. The political circumstances surrounding this afternoon's debates are well known, and I suspect that, although none of us are prophets or sons of prophets, we have a sense of what the various outcomes will be.

The Northern Ireland Office is busily talking to party leaders and various representatives, saying that the Assembly must urgently agree to the Bill because policing and justice powers must be devolved quickly. In remarks made from the United States, the First Minister said that the confidence now exists to devolve policing and justice. The Minister of Finance and Personnel has declared that the devolution of policing and justice should happen sooner rather than later, and the former junior Minister Mr Donaldson said yesterday that the retention of the full-time Reserve was a deal-breaker. He said that policing and justice would not be devolved without that retention. Such words imply that the context that we are in is one in which the DUP and Sinn Féin are talking about the possible imminent devolution of policing and justice. I see that you are taking advice, Mr Speaker.

The leader of Sinn Féin, Mr Adams, has said that the British Government and the DUP must now implement their commitments under the St Andrews Agreement to speedily devolve policing and justice powers. Despite that, during the Bill's Second Stage, the DUP's Rev Dr William McCrea — I am sorry that he is not in his place — informed us that this was make believe. He said that we should all vote for the Bill, because:

"The Bill does not say that the devolution of policing and justice powers is imminent."

"The Bill does not do that." — [*Official Report, Vol 43, No 4, p206, col 2*].

"The Bill does not hasten by one hour the day of devolution of justice and policing powers. — [*Official Report, Vol 43, No 4, p207, col 1*].

Where does that leave the amendments in group 1? Do they address a situation that will be faced by the Assembly in the immediate future, or is this an abstract debate over constitutional niceties that are not to be faced any time soon? We need an answer to that question if Members are to have an informed debate on the tabled amendments. I am prepared for an intervention from the deputy First Minister, who will respond to the debate, or the First Minister, who is no longer in his place, to clarify the position that they both hold.

I believe in devolution, and I come from a party that believes in devolution. We are more than happy to contemplate the return of policing and justice powers to this House. After all, the Ulster Unionist Party exercised such powers in this House for a considerable period. I want the process of devolution of those powers to be done properly. Those powers are too fundamental to the well-being and security of the entire community to be shoved through without consensus.

The division at Second Stage showed the lack of consensus on the mechanisms proposed in the Bill. The amendments in group 1, tabled by the SDLP, also emphasise that lack of agreement on the mechanics for

the appointment of a justice Minister. A particularly important provision of the new clause 2A, as proposed in amendment No 2, is the responsibility that it would place on the First Minister and deputy First Minister to explain to the House the consequences of the sunset clause.

Even if the parties of the First Minister and the deputy First Minister vote down the proposed new clause 2A, surely they have a responsibility to explain to the House what will happen if the Bill is passed without amendment, and the sunset clause is invoked on 1 May 2012. The list of matters referred to in proposed new clause 2A(b) are not prescriptive. The clause refers to:

"the consequences of such dissolution for the exercise of the functions that the Department of Justice is to exercise".

The deputy First Minister must explain to the House what those consequences will be.

Northern Ireland has been here before. In 1972, circumstances undermined the stability and the integrity of the Northern Ireland Parliament, and that had a grievous impact on the stability of our society. Therefore, the following question is legitimate and necessary: what will happen if the sunset clause is invoked on 1 May 2012? I cannot imagine how Members can vote against amendment No 2 without having been given a satisfactory answer to that question.

Amendment No 2 also makes provision for a Minister of justice to be appointed under the d'Hondt system if the report of the First Minister and deputy First Minister proposed by the amendment is not endorsed by the Assembly. The d'Hondt system should be rerun in full to appoint a Minister of justice. The Minister of justice should be appointed on the same basis as his or her ministerial colleagues. If the community confidence exists to devolve policing and justice, that should be the manner in which a Minister is appointed.

My colleagues and I will join the SDLP to vote against the DUP/Sinn Féin arrangement to appoint a Minister of justice outside the normal procedures of the House. The DUP/Sinn Féin arrangement to appoint, potentially, a puppet Minister demeans the administration of justice and the significance of policing. Only yesterday, in 'The Irish News', the Alliance Party's Dr Farry stated that a Minister of justice who had been appointed according to the unamended provisions of the Bill would have little integrity or authority. He said:

"As things stand the legislation suggests that ... under a political whim the DUP and SF could reach a conclusion they want to remove a minister from office. If a Minister is looking over a shoulder then their ability to take those decisions is going to be significantly impaired."

Dr Farry: We all agree that a Minister of justice must not be a puppet Minister. In the light of the need to avoid that situation, will Mr Kennedy give an assurance that his party is willing to engage with all the other parties to agree a policy programme in advance of the devolution of policing and justice, perhaps as an addendum to the Programme for Government? That would ensure that a Minister of justice can deliver a programme on behalf of the people of Northern Ireland and the House.

The Chairperson of the Committee for the Office of the First Minister and deputy First Minister: A considerable flaw in the process has been the lack of consultation and meaningful dialogue with other parties in the House and in the Executive. Clear lessons should be learned from the reasons why we are unhappy with the provisions of the legislation and why we are cynical and sceptical about engagement with the DUP and Sinn Féin. Like other parties, we are ready to engage. However, that engagement must be serious and go even further than what Dr Farry outlined. Engagement must address how the Executive behave in looking after the work of the Assembly and the affairs of the people of Northern Ireland. A fundamental change must be made to the dysfunctional way in which Executive business is carried out in this place.

Mr Ford: I appreciate the Member giving way. Given that he places so much emphasis on the importance of parties discussing these various issues, will he, as deputy leader of the Ulster Unionist Party, encourage his party leader to respond to the letter that I wrote in August?

The Chairperson of the Committee for the Office of the First Minister and deputy First Minister: That is a very helpful suggestion, and I will raise the matter with Sir Reg Empey. I have no doubt that he will give it urgent consideration. I am not sure how that letter was signed, perhaps as the possible justice Minister designate or something like that, but we will certainly —

Mrs Long: He signed it as the leader of the Alliance Party.

The Chairperson of the Committee for the Office of the First Minister and deputy First Minister: Well, we will consider it and provide a full, detailed reply.

In general, the Ulster Unionist Party supports what the SDLP is attempting to do today with the amendments. However, that support is qualified. Although we seek the clarity that the SDLP seeks, and we want the d'Hondt system to be run in full sequence, we will not be bound by any artificial time frame for the devolution of policing and justice. Therefore, we cannot and will not support any amendments that place a specific deadline or timetable on events.

My party colleagues will address other matters associated with the amendments in this group. At this

stage, I signify that the Ulster Unionist Party is minded to support the opposition to clause 2 and to support amendment No 2.

Mr G Robinson: I will address the specific point of the election of the Minister for the new Department of justice. The topic has produced much discussion, but it is a relatively simple concept for Members to understand.

The Bill is straightforward. Clause 2 sets out a process for the appointment of a Minister of justice by vote of the Assembly. I point out that the process of appointing a justice Minister, whenever that occurs, will be an inclusive, full-blown Assembly process that ensures every Member's involvement. The proposed method is not unfamiliar to Members. Indeed, it is used for critical votes in the Assembly; and the Speaker is elected according to the method. Therefore, d'Hondt is not the only process used by the Assembly. Surely, the appointment of a policing and justice Minister is so important that it must have cross-community support. We will then have a Minister who has support that is drawn from both sections of the community, which is essential.

The position is of great importance and sensitivity. Therefore, every possible means to demonstrate cross-party support and to ensure that the person who is appointed has the confidence of the widespread community must be taken. The system that I want to see will ensure that both sections of our community support the new justice Minister. The proposed method of electing the new Minister requires not only a majority of Members of the Assembly to endorse the appointment; it must be further endorsed by a majority of nationalist Members and a majority of unionist Members.

That approach sends out a strong message because a cross-community vote demonstrates that all sections of the House have given their agreement. Unanimous support from the Chamber also sends out an important signal of legitimacy for any Minister. Some Members have complained, today and previously, about clause 2, but their argument is flawed. The arrangements in the Bill for appointing a Minister of justice are clearly different from those that are used to appoint other Executive Ministers. Members who complain must realise that what was negotiated as part of the Belfast Agreement was rewritten in the St Andrews Agreement. That ensured that the DUP had a veto over when the devolution of policing and justice powers would take place. It is obvious that that is far from agreed at present. The party also ensured a veto over who the Minister would be. Sinn Féin conceded that veto to the DUP.

With those points in mind, I support the Bill.

Mr A Maskey: Go raibh maith agat, a Cheann Comhairle. I understand that this debate may be

suspended at 3.00 pm. I am in your hands about whether you want me to continue or you wish to break.

Mr Speaker: We will run the debate very close to 3.00 pm. I will then interrupt you and allow you to finish after Question Time.

2.45 pm

Mr A Maskey: Thank you, Mr Speaker. I am sure that you will not be the only one to interrupt me this afternoon.

What we have heard so far amounts to an attempt to rerun debates that we have had in the House recently and, periodically, on the airwaves. Absolutely nothing additional has been contributed to the debate, so we have learned nothing new. I note that people spend their time saying that what we are doing is wrong, and why we should not be doing it, but nobody ever comes up with any alternative. That has been made clear and confirmed by the previous contributors, including Danny Kennedy.

The SDLP and the UUP often operate in the Assembly by presenting themselves almost as leaders of the opposition. However, on the very important issue of timing, which is crucial to the SDLP amendments, it is clear that those two parties cannot agree on an essential element of the transfer of policing and justice powers. At least one of those parties, which keep telling everyone what we are doing wrong, should let the public know its alternative. Those parties need not worry about informing the House, because they have not done so yet, but they should tell the public how they might secure the transfer of policing and justice powers, which they say that they want to achieve.

At no time during the lifetime of the first Executive, when the Ulster Unionist Party and the SDLP occupied the positions of First Minister and deputy First Minister, did they propose the establishment of a Department of justice, or anything like it. The issue did not arise then, so parties that claim that they have been pursuing the issue for years have never demonstrated their intention by putting forward a proposal. Furthermore, although the party that tabled the amendments tells us that it wants to behave responsibly, it has taken every opportunity to denounce the Bill and vote against its provisions. That, as we have witnessed, extends to the party's participation at Westminster, where its Members variously voted for, abstained or did not turn up for votes on a policing Bill. On one occasion, the SDLP voted for the Bill, on others it voted against or abstained. I am not saying whether the party was right or wrong in any of those actions; I am merely pointing out that there are many contradictions in the position of the party that tabled the amendments.

Mr Durkan: The Member refers to votes against and for the policing Bill at Westminster. The vote cast for the policing Bill by the SDLP at Westminster was

at Second Reading, when the only Members who voted against were those who opposed the Patten plan. As a party that backed the Patten plan, which required legislation, the SDLP supported the Bill at Second Reading. We then tabled a series of amendments and opposed the Government's later version of the Bill because it did not match up with the Patten recommendations. That is how legislation is conducted, and the Member's party does exactly the same in this House.

Mr A Maskey: The Member should not get too excited; it is a bit early in the debate to be getting annoyed. I made the point that I was not contesting whether the decision to vote for, against or abstain was right. During the legislative process, people have the right to take various positions as they see fit. I merely point out that, at the time, there were fundamental problems in getting that Bill passed. It took a lot of hard work afterwards, and our party had to fight an almost lone battle to rectify the Bill.

Notwithstanding all of that, we are here, in 2009, essentially to respond to Members who have argued that they have done all the work and carried the heavy burden for years by themselves. The point is that, when they had the opportunity, in the roles of First Minister and deputy First Minister, they never advocated the establishment of a Department of justice. As the old saying goes, talk is cheap, but it takes money to buy drink.

There were recurring themes in Mr Attwood's contribution. The fact that Mr Attwood and his party are simply going round the houses — the long way round — on this matter was demonstrated this morning and this afternoon, when he took a long time to tell us how “on the one hand”, in what I thought was initially a negative tone in respect of the sunset clause, the First Minister and the deputy First Minister should “explain” and “come clean” about what will happen if we reach May 2012 without making provision for a Department of justice.

Mr Attwood contends, and his party colleagues often repeat, that, by design or default, alternative arrangements are in place and the sunset clause is meaningless. At the other end of the spectrum, Mr Attwood went on to say that our failure to make provision for 2012 and the fact that there is no fallback position means that we face grave and catastrophic consequences. He cannot have it both ways: either there is a fallback position, whether by design or default, or there is no provision for 2012.

I am sure that the First Minister and the deputy First Minister will deal with this point; but, certainly, from Sinn Féin's point of view, the arrangements that OFMDFM has reached with Sinn Féin and the DUP thus far have resulted in the Bill, which is important, necessary and enabling legislation, being tabled. The

essence of the Bill is that we have an arrangement that, although it may not be perfect, will facilitate the transfer of policing and justice powers, if and when we can agree a time frame for it to happen.

I have no hesitation in, or reservations about, saying that Sinn Féin has relentlessly pursued this matter. Why have the media and the airwaves been full of controversy in recent days? Why were Martin McGuinness and Peter Robinson with the British Prime Minister last Saturday? It is because we are relentlessly attempting to secure the establishment of a Department of justice, and we make no apologies for that pursuit. The fact that we do not have it yet is hardly breaking news; it is a work in progress, and everyone is aware that we are reaching a point at which there are difficulties beyond even policing and justice. However, that is a discussion for another day. I am merely making the point that we are relentlessly pursuing an agreed time frame in which to establish a Department of justice.

The Bill provides that, when we reach that point, the legislation that is required to establish the Department will be in place and, therefore, we will not face undue delays in having a Department with the appropriate policing and justice responsibilities that functions fully and benefits the interests of the wider public. The sunset clause is important and necessary, because it means that, once a Department is established, there will be an imperative on the parties, as my colleague John O'Dowd said, to learn from what I hope will be a positive experience, and that will enable us to agree a more permanent structure for the Department of justice by May 2012. Those discussions will then reach their own conclusions.

I look forward to the Department being established, and then we can live and learn lessons from our experiences as we work through to 2012. However, let me make it clear, there are no fallback arrangements for 2012, if the Assembly has not put in place or agreed any alternative measures. The British Government's representative in Westminster, Paul Goggins, addressed that matter when responding to Mark Durkan in the debate to pass the relevant legislation. He stressed at length that, as far as the British Government are concerned, there is no fallback position and it is not their job to provide one.

We all know that the world will not end in May 2012, so something will have to happen. Sinn Féin is working on the basis that, if we can establish a Department, people will find it beneficial that locally elected representatives will, for the first time, be accountable for those crucial powers and functions. Having gained experience between the time when the Department is established and May 2012, we will be able to come to a rational, mature decision on how to proceed from that date.

Mr Speaker, were you about to intervene?

Mr Speaker: No. Carry on.

Mr A Maskey: Thank you. The purpose of the sunset clause is clear: to ensure that all our minds are concentrated before May 2012 so that we can take forward the work of an already transferred Department on a rational, sound and permanent basis. For my party, that implies that, in the wider scheme of things, the Department should be established under d'Hondt, and so on. The Bill provides for a temporary or interim arrangement among OFMDFM, Sinn Féin and the DUP. That the arrangement is temporary is demonstrated by the fact that, in May 2012, a sunset clause will kick in, and there is no fallback position. That stresses the need to agree a more permanent basis upon which the new Department of justice can proceed.

I turn to the amendments, which Sinn Féin opposes. A number of them are consequential amendments, and I do not intend to devote any time to those. The issue of a "designated day" shows that people are trying to set a time frame on the process. I have already referred to the fact that Sinn Féin and others are working to resolve the question of a time frame. No amendment or proposal made in this debate can compel any party that has not yet agreed to the transfer of powers to co-operate on that, particularly if it is the largest party in its respective designation. Those amendments are meaningless because they cannot compel anyone to fulfil the intention behind them.

I turn to the question of the d'Hondt process and what the SDLP regards as its entitlement. It argues that the Department of justice will be the eleventh Department and that because the SDLP comes next in the d'Hondt running order, the Department should fall automatically to that party. Mr Attwood referred to the rules of d'Hondt and the additional Department. However, there are no rules and no provisions for 11 Departments. We will have to create rules and provisions for an eleventh Department. To do that, d'Hondt must be run from one to 11. No one can seriously suggest —

A Member: Why not do that?

Mr A Maskey: I have no difficulty with that. However, there are no rules under which that can be done at present, so we must agree them. I invite other parties, instead of telling us what we are doing wrong, to tell us how they would do it differently, and with whom. We have heard already from Mr Kennedy that the Ulster Unionist Party does not agree with the SDLP on the issue of timing.

Mr Durkan: The Member suggests that there is no provision for more than 10 Departments. Under the Good Friday Agreement, the provision is that, if there are to be more than 10 Departments, the consent of the Secretary of State is required. Elsewhere in the agreement, it is clearly stated that government

Departments in Northern Ireland must be headed by a Minister appointed through the d'Hondt system. That is what the agreement and the 1998 Act provide for. This Bill is a departure from that, and the Member is trying to create a fiction and a smokescreen to obscure that.

Mr Speaker: Order. I must interrupt the debate for Question Time, after which I will allow Mr Maskey to continue. The House may take its ease for a few moments.

The debate stood suspended.

3.00 pm

Oral Answers to Questions

FINANCE AND PERSONNEL

Mr O'Loan: On a point of order, Mr Speaker. I see no Minister here to take questions.

Mr Speaker: The Minister is in his place.

Social Housing: Credit Unions

1. **Mr F McCann** asked the Minister of Finance and Personnel if he has discussed within the Executive the credit unions' proposal to open up discussions regarding the investing of their funds in social housing programmes. (AQO 348/10)

The Minister of Finance and Personnel (Mr S Wilson): I am glad that at least you recognised that I was in the House, Mr Speaker. I know a good optician that Mr O'Loan can use so that he can see me in future. I do not think that I have been called the invisible Minister before; this is a first.

Housing policy is an issue for the Minister for Social Development, and I would expect her to raise any proposal for the funding of social housing by credit unions. I understand that she has already met the credit unions, but, to date, she has not made any approach to my Department about funding from that source.

Mr F McCann: Does the Minister agree that given the shortage of finance for the housing issue, and the lack of any strategy from the Minister for Social Development to deal with the problem, the financial resources held by credit unions could transform the social housing sector?

The Minister of Finance and Personnel: As I have already mentioned, this really is a matter for the Minister for Social Development. Housing associations can seek funding from whatever sources they wish; currently, approximately 67% of housing association funding for social housing comes from private sources. If the housing associations want to follow up on the possibility of funding from the credit unions, or any other financial institution, they are free to do so. Within certain rules, they are free to finance housing stock from that source.

Mr Hamilton: The Minister will recognise that the future financing of social housing in Northern Ireland is a big issue, and Mr McCann's question, the Housing Council and the Northern Ireland Housing Commission

have all talked about the issue. There are dozens of different ideas, many of which could ease pressure on the public purse. Does the Minister agree that to get a better assessment of the validity and feasibility of those ideas, a review of social housing in Northern Ireland — one which particularly examines placing social housing delivery on a firm foundation in difficult economic times — would be a good proposal?

The Minister of Finance and Personnel: I understand the importance of investment in social housing, particularly as private sector house building has taken a knock, and that has impacted on the construction industry. The social housing sector is important. However, any review of the finance or structure of social housing is ultimately the responsibility of the Minister for Social Development, and she should be the first port of call on that issue.

There have sometimes been difficulties with the Department for Social Development's finances and looking at innovative ways of using finance. Therefore, my departmental officials would be more than happy to help with any such review and give the Department some pointers.

Mr O'Loan: I welcome the Minister to Question Time.

As Mr Hamilton rightly said, there is a lot of novel thinking going on about funding for social housing. I understand what the Minister has said about the responsibility of the Minister for Social Development in that area, but clearly there are also serious financial issues. Therefore, I urge the Minister to go further than he has done in his contribution and say what his Department has done in researching the issue and what novel forms of funding his Department could bring to the table.

The Minister of Finance and Personnel: I thank the Member for his question. I hope that I am not treading on the Minister for Social Development's toes, but I have already met a number of people who are interested in bringing private finance to the social housing sector. The sources of that funding range from the construction industry to pension funds, and I have looked at how that finance might be innovatively used. I know that some of them have spoken to the Minister for Social Development, too.

The Department of Finance and Personnel can help in a number of ways. First, once we go down the route of looking at innovative proposals, procurement issues will be involved, and some of those will be complex: the Department can bring its expertise to bear. Secondly, there is no point in looking for innovative sources of finance if finding them has an impact on the block grant. Again, the Department can provide advice and expertise on how any such finance might affect the Treasury's view of money that it already gives to

Northern Ireland and whether the method of finance involved is likely to have an impact on the block grant.

Thirdly, the Department of Finance and Personnel can help with the economic evaluation of such schemes. I looked at one scheme and met representatives of the pension fund. Such schemes are very often complex and will have long-term implications for housing association and social housing revenue, and my officials can evaluate the longer-term aspects.

Civil Service: Recruitment and Overtime

2. **Mr Beggs** asked the Minister of Finance and Personnel which Departments and agencies have recently introduced a recruitment freeze, or a policy to cut or reduce overtime. (AQO 349/10)

The Minister of Finance and Personnel: Due to financial pressures, the Department of Finance and Personnel, the Department of the Environment, the Department for Regional Development and the Department for Employment and Learning introduced a temporary freeze on recruitment, promotion and non-essential overtime to allow them to consider their financial positions in light of budgetary constraints.

Mr Beggs: I thank the Minister for his answer. Recruitment freezes are much more preferable to the costly alternative of redundancies. Does the Minister agree that recruitment freezes can expose areas of need and work required due to staff being in the wrong place; and will he acknowledge that his late acceptance of a financial black hole may well have contributed to the problem, and that this matter should have been addressed earlier?

The Minister of Finance and Personnel: I wondered how long it would be before the black hole appeared. There are more black holes in the Assembly than there are holes in Cromac Street. *[Interruption.]*

Mr Speaker: Order.

The Minister of Finance and Personnel: There are limitations to the use of recruitment freezes. Although those four Departments introduced a freeze, it was for a very short time in order to allow them to consider their financial positions. Departments might well look at the use of temporary agency staff, overtime bans, recruitment freezes and redeployment. Therefore, there are a number of ways to deal with this matter. Financial pressures will inevitably come, and Mr Beggs will, I am sure, know from the discussions which his party has had with its new allies that they might be even greater than at present. We will have to manage that, which will mean managing the number of staff used by Departments.

Mr Burns: The hole in Cromac Street will be filled in by the end of the week. Will the number of people

employed in the Civil Service decrease in light of those recruitment freezes?

The Minister of Finance and Personnel: The number of Civil Service posts was reduced by almost 2,000 in the past 18 months. That was not entirely as a result of recruitment freezes, but was also due to people leaving and their posts not being filled. It was also decided that some posts, including some in my Department, would no longer be held, and they will, therefore, not be filled when they become vacant.

We envisage that there will be a further reduction of 2,000 to 2,500 people in the Civil Service between now and 2012.

Regional Economic Strategy

3. **Mr Neeson** asked the Minister of Finance and Personnel for an update on the status of the Regional Economic Strategy. (AQO 350/10)

The Minister of Finance and Personnel: The need to produce a regional economic strategy is a legacy of direct rule, during which Her Majesty's Treasury made it a requirement on all the devolved Administrations throughout the UK to produce such a strategy. The issue has changed considerably since then, because the economic strategy for Northern Ireland is now contained in the Programme for Government, which has placed the promotion of the economy and economic growth at the centre of our activities, policies and spending although, in light of economic and fiscal changes, the Executive need to, and do, constantly assess the policies.

There is, however, an underlying, long-term vision for the local economy, which is that we should have an innovative and dynamic economy that is founded on a number of bases, such as strong productivity growth that is driven by high-value-added human skills, as well as research and development. That vision is reflected in the original draft regional economic strategy, but it is central to the Programme for Government. The latest report by Professor Barnett reinforced the need to continue to pursue those objectives, if we are to have a thriving economy for the future.

Mr Speaker: I call Mr McLaughlin for a supplementary question.

Mr Neeson: Mr Speaker.

Mr Speaker: My apologies, Mr Neeson. I call Sean Neeson for a supplementary question.

Mr Neeson: I heard what the Minister said, but does he recognise that the lack of an economic strategy limits what the Executive can do in relation to rebalancing the economy? He mentioned the Barnett review; will that not be constrained without the required overarching strategic policy?

The Minister of Finance and Personnel: I hope that I have made it clear to the Member that our economic strategy is now embedded in what we do, as decided by the Assembly when it voted in support of the Programme for Government. The Programme for Government does not only state the overall strategic objective of growing the economy through the targets and policies that are highlighted within it; it indicates the means of measuring whether we are achieving those targets. Therefore, I do not think that Professor Barnett's report is hampered in the way in which the Member has stated.

If anything, the Barnett report indicated that we were doing many things right, although it also stated that there was a number of things that we should do differently, and those will be consulted on by the Minister of Enterprise, Trade and Investment. For instance, we should, perhaps, move away from providing selective financial assistance to firms and look towards spending more money on human skills and research and development, as I mentioned. That will have to be looked at by the Assembly and the Minister.

Mr McLaughlin: Go raibh maith agat, a Cheann Comhairle. Given the number of jobs that have spilled out of the economy as a result of the economic downturn, does the Minister still believe that the targets in relation to the economically inactive, as set out in the regional economic strategy, can be achieved by 2015?

The Minister of Finance and Personnel: We do not know what will happen or how quickly the economy will turn around between now and 2015.

Some of the targets that we have set ourselves in the short term will not be met due to circumstances beyond our control. However, the longer-term goals are worth meeting. We must get people onto the employment list and into jobs if we are to give them a stake in society and improve their economic and physical well-being. The Assembly and the Executive will be judged on what they do for that most disadvantaged part of our society. Very often those people are in long-term unemployment and we must target and address their situation.

3.15 pm

Mr McNarry: I thank the Minister for his answer so far. Does he concede that the regional economic strategy, along with that other embedded historic relic, the Programme for Government, needs to be revised to take account of the contraction in the economy, the doubling of unemployment, the public expenditure cuts that he now proposes and the inevitable black hole in public finances that he expects me to mention and which he has now been forced to admit, all of which, apparently, are endorsed in today's report —

Mr Speaker: Will the Member conclude his question?

Mr McNarry: — the Economic Eye winter forecast by Ernst and Young and Oxford Economics?

The Minister of Finance and Personnel: I know that Mr O’Loan has difficulty with his eyes, and perhaps Mr McNarry has difficulty with his ears, because I do not know at what stage I admitted to there being a black hole. Nevertheless, if the Hansard report turns that up, I will be more than happy to concede the point.

[Interruption.]

Mr Speaker: Order.

The Minister of Finance and Personnel: However, I do not think that I made any such admission today.

With regard to the economic strategy responding to different economic circumstances, I have made it clear already that it must do that, and the actions of the Executive show that we are already doing that. For example, in its report this week the construction industry indicated that, since 2007, there has been an increase of 80% in the index of infrastructural programmes being accounted for in the construction industry. In fact, 54% of all construction activity is financed through the Assembly, and that is the result of a decision made by my predecessor to increase the amount of money spent on infrastructure and investment by £1 million each day in the past year. It is a result of the redirecting of the activity of the Executive to respond to the circumstances that we faced.

The Rates (Amendment) Act (Northern Ireland) 2009 was passed recently, which gives business rates relief to 16,000 small businesses. That means that we must redirect money from something else because the cost of that relief will be about £10 million. However, we are redirecting that money because we saw that there was a problem as a result of the economic circumstances and that it needed to be dealt with. I accept that we need to adjust and be fleet-footed, and perhaps we are not fleet-footed enough at times, but there are examples of when the Executive and the Assembly have done that already.

Mr Speaker: I remind Members not to use Question Time to make statements. Question Time is an opportunity for Members to put questions to Ministers. The same happened yesterday. In future, I will ask the Member to take his or her seat, and I will move on to the next Member.

Dr McDonnell: Thank you, Mr Speaker. I will try to be succinct.

Does the Minister agree that people are confused about the economic strategy? Although he is content that it is buried in the Programme for Government, nobody is quite sure what it is. Would it not be useful to extrapolate the situation and tell people specifically what it is? Does the Minister not feel that it would be useful to amalgamate the three different policy units?

There is an economic policy unit in the Department of Finance and Personnel, in the Office of the First Minister and the deputy First Minister, and in the Department of Enterprise, Trade and Investment. Surely someone should be in charge. Three different units cannot be in charge.

The Minister of Finance and Personnel: I know that the Member has a difficult task ahead of him in his bid for the leadership of his party. I hope that he has not put his foot in it. The last part of his question represents a rather off-message response.

I understood that as far as the SDLP was concerned, the number of Ministries was almost sacrosanct and that to reduce that number would be a betrayal of the Belfast Agreement. Perhaps a new leadership is coming through, and perhaps that is the innovation that we will see from the potential new leader. If that is the case, I welcome it, because I support the Member’s point. Margaret Ritchie put me up to that, by the way.

Professor Barnett also supports the Member in that view. He talked about a Department of the economy, which would involve the amalgamation of at least two Departments and the removal of the economic unit from the Office of the First Minister and deputy First Minister. I think that that would be a sensible first step in the rationalisation of Government Departments, and I thank the Member for his support.

Quangos

4. **Mr I McCrea** asked the Minister of Finance and Personnel to outline the total annual operating costs for all unelected quangos. (AQO 351/10)

The Minister of Finance and Personnel: In the 2008-09 financial year, the gross expenditure of public bodies in Northern Ireland was in the region of £9.7 billion. That includes the costs of some significant providers of public services, such as Northern Ireland Water, Translink, health and social services boards and education and library boards. Members can see the details of those bodies in the annual report that DFP will publish. A copy of that report will be placed in the Assembly Library.

Mr I McCrea: I thank the Minister for his answer. I am sure that the House will agree that the figure of £9.7 million for the previous financial year is certainly excessive. Will the Minister detail what mechanisms are in place for reviewing the number of public bodies that exist?

The Minister of Finance and Personnel: First, I should make it clear that I wish that it had been only £9.7 million — we spent £9.7 billion. The mechanisms for reviewing public bodies are, of course, the responsibility of each Minister and their Departments.

In the past year, there has been a reduction of eight of those bodies — seven by the Minister of Health in the reorganisation of the Health Service and one by the Minister of Culture, Arts and Leisure when he decided to close one of the public bodies in his remit.

Mr K Robinson: I thank the Minister for bringing us up to date on the amount of money that is going through the quangos. However, although it is one thing to reduce quangos and their power — and we would all agree with that — the impact of that loss of spending power could be quite catastrophic to some of our local economies. Has the Minister made any assessment of the impact that such a drop would have?

The Minister of Finance and Personnel: First, there is not necessarily a connection between reducing the number of quangos and reducing spending power. I will take health as an example, given that I mentioned it to the Member earlier. In that case, the question was whether we should redirect spending from one function to another and whether there was a need for a public body, with all its administrative attachments, if that money might be spent more effectively in another way. Although some of the reductions will be for efficiency savings, some of which have to go back as cash savings, much of it should be directed toward making sure that we have not established bodies that we do not really need, the spending on which could be better used in the Department in question or in other Departments to provide more effective services. That is how I would like Departments and Ministers to look at the matter.

Mr A Maginness: I thank the Minister for his answer. He detailed a huge amount of money. Has he or his Department taken any action to assess the effectiveness and value for money of those quangos?

The Minister of Finance and Personnel: Again, it should be the role of Ministers — and when I was in the Department of the Environment I regarded it as my role as Minister there — to look at the bodies that are under their control and ask whether they are effective, whether they could be amalgamated and whether they are still serving a useful purpose.

Ministers say all the time at Executive meetings that certain responsibilities are theirs and that they do not want DFP to plunder through their Departments. If Ministers do not consider how resources might be used more efficiently, in a time of spending constraint, they will have to bear the consequences. That has been the case in some Departments.

Public Sector Jobs

5. **Mr Attwood** asked the Minister of Finance and Personnel whether he will continue to pursue the recommendations of the Bain report on the location of

public sector jobs, recognising the social and environmental value of these proposals. (AQO 352/10)

The Minister of Finance and Personnel: The question of whether to pursue the recommendations of the independent report on the relocation or location of public sector jobs is a matter for the Executive. I wrote to Executive colleagues at the end of September to say that I am keen for an early discussion. However, we are all aware of the funding pressures that the Northern Ireland block faces, and spending on the relocation of public sector jobs would require funding from other services.

I am coming to the conclusion that the cost of £40 million that Professor Bain identified for the pilot phase alone is simply not affordable to proceed to implement the recommendations, nor, as the report states, would it represent value for money. Therefore, although the Executive will make the final decision, we must bear those points in mind.

Mr Attwood: Earlier, the Minister referred to people who could not see or hear. He might want to learn to listen a bit more, because Dr McDonnell's question was about economic policy units and not about the number of Departments. I trust that he will answer the question in writing in due course.

Whatever the arguments about the relocation of existing public services, does the Minister agree that there are opportunities for the Government's new or restructured public bodies, including a victims' service, a development corporation for Maze/Long Kesh, the Charity Commission and the Business Services Organisation to name but a few, to be located outside the Belfast region?

The Minister of Finance and Personnel: I suspected that that might be the tenor of the Member's question. It is frightening to think of the number of new public bodies that are being created in Northern Ireland. Before the Member starts to talk about relocating jobs outside Belfast, perhaps his party and others should ask themselves the same question: where does the example start? Before I came to the Chamber, I asked someone to google the SDLP for me, because I am not good at doing that myself. The SDLP leader lives in Londonderry, and the bulk of SDLP councillors and representatives represent areas outside Belfast, but the SDLP headquarters are at 121 Ormeau Road, Belfast. Before the Member starts to ask questions about public sector relocation and location, perhaps his party should look at the location of its headquarters.

Often, there are good reasons for government bodies being located in the capital city and close to the seat of government. However, I take the Member's point. Relocation is one thing, but there may be opportunities for looking at places outside Belfast in the case of new

government bodies that do not have relocation costs and do not involve relocation disturbances. That would be the responsibility of the individual Ministers who are responsible for the new bodies.

Ms J McCann: Go raibh maith agat. Given that the Minister said that there are good reasons for government bodies to be located in Belfast, why are those bodies resistant to locating jobs in parts of Belfast, such as west Belfast, which is one of the most deprived areas of Belfast and an area of disadvantage and need? That was set out in the report of the West Belfast and Greater Shankill Task Forces.

3.30 pm

The Minister of Finance and Personnel: First, relocation, whether outside or inside Belfast, will still carry costs.

I must say to the Member that I really do not accept that people cannot travel from west Belfast into the city centre, which is a journey of a couple of miles, by good public transport, by bicycle or on foot. I cannot accept that it is necessary to relocate offices to the end of someone's street. Surely to goodness, Belfast is a compact enough city for people from all areas to be able to reach jobs that are located in the city centre.

Mr Speaker: Order. That concludes questions to the Minister of Finance and Personnel. The House may take its ease until the debate on the Department of Justice Bill is resumed.

Mr Dallat: On a point of order, Mr Speaker. As a Member who has a hearing defect, I ask you to give a ruling on the appropriateness of making references to people's eyesight and hearing when answering questions.

Mr Speaker: Of course, as far as possible, Members should be sensitive to that issue, which Mr Dallat has raised on a number of occasions. I ask the House to be mindful of that.

EXECUTIVE COMMITTEE BUSINESS

Department of Justice Bill

Consideration Stage

Debate resumed:

Mr Speaker: Order. We shall resume the debate on the Department of Justice Bill. I ask Mr Alex Maskey to continue with his remarks.

Mr A Maskey: Go raibh maith agat, a Cheann Comhairle. I want to pick up briefly from where I left off, which was the question of d'Hondt and the SDLP's argument of its entitlement to the justice Ministry, if it were established.

In an intervention, Mark Durkan said that his party could go to the Secretary of State to seek provision for 11 Departments, and so on. My argument, which is essentially different to his, is that there must be agreement to go to the British Secretary of State to seek anything. Mr Durkan presented his argument in such a way that suggested that people could go to the Secretary of State to ask for anything. I invite him to seek that agreement.

Mr Durkan: We can go to the Secretary of State.

Mr A Maskey: Mr Durkan made that point already, and I am responding to it. It is easy for the Member to throw out a comment about being able to go to the Secretary of State. However, he and his party have failed consistently to explain who they will go with and who they will reach agreement with to do that.

Clearly, they will not reach agreement on key issues with the Ulster Unionist Party, for example. I do not know what other party the SDLP would seek to reach agreement with. It does not appear to have been able to put together a package that shows that it, or a collection of parties, could secure a vote in the House and thereby go to the Secretary of State, or that it could reach any other agreement for that matter. Therefore, the essential issue remains that —

Mr Durkan: Will the Member give way for clarification?

Mr A Maskey: I am sorry; I have taken some three interventions already. The Member will have plenty of time later to clarify his position.

Mr Durkan: And I will.

Mr A Maskey: He can all right. Talk is cheap, so the Member must clarify whom he would reach agreement with to secure all those great and wonderful things that he wants.

I want to recap on a number of points. First, I want to return to the sunset clause, which my party considers

to be both a vital protection and an opportunity. My party's intention is to establish a justice Department for beyond 2012. I am sure that other parties are also committed to that.

If, during the intervening period between the justice Department's establishment and 1 May 2012, the experience has been positive, the sunset clause, which my party hopes will be agreed, offers the Assembly the opportunity to consider what will occur beyond May 2012 in a positive, mature and rational light and to establish a permanent justice Department that is fit for purpose and that has all the necessary protections.

I look forward to that opportunity. I believe that the vast majority of the public want that to happen in the positive light that I described.

The SDLP keeps trying to hammer home its entitlement to the Department of justice under d'Hondt, but it has no such entitlement. There is no provision for 11 Departments and, therefore, no provision to run d'Hondt from one to 11. If we were to secure 11 Departments, the essential argument remains that d'Hondt would be run from one to 11. Does anyone suggest that the SDLP has the God-given right to take the eleventh Department and that all the other parties would sit back and wait until they did?

Mr A Maginness: *[Interruption.]*

Mr A Maskey: With respect, I have already taken numerous interventions.

Mr Speaker: Order. Let the Member finish.

Mr A Maskey: The SDLP's repeated position is that it has the right to the next Department. It does not. If, as I wish would happen, 11 Departments were to be established here this afternoon through running d'Hondt, I would love, by 5.00 pm, to be putting Sinn Féin's hat into the ring for the justice Department. At least two other parties are ahead of the SDLP in the queue, and they would have a serious argument to make on their behalf.

Sinn Féin is determined to secure the transfer of policing and justice powers and pursues that aim relentlessly. In the first instance, powers should be transferred into the hands of elected representatives from here. We like the idea of, and are totally committed to, d'Hondt, but there must be transitional arrangements. Sinn Féin was involved in negotiations, although other parties, particularly the SDLP, seem to think that they were the only ones involved. The SDLP must have been talking to itself in 1998 because, from what it says, no one else was involved. Sinn Féin is wedded to the necessity of power sharing.

Mr Kennedy: Is it the ambition of the Member, or his party, to hold the Department of justice at some stage?

Mr A Maskey: I thank the Member for his question. Why would any party with a mandate deny itself the

opportunity to take responsibility for any area of governance? I presume that Mr Kennedy's party — the Ulster Unionist Party, UCUNF, or whatever its name may be this afternoon — would consider taking any Department to which its mandate secured it the right. I look forward to a time when all parties, including mine, will have the opportunity to consider each Department before deciding which to select under d'Hondt.

The absolute inclusion of all parties is essential to the political dispensation in which we are all involved, and that brings me to my next point. Mr Attwood referred to the process of exclusion, but Sinn Féin is committed to a process of inclusion. That is why there is a power-sharing Executive: the parties in the Executive share power. The difficulty for the SDLP is that it does not occupy a lead position in OFMDFM, but that is simply the democratic outworking of the last election. That may change: who knows? As the SDLP is not in a lead position, it falls to Sinn Féin and the DUP to work their way through the issues by showing leadership and working inclusively with the other parties. Mr Durkan, the outgoing leader of the SDLP, is aware of that. Sinn Féin and other parties have spoken with the SDLP about the issue, and SDLP Members sit on the Assembly and Executive Review Committee.

Mr Speaker: In trying to keep the discussion to the amendments and clause 2, I have shown some latitude to all Members. However, I detect that some Members are straying outside the amendments to the justice Bill and, specifically, at present, support for, or opposition to, clause 2. I remind Members that, as far as possible, they should keep to the subject of the debate, which is the Department of Justice Bill.

Mr A Maskey: I thank the Ceann Comhairle for his reminder to Members; I will do my best to honour that commitment. I do not wish to recap to ensure that I clarify all the relevant points.

We support the sunset clause because it is very important, and we clearly support clause 2 and the Bill as a whole because we are focused on getting policing and justice powers transferred into the hands of locally elected representatives. The arrangements in clause 2 are interim and transitional, and that is verified and underscored by writing a sunset clause into the Bill that will bring those arrangements to an end by May 2012. Sinn Féin supports and will continue to support the Bill as it stands because we believe that it represents the best efforts of people to ensure that powers are transferred as soon as possible.

The time frame mentioned in some of the amendments has been dealt with earlier. It will come up again later, so I suppose that we can deal with it then, too. As far as Sinn Féin is concerned, the Bill does not require a time frame. Although some people want a time frame to be included, the Bill is an essential piece of enabling

legislation that does not require one. The Bill needs to be passed sooner rather than later, because it is a necessary element of devolution. People who argue, inside and outside the House, in favour of powers being transferred must explain how voting against the Bill and working actively against it will serve that need.

Our party supports the Bill, and we oppose the amendments unapologetically in our relentless pursuit of having the powers of policing and justice transferred to locally elected representatives as soon as possible.

Mrs Long: I support the Bill and oppose the amendments. The devolution of policing and justice is a positive step for Northern Ireland. It brings potential benefits, because it allows much closer collaboration and co-operation among the existing Departments and the Executive on a range of issues relating to policing and justice. My party believes that it should happen as soon as possible.

However, we have never set artificial deadlines for the process, because we recognise that the issue is sensitive in respect of political and community sensibilities. We want our approach to be constructive because we want people in the community to have genuine confidence — not the kind of confidence that is about setting up a series of hurdles for people to jump — in the House and in the Executive to competently and capably deliver on the issues. We have tried to be constructive from our position outside the Executive, and I am trying to do the same now.

I wish to speak about the amendments and the picture painted of them. First, as to whether clause 2 should stand part of the Bill, the Alliance Party has never made any secret of the fact that it believes that the Executive should not have been formed using the mechanism laid out in the Good Friday Agreement. That was not our first choice, and we have been very open and honest about that.

We support moving from a mandatory coalition to a voluntary coalition in which Members negotiate a Programme for Government and work together on it. That would create a level of cohesion and co-operation in the Executive and tie Members to a programme in a way that the mandatory coalition has not done. We have been open and honest in saying that we would prefer that. However, we respect the fact that some Members are not comfortable with that or confident that it would work. Some view voluntary coalition as a mechanism to exclude them, while others think that it is a mechanism that would benefit them by excluding others. My party believes that voluntary coalition is not about that; it is about trying to find a system that works.

We have made no apologies for the fact that we are not and never have been wedded to d'Hondt. We view it simply as a mechanism to deal with proportionality. However, it is only one of many mechanisms that can

do that. It can be argued that, in many cases, it is not the best mechanism for dealing with proportionality. The Good Friday principles underpinning the issue are inclusion and proportionality, not d'Hondt, and they can be achieved in a range of ways. We are again in danger of making the mechanism the principle, and that is a very foolish thing to do.

3.45 pm

I aspire to the day when we no longer need the d'Hondt mechanism for any of our Ministries and when we can move away from the type of mandatory coalition that we have currently. Therefore, I welcome any opportunity to demonstrate how other mechanisms can deliver. I believe that the Bill presents such an opportunity.

It is not about who gets the job of justice Minister; it is about how a person gets the job. The Bill provides a better mechanism for electing a Minister than that which we use at present.

I am not going to shed any tears if the person who is appointed justice Minister is appointed on the basis of a cross-community vote. However, I am realistic enough to know that clause 2 is not some sort of Trojan Horse by which we will be able to speed up getting voluntary coalition into the Assembly. Much as I would like to see that happen, and much as I wish that that were the case, I do not believe that to be the reality. However, as political fixes go, this is preferable to those that we have chosen in the past. Therefore, I have no difficulty with clause 2 standing part of the Bill.

Alex Attwood talked about the rules of democratic inclusion. However, which ones was he referring to? The d'Hondt mechanism is only one of many ways by which to achieve democratic inclusion. I find it quite strange that when we talk about the rules of democratic inclusion, we talk about it in those broad terms. The SDLP is wedded to the d'Hondt process. It amazes me that an obscure Belgian gets so much attention every time we debate any issue in the Chamber.

The reality is that the SDLP has acknowledged that there may be other, better means of inclusion. Through the Equality Commission, the SDLP challenged Lisburn City Council for allegedly breaching equality rules because it went beyond other inclusion mechanisms so that it could use d'Hondt. I do not disagree with the position that the SDLP has taken on that matter. However, it raises the question that if other methods of inclusion are good enough for other places, why is the SDLP so wedded to the d'Hondt mechanism when it comes to appointing a justice Minister? There is a contradiction in the SDLP's position on the d'Hondt process.

Mr Durkan: The SDLP's concern is that clause 2 is a departure from the provisions of the Northern Ireland Act 1998. Those provisions are based on the agreement. If there is a review of the agreement, and if parties

agree to a different form of inclusion according to mandate — such as the Sainte-Laguë method — that mechanism will become the rule. However, the principle of the agreement remains inclusion according to mandate. Clause 2 is a departure from inclusion according to mandate and is a departure from the existing Act.

Mrs Long: I will raise a number of issues in response to that.

The first departure from the Good Friday Agreement is having an extra Department. If we are to devolve policing and justice —

Mr Durkan: It does not have to be an extra Department.

Mrs Long: If we are to devolve policing and justice, it looks, at this stage, as though that will require an extra Department. If we are to redraw the Departments, that is another departure from the Good Friday Agreement. Furthermore —

Mr Durkan: No, it is not.

Mrs Long: Furthermore, Mr Durkan specifically said that clause 2 would be a departure from inclusion on the basis of mandate. However, nobody knows who the justice Minister is going to be. There is no guarantee that it will not be someone who is being included on the basis of mandate. Frankly, I think that people are getting ahead of themselves in suggesting otherwise.

I want to deal with the issues on amendment Nos 2, 3 and 4. I listened very carefully to Alex Attwood as he made the arguments in favour of those amendments. He did two things. First, he emphasised the likelihood of failure to agree a long-term solution by the deadline of 2012, and secondly, he emphasised the consequences of that failure. I will look at both those points, beginning with the first.

Alex Attwood emphasised the impossibility of finding agreement by 2012 on the future shape of a Ministry, and he purported that that was an argument for tabling his proposed amendments. On the surface, that argument has a certain ring to it, from our perspective. Mr Attwood said that there has been a series of issues that the Executive failed to reach agreement on and that that is evidence that they are not capable of reaching agreement.

That argument does not, however, bear close scrutiny for a number of other reasons. First, if we had followed that pattern in 1998, we would not be sitting here now. Secondly, if we had said that we would not move forward because the risk of failure was too great, we would still be where we were in 1998 and we would perhaps be even worse off.

We did not say that getting the UUP and the SDLP to agree thing in the future was the issue. We did not say that getting engagement between the UUP with Sinn Féin when the electoral tables were turned was a reason not to proceed with the process. We did not even say that the idea of getting the DUP and Sinn Féin to go into Government together, which was unimaginable at the time, was a good enough reason to stop the process. In such instances, instead of not embarking on the process, the answer is to carry out the process in a controlled way and to see it for what it is — a process. The process will evolve over time in the context and circumstances that present themselves, and it is dependent on the work that will be done over the next 30 months. I cannot accept the argument that Executive failures are a reason for stopping the process of devolution.

The other argument was about what will happen if we fail to agree by May 2012. For me, such a scenario raises a much deeper question, which was not touched on. If we cannot agree on what happens with the Ministry for policing and justice by 2012, much more significant questions about the future of the institutions will be raised. We all realise that. There is more import and more pressure to reach a solution by 2012. It is very simplistic to say that we cannot do it. I do not buy into that argument, because there is too much at stake if we do not agree a solution.

The third thing is this; if it is so inconceivable that parties in the House are capable of reaching agreement on the issue in 30 months, how come we have an interim agreement that people are happy to sign off on? The logic is that, if people can sign off on an interim agreement, it is not beyond their capabilities to sign off on a longer-term agreement. I cannot follow the logic of the argument that we cannot reach agreement.

Mr Attwood then argued about the consequences of failure. There seems to be conflict in his argument, because its logic was very contorted. Mr Alex Maskey highlighted that in his speech. In great depth and with great vigour, Mr Attwood painted the most apocalyptic scenario possible for May 2012. He used the word “catastrophic” twice. I listened carefully to his description of what could happen in 2012, and it conjured a picture in my mind of prison doors being left open, prisoners wandering onto the streets and various other types of madness and mayhem. All of that was based on the assumption that the Assembly would fail to agree.

Mr Attwood then said that Westminster would not allow such a scenario to happen. According to his legal advice and in his view, an Order in Council would come from the Secretary of State to stave off the apocalypse. At that point, I was able to draw breath again and feel much calmer about the situation.

After posing the grave and potentially catastrophic consequences of a failure to agree, Mr Attwood reassured us that there will not be a cataclysmic meltdown and that there is a fallback position. His concern seemed to switch from the apocalypse ahead to his suspicion that the First Minister and the deputy First Minister know that there is a fallback position but do not want to articulate it in the Assembly. That is what I am not clear about. I am not sure that it matters whether people know that there is a fallback position, because, any time between now and 2012, legislation and amendments to deal with a likely meltdown could be made in Westminster. Frankly, it is inconceivable that the Government would allow our Prison Service to implode, for example. Therefore, I cannot understand the logic of an argument that states that, on the one hand, there will be cataclysm and then states that there will not and that, because people will not admit that, we should vote against the Bill in its present form.

Mr Durkan: Those who supported and passed the legislation that provides for the sunset clause in May 2012 have literally legislated for failure. We did not introduce the concepts of failure, collapse and dissolution. Members legislated for that because it was the best interim solution that they could come up with. Those who supported it, particularly Sinn Féin, have made a virtue of saying that there is no fallback position. We believe that there could be a fallback position that could be used by the British Government. However, it may not work, because it depends on votes in the House.

Mrs Long: I will address several aspects of that intervention. First, the matter seems to have been distilled down to the SDLP trying to point out that what Sinn Féin has said all along is incorrect. That seems more like an attack for party political purposes than dealing with concerns about the stability of the justice Department. I suspect that such logic underpins a lot of what we are listening to today. That is part of the difficulty.

I do not understand how anyone can believe, based on their legal advice, that there is a fallback position and, at the same time, articulate an argument that says that there is no such position. It is completely illogical, and the argument does not stack up. Regardless of whether the fallback position exists at the minute, it could be created at any point in the future. Therefore, the idea of apocalypse does not add up. The SDLP has argued that it is, in essence, trying to avert crisis and crisis-proof the legislation, yet it has proposed a series of amendments that appear to be designed to precipitate a series of mini crises in the system.

Mr Durkan: No.

Mrs Long: The Member beside me says no. However, putting time frames, deadlines and demands

on such matters and introducing additional sunset clauses into the legislation has the potential to create more of a crisis.

Amendment No 1 sets a deadline. Everybody in the Chamber recognises that the issue will be subject to detailed and sensitive discussions in which everyone in the House has an interest. I agree entirely with Members who feel that, for whatever reason, they do not know all the facts. They should know all the facts, because this is a matter of importance, not only to parties represented in the Executive but to those that are not represented. The Alliance Party's voters need to have confidence, too, as do those who vote for the SDLP, the Ulster Unionists, the DUP, Sinn Féin, the Green Party, the PUP and others who sit in the House. People need to have confidence that the system will work, because it is a serious matter. We do not take issue with any of that. However, creating deadlines is a way to heap on pressure, and it is deeply unhelpful. I suspect that it exposes the SDLP's need to do down any proposals that come from the Executive. That is unfortunate.

I have read amendment Nos 2, 3 and 4 several times. I listened carefully to Alex Attwood's speech, in which he proposed the amendments, to try to get to the bottom of what they would achieve. That remains unclear. The amendments seem to force the First Minister and the deputy First Minister to make written and oral statements to the House within seven days, after which there would be a vote.

Mr Durkan: That is correct.

Mrs Long: The Member has provided helpful clarification from a sedentary position. That is what I thought that it meant. Therefore, I am unclear about the point of the amendments. The seven-day requirement seems to place potentially unrealistic and silly deadlines in the Bill in the hope that somebody will drop the ball, not jump through the hoop, and revert to d'Hondt. Moreover, it seems unnecessary, because no other legislation that has been passed in the House has proposed that somebody has to report within seven days. Indeed, if people want the First Minister and the deputy First Minister to explain — I think that is the word used in the amendment — their view on the issues, they can do so at any time now. They do not have to wait until the Bill is passed. It does not change anything. I cannot get my head around that: it does not actually change the situation.

(Mr Deputy Speaker [Mr McClarty] in the Chair)

4.00 pm

Mr Durkan: The Member said that no one has ever proposed here that statements should come from the First Minister and deputy First Minister, but I recall that her party moved amendments to the Financial

Assistance Bill that would have required that statements be made by the First Minister and the deputy First Minister in relation to the implementation of that Bill and any actions flowing from it.

Mrs Long: I said that I did not recall a piece of legislation being passed anywhere that required statements to be made within seven days. It is clear that Mr Durkan was not paying attention, because our proposal was that the First Minister and deputy First Minister should report to the Assembly on an annual basis. It was an ongoing clause, not simply another hurdle that they had to jump over after commencement with a once and once only explanation. The comparison does not stack up, because there was substance to our amendment. There is no substance to the SDLP's amendments.

I will move to the issue of clarification and explanation. The First Minister and deputy First Minister are in the Chamber, so perhaps when they respond they will be able to give clarification. However, my reading is that they could come in and provide us with an explanation. It might not satisfy us, but such an explanation, written or oral, would not change anything. They would simply have to provide the explanation in order to tick the box. That achieves absolutely nothing, as far as I can tell. I am slightly bemused by that, but on reading the amendments together, it is clear that they are designed so that, assuming that the SDLP's arguments in relation to clause 2 are lost, another opportunity is created to revert to d'Hondt after commencement. The SDLP's argument is not about trying to get clarity, because that can be obtained at any time. *[Interruption.]*

Mr Durkan has been allowed a significant number of interventions, but nothing seems to satisfy him, because as I try to make my contribution to the debate, he is constantly chirping in my ear, which is very distracting. I have been generous with the Member in allowing him to have interventions. I wish that he would either stand up and make his point or allow me to make mine.

Mr Attwood made a long and meandering speech containing a lot of convoluted logic, but eventually, at the end, we got to the core of the issue. He said that the SDLP felt entitled to the justice Ministry and that that entitlement would not be guaranteed under clause 2. There were those who, in previous interventions, said that they were happy to run d'Hondt for all 11 Departments, but Mr Attwood said that he objected strongly to the SDLP's being excluded from the process to appoint a justice Minister. He raised the issue that the DUP did not see the SDLP as fit to do the job and that his party was being blocked as a consequence of Sinn Féin's position. There was more to Mr Attwood's speech than the issue of being nominated for any Ministry.

However, while the justice Ministry would not be guaranteed under clause 2, neither is it ruled out. It is not inconceivable that the SDLP could be nominated and voted through on a cross-community basis. The assumption that it will not happen is an SDLP assumption; it is not shared by anyone else. To be fair, Mr Attwood delivered a heart-rending plea for the SDLP to get the justice Ministry, which almost brought a tear to my eye. He said that his party had been slighted and that its contribution to policing and justice had not been fully recognised.

The Alliance Party could make an equally heart-rending plea: we could say that throughout the years when things were very difficult in Northern Ireland, coming from a cross-community background and representing a difficult constituency, the Alliance Party maintained its links with the police service and sat on the Police Authority when others would not join it and would not do that job. It is a bit rich for people to expect sympathy from those of us who weathered the storm when it was very difficult to do so. From that point of view, I do not have a lot of sympathy on that point. However, I am less concerned with who the Minister for justice will be, what party he or she represents or where he or she is from, than I am about what a Minister for justice will do for the people whom they are elected to serve. That is what matters: it is the programme that a Minister for justice will follow and what that person will achieve that is of consequence. I cannot see any reason why any party here would be guided simply by self-interest.

Other Members have raised the issue of d'Hondt in relation to clause 2. If an eleventh Ministry were to be added, various meetings with the Secretary of State notwithstanding, d'Hondt would have to be rerun for all Departments. That is clearly stated in the Northern Ireland Act 1998. If that were the case, I do not think that anyone believes that policing and justice would still be on the table when the SDLP got to make the fifth choice, let alone the eleventh. It would say something fairly skewed and malign about other parties in the House if it were still on the table at that stage.

I have some sympathy with Danny Kennedy on that point. He said that the debate was surreal at times. I agree; if we think that policing and justice can be delivered by any means other than ongoing political dialogues and agreement, we are fooling ourselves.

If the mechanisms that were used in 1998 were sufficient for this task and could create the required confidence, I suspect that they would have been used by now. That is not the political reality of this situation, and we need to wake up and accept that.

I am disappointed that the SDLP seems to oppose the devolution of policing and justice unless it benefits them either directly through that Ministry, or indirectly

by obtaining a second seat in the Executive. In an intervention to Alex Maskey earlier, the SDLP leader —

Mr A Maginness: The SDLP is fully committed to the devolution of policing and justice, without conditions. We are fully committed to that, and we have made that plain. I do not know how I can emphasise that point more.

Mrs Long: Perhaps if the SDLP had voted in favour of the Second Stage of the Bill, that would have made it clear. The issue there was the principle of the devolution of policing and justice. *[Interruption.]*

Mr Durkan is again interjecting from a sedentary position. However, in an intervention to Alex Maskey's speech, he walked us through the process at Westminster very carefully, and explained how he could vote in favour of a Bill at Second Reading and table a series of amendments in Committee. One should do the equivalent in these circumstances.

Dr Farry: The implication of supporting the Bill at Second Stage was that one supported the principle of the devolution of policing and justice and, in particular, the creation of a justice Department in Northern Ireland. It is in order for the SDLP to propose an amendment to change the mechanism in the Bill and go back to d'Hondt; that is a logical position for them to argue from if they wish. However, voting in favour of the Second Stage of the Bill would still have allowed them to do that and, at the same time, would have made clear their support for devolution, whereas voting against it sent out, at best, a very dangerous, mixed message.

Mrs Long: That is exactly the case. The normal way to deal with such a situation is to vote in favour of a Bill at Second Stage and to table any amendments at the next stage. If the amendments fall and people believe that the Bill as it stands is unacceptable, it is at that point that they should vote against it. One does not vote against a Bill at Second Stage if one is in favour of the principle of it, and the principle of this Bill is to devolve policing and justice powers and to create a Ministry of justice. Therefore, the SDLP's position with regard to the devolution of those powers is unclear.

Mr Kennedy raised some concerns. He referred to the difficulties of the Bill creating a puppet Ministry. He was concerned that, if appointed in the way that was suggested in the Bill, the justice Minister would be a puppet. I do not believe that to be the case; however, I believe that there is a risk that the justice Minister could be a puppet.

The mechanism for appointing the justice Minister will make them no more or less of a puppet than any other Minister; it does not change anything. They would arrive at the Executive table with the same authority and ability to do their job. However, some issues could create the circumstances in which we would be dealing with a puppet Minister. The problem would, first, lie in the potential for a Minister to be

removed by cross-community consent. We cannot deal with that, because it is dealt with in legislation that went through another place. It is not something —

Mr A Maginness: Will the Member give way?

Mrs Long: No; I will not give way on that point.

The way in which a Minister can be removed from office has the potential, in certain circumstances, to make that Minister more susceptible to pressure. However, we cannot deal with that issue, because our legislation is subordinate to the Westminster legislation, which sets out how any Minister would be removed from office. Indeed, the issue arises only when a Minister who is so desperate to hang on to his or her ministerial seat does not resist such pressure. Therefore, in addition to there being a poor mechanism for their removal, it would require a weak-willed Minister with no backbone for that situation to arise. If we are to subject someone to a cross-community vote in the House, I hope that we will pick someone of sufficient calibre and robustness and who has enough backbone to withstand that pressure.

Some Members from the smaller parties on the Executive wax lyrical about the potential for a Minister of justice to be a puppet, but it is dangerous to tread on such ground. It may not be possible to eject smaller parties' Ministers from their ministerial seats under d'Hondt, but those Ministers have little say over their budgets. Sinn Féin and the DUP have the lion's share of the votes and can make those decisions. Those Ministers do not have much control over what legislation they can bring to the House, because that is largely in the gift of Sinn Féin and the DUP as well. Some people might say that Ministers from the smaller parties in the Executive, even though they were nominated under the d'Hondt system, could be puppets if they do not have sufficient backbone to walk away when push comes to shove and when they feel that they have been maligned or mistreated.

Mr Kennedy: The Member clearly does not listen to, or heed, the First Minister's assertions that we have a four-party mandatory coalition. There are no puppets in this Administration, and it is not expected that there will be any. The Member seems to doubt that.

Mrs Long: I was explaining the risk of someone's becoming a puppet Minister. I would not be so rude as to suggest that any of the Ministers from his party or the SDLP is a mere puppet. If Mr Kennedy feels aggrieved by my comments, I may have struck a chord that I did not intend to. I was simply saying that it is possible for Ministers to be nothing more than puppets under the current system if they are willing to accept whatever the two main parties foist on them rather than running the risk of having to walk away. Unless Ministers have the backbone to walk away in such circumstances, they risk being puppets. The question

for Ministers is whether they can be more than puppets in the Executive. I will leave it for Mr Kennedy to decide that on behalf of his colleagues.

Mr O’Loan: The Member speaks in a very principled way and, indeed, almost claims that the Alliance Party is the only principled party in the Assembly. She has spoken very nobly about how neither she nor her party has any interest in who becomes the Minister of justice and says that the Alliance Party is concerned only with the outcomes from our having a Department of justice. The Alliance Party was prominent in describing itself as “the party of opposition”. Indeed, it was the opposition in the Assembly for many months. When Bills were debated, the Alliance Party was assiduous in proposing amendments and discussing them at great length.

However, it is noticeable that the Alliance Party has not proposed an amendment today. The Member has not used the word “opposition” at all and has described her party as being “outside the Executive”. A reasonable person might conclude that her position is less principled than before and that she and her party may have a vested interest in taking the stance that they are taking.

Mr Deputy Speaker: Order. Some private conversations are being conducted in the Chamber, and that is very distracting for me, not to mention for the Member who is on his or her feet. If Members wish to carry on their private conversations, I ask that they do so in the Lobbies or elsewhere in the Building. I also remind Members that interventions should be short and sharp.

4.15 pm

Mrs Long: Thank you, Mr Deputy Speaker. I appreciate both of those points. I will be clear about the issue that Mr O’Loan raised: I said that we had no selfish interest. I also said that we were less interested in who the Minister was and which party he or she came from than what they do. That is a principled position. If Mr O’Loan is asking me, as a politician and a member of the Alliance Party, whether I aspire to be in government, the answer is yes. If that makes me unprincipled, what does it make any other party that sits in this Chamber? What would it make me, other than a fool, if I were to say that I did not aspire to be in government for my party? Of course political parties have aspirations to be in government, but not at any price. That is what gives principle to our position. If Mr O’Loan does not understand that, I am not sure that there is much that I can say to help him.

Mr O’Loan also talked about proposing amendments. We propose amendments to legislation as and when we feel that they are required. However, we have articulated an argument today to explain why, based on our principles, we are happy with the legislation, which represents a move away from a mechanistic approach to the nomination and appointment of Executive

Ministers and towards an approach that we prefer. Regardless of the outcome in respect of the make-up of the Executive, we would prefer that that body be formed voluntarily. We believe that this is a move in that direction, and that is a principled position.

On the issue of opposition, I am not in the sad and unfortunate situation of being confused about my role in this House. I am outside the Executive and I am part of the opposition. However, it would serve the Member well to talk to his party about what its role is, because it seems to be confused: it holds seats at the Executive table, and acts as opposition in the House. That is a much more confused and less principled position than the one that my party has adopted.

In conclusion, Members will be glad to hear, there have been many political fixes on the road from 1998 to 2009. Some of those were designed by the SDLP and the Ulster Unionists and others by the DUP and Sinn Féin. Some have further entrenched division in this Assembly, some have reduced it, some have moved us forward, and some have made it much more difficult for us to achieve progress. Some of those fixes have been based on good politics and others, frankly, have not. That is the reality of the situation. My party will look at each situation on its merits. The Bill provides for a move away from a rigid, mechanistic method of power sharing and towards a situation in which cross-community consent becomes more embedded in how we form an Executive. The Alliance party believes that that is a good thing, and, therefore, we support clause 2.

The Bill moves us to a situation in which the Minister of justice will be from Northern Ireland. There will be difficult decisions ahead on finance and many other issues, but the person who makes those decisions will, when they need a police officer, call 999 and go to the same people as me and the people whom I represent. That is a step forward, not a step back. That is a welcome change, and, therefore, we will support the Bill and oppose the amendments.

Mr Hamilton: I am sure that there were some Members in the House to hear that Mrs Long was coming to a conclusion, Mr Deputy Speaker. Perhaps that has changed because you have called me to speak, but I will do my best to make a valuable contribution to the debate.

It is no secret that my party and I support the devolution of policing and justice. However, as we have made clear on many occasions, that requires community confidence. One element that helps to build community confidence is confidence in the institutions to which matters are devolved. That is why clause 2 is so important, not just to me and my party, but to the community that we represent.

During his lengthy contribution at the start of the debate, Mr Attwood talked about people needing to live in the political real world. He is not living in the real world if he believes that there is any other method of appointing a justice Minister that is capable of commanding community confidence in Northern Ireland — critically, unionist community confidence — other than that contained in clause 2.

In making a case for clause 2, I must stress that, as desirable as it may be for some of us, the Member who takes up the justice post, from whatever party they come, will not do so simply on the DUP's say-so. The decision is not something that we wholly control. The Member who becomes Minister of justice must be able to command cross-community support in the Assembly.

I am sorry that the SDLP has such a slavish devotion to the principle of d'Hondt that, in its eyes, nothing else is feasible, viable or possible. However, as Mrs Long pointed out, there are ways other than d'Hondt by which we can get cross-community buy-in. I ask the same question that I did at Second Stage: how much more cross-community can we get than a clause and a method of appointment that requires support for an individual by a majority of Members on each side of the House? Somebody who can come through that test and command that support will surely also have wider support in the community.

As the First Minister, Mr Robinson, pointed out, the cross-community voting mechanism is used regularly in the House. We use it to appoint the Speaker and Deputy Speakers, and during the passage of Budget Bills. We can also invoke cross-community support mechanisms in the House if Members decide that a matter is critical. The point is that to have cross-community support for an individual, or any proposal in the House, is not so alien, so different or so abnormal. It is something that we do —

Mr O'Loan: Will the Member give way?

Mr Hamilton: Yes.

Mr O'Loan: I note that the Member said that there is no method other than cross-community support in the House that will secure community confidence. In particular, he said, "unionist community confidence". Therefore, I take it that he is rejecting a continuation of d'Hondt, which would lead to the SDLP's taking the new justice portfolio.

Will the Member make it absolutely clear that it was not mere rhetoric when his party leader, the First Minister, said that he would reject the SDLP nominee? Was the DUP taking a determined and fixed stance to reject an SDLP nominee for Minister in the Department of justice?

Mr Hamilton: I am not the first person to make the following point. Others have done so, but I will go as slowly as I can. I honestly do not think that the

Member gets the point. The SDLP seems to have some sense of ownership of the justice position. If the SDLP were to get its desire, and if the position were subject to the d'Hondt mechanism, there would be absolutely no guarantee that the Member's party would get it. However, we repeatedly hear that the SDLP is being deprived of the Ministry — that it is losing out.

That is not the case, because d'Hondt would be triggered for all Ministries, and it is highly unlikely that the eleventh pick would be the Department of justice. I would be very surprised if the Department were not chosen sooner.

Mrs Long: In his intervention, Mr O'Loan used an interesting phrase: "continuation of d'Hondt". There appears to be some confusion in the SDLP, because Mr Hamilton was asked specifically about opposition to the SDLP's holding the justice Ministry — not any Ministry or the eleventh Ministry, but the justice Ministry — under a "continuation of d'Hondt". However, others in the SDLP are saying that they are happy for the eleventh Ministry to be any portfolio, not just the justice portfolio. There seems to be confusion, and I cannot understand what the problem really is.

Mr Hamilton: I concur with the Member. I am not sure whether the SDLP is upset about losing out on gaining the Department of justice or the Department for Employment and Learning, but it does not seem to register with that party that there cannot be a continuation of d'Hondt. D'Hondt does not work like that; it is a system that runs throughout. It is not possible to allocate 10 Departments and then go back for an eleventh; the process would have to begin again.

Mr Attwood: I may be able to clear up the confusion on both sides of the Chamber. There is no confusion, because, looking at the Hansard report, we have been able to confirm that if the d'Hondt process were to be run, the SDLP would be entitled to the eleventh Ministry, whatever it may be. The critical issue, Mr Hamilton, is that —

Mr Deputy Speaker: Order. The Member should refer all his remarks through the Chair.

Mr Attwood: The critical point is that, regardless of whether the SDLP looked for the justice Ministry, on 8 July 2009, outside 10 Downing Street, on the record and in front of cameras, Mr Hamilton's party leader, the First Minister, said "I'm going to veto" an SDLP nominee for justice Minister. There is no confusion, because the issue was put on the table by the leader of the DUP, the First Minister, independently of whether or not the SDLP was entitled to the justice Ministry. It was your party that said explicitly on the record that it would stop us.

Mr Hamilton: The Member has got very upset about that point, which reveals the truth behind it all. It is the loss of the chance to have the Department of

justice in the hands of the SDLP that is at the core of everything that is going on today. It is not some high point of principle; it is the loss of that potential position for that party. Nobody from the Member's party has been put forward, and, although I am not going to prejudge anything, whoever is ultimately selected to take on the Minister of justice post must be capable of commanding the support of both communities. As everyone knows, the position is of such critical importance and sensitivity that the person who is appointed to it must be capable of commanding support from both sides of the community.

The Member quoted the First Minister — who I see is back in his place — but it is not only the First Minister who ruled out the SDLP for the Minister of justice role; the leader of the Ulster Unionist Party did so as well. In that respect, he is in good company. More than one unionist party is ruling out members of Mr Attwood's party from taking the position. Community confidence is at the core of clause 2; it is absolutely critical that that confidence is there. In the past, my party has made it clear that it would not have confidence in Sinn Féin holding the post, and, although I have no particular insight into the mind of republicans, I am pretty sure that they are not too keen on any member of my party holding the position.

Ms Anderson: Do not take it personally.

Mr Hamilton: I certainly do not take it personally.

In that respect — and this is where I have some confusion about the SDLP's opposition to clause 2 — this is not some sort of unionist utopia that is being put forward. It is not what only either unionists, republicans or nationalists want; it is what both sides in the Chamber want. That is the critical point; whoever is put forward must be capable of commanding support from both sides of the community.

As I said, some Members may be exhibiting a slavish devotion to one particular method, but we have to be much more innovative, and there are different ways to achieve community support. Given that we use cross-community votes in the Chamber on quite a few occasions, it is not a particularly original method. Consensus and inclusivity are at the core of clause 2, and, down through the years, the SDLP has preached ad infinitum that we must have consensus and be inclusive. Those principles are at the core of the clause, so I am confused about why the SDLP opposes its standing part of the Bill. It may not be its preferred option, but it must at least accept that it is an option for having consensus and inclusivity and for achieving cross-community support for whoever the justice Minister is.

4.30 pm

I turn to the opposition to this clause from the unionist Benches. I do not want to go into an historical

retrospective about what people have agreed to in the past. Others have not engaged in that, and I do not want to go down that path, unless provoked into doing so. I have to point out that the clause protects the interests of unionism. Their opposition comes from a concern that there is sensitivity in the unionist community about the position of a justice Minister. Emotions run high, and there is great concern about who might take that position. That is why those Members have stated their opposition, notwithstanding things said and done down through the years and in the not too distant past.

I ask why they oppose the clause, when it protects the interests of unionism and allows unionists a clear say on who holds the very sensitive position of Minister of justice. No other option in legislation available to the Assembly offers the protection offered by clause 2. Clause 2 ensures that political unionism has a say over who holds that position; that is something on which those Members should reflect. As I mentioned, they said recently that they oppose both Sinn Féin and the SDLP holding that position. This goes back to the point about the rerunning of the d'Hondt system. No other system protects that position and ensures that certain members of certain parties do not hold it. I ask those Members to reflect on that in their opposition to this clause and their support for the SDLP's proposal. Clause 2, as it stands, protects the interests of unionism that the DUP has espoused and which the Ulster Unionist Party has latterly come around to espousing.

Mr Kennedy: I am grateful to the Member for giving way. Does he understand that one of our primary objections is that the institution of the Executive was formed on the basis of the d'Hondt system and that implies that that system should be used to choose Ministers during this mandate?

Likewise, will the Member concede that the Alliance Party, in its current strength, is not entitled under the d'Hondt system, as of right, to a Ministry? However, a convenient agreement is being hatched, which is being labelled "cross-community support", to enable the Alliance Party to expect that that Ministry will be given to its charge.

Mr Hamilton: The d'Hondt system may well have been the mechanism used at the start. However, I would have thought that the Member would agree with my point about the sensitivity of the office of a Minister of justice — indeed, a first Minister of justice — and that he would agree with the position outlined in clause 2 that cross-community support is essential.

The Member may be mathematically correct that the Alliance Party has not the strength of numbers to have the right to a Department according to the d'Hondt system as it is currently constituted. However, I suggest that that is not the issue at hand: rather, it is the need to have confidence on a cross-community basis in the

person appointed Minister of justice. I would have thought that the Member would agree with me on that.

Dr Farry: I am grateful to the Member for giving way. This is not about the Alliance Party; it is about a new Department and the mechanism of election. In today's debate, the Alliance Party is judging the issue on its merits. It is not about our party.

Does the Member recognise that, with respect to size of mandates, it is commonplace around the world for parties that are smaller than the Alliance Party in terms of seats in the legislature and support in elections to be in government legitimately? South of the border, there is the recent example of the Progressive Democrats and, at present, the Green Party, both of which have proportionately smaller mandates than the Alliance Party but play a full and active part in voluntary coalition Governments.

Mr Hamilton: The Member has made a very valid point. In other democracies not too far from here, where coalition Governments are the norm, parties very much smaller than the Alliance Party regularly form part of the Government and regularly punch well above their weight.

I say to Mr Kennedy that this is not a point about one particular party; it is about having a system in place that commands community support. Obviously, we on these Benches are keen to ensure that there is unionist confidence in any system that appoints a Minister of justice. I ask Mr Kennedy and his party to reflect again on how any of the other available systems could command cross-community support.

The First Minister: The Member was in the process of making the key point when he was interrupted. That key point is that a future Department of justice will have responsibility for the most sensitive life and death issues that affect our community.

If the SDLP were to achieve the post of Minister of justice using the d'Hondt system, it would mean that that Minister would command less than 15% of the support of the Assembly. It would also depend on a SDLP Minister being able to gain the support of all of his or her colleagues, and that is unlikely. There is a requirement in the Department of Justice Bill for the person selected as Minister of justice to have the support of more than 50% of both sections of the community through the designation system.

Mr Hamilton: That is absolutely correct. Perhaps it would be better for the SDLP to wait until its leadership contest is decided before it nominates someone as Minister of justice.

The issues that will be dealt with by a future Minister of justice are so sensitive that a higher threshold for the post is required. Therefore, to subject the post to the vagaries of the d'Hondt process, as the UUP would

do, despite acknowledging those sensitivities, which, I think, they now do, is something that they need to reflect on. Opposing for the sake of opposing or doing so for spurious reasons such as timing — there are no timings involved, which will be demonstrated when the second set of amendments is proposed — is wrong. The UUP must reflect on its opposition, which is not particularly principled, is entirely manufactured, and does not represent the position that it has espoused in recent times or indeed that has been espoused by the wider unionist community.

I want to move on —

Mr D Bradley: Will the Member give way?

Mr Hamilton: I have been trying to move on to my second set of points for some time, but I will give way to the Member.

Mr D Bradley: Will the Member confirm explicitly what he has said implicitly: the cross-community mechanism has been chosen by the two main parties and his own party in particular to exclude a nationalist from the position of Minister of justice? In fact, the Member has said what the SDLP has said all along, and the message is that no nationalists need apply.

Mr Hamilton: I have allowed the Member to get his intra-nationalist warfare sound bite in, but I cannot see how, if he examines clause 2, he can conclude that its intention is to exclude anyone. Instead, it embodies inclusiveness and the need to have cross-community support for whoever is nominated. The point that the First Minister made was that whoever is selected will ultimately have the support of the majority of Members on the unionist and nationalist Benches. That is inclusiveness and consensus and exactly the type of principles that the Member and his party have been ramming down everyone else's throat for the last number of years.

I will now move on to the other amendments tabled by Mr Attwood. Amendment Nos 2, 3 and 4 deal with the requirement for reporting and voting by the Assembly on what may or may not happen in May 2012. Having listened to Mr Attwood speaking about those amendments and using words such as "grave", "acute" and "catastrophic" I was interested in the motivation behind the amendments. Were they motivated by some genuine concern about what may or may not happen after May 2012? I listened intently and with interest to what he said to find out whether he was genuinely concerned about what might happen or whether there was some other motivation. It did not take too long to see that there was another motivation, and it is not genuine concern about some catastrophic state of affairs in May 2012; it was about protecting a slavish devotion to d'Hondt and trying to protect the SDLP party position on the justice Ministry.

No one in the Assembly should be planning for failure. Times have genuinely changed when a member of the SDLP is more pessimistic than me about the future. We should not be saying that the world will end, things will collapse, and it will all be doom and gloom and catastrophe in May 2012. No one believes that, if the Assembly cannot agree a continuation to the current arrangements or even an alternative set of arrangements, policing and justice will suddenly just end. Halloween is not too far behind us, but Mrs Long mentioned a nightmarish scenario in which prison doors would be opened — I thought that had happened before; a recurring nightmare, perhaps — police would not be on the streets or have any resources and the justice system would grind to a halt. That sort of nightmare scenario, implied by Mr Attwood, is not at all realistic.

I concur with others who said that the argument that was put forward was based on twisted logic. We are facing what Mr Attwood regards as a catastrophic set of affairs or there is a fallback position. We cannot have both: it is one or t'other. However, that is the twisted logic that was put forward in support of the amendments. I am not confused; my interpretation of the section of the Northern Ireland Act 2009 that deals with this issue is that the Department, having been created, would dissolve unless the Assembly passes a motion to sustain it, or —

Mr Durkan: Is the Member saying that there is no fallback? Is he supporting the legislation on the basis that there is no fallback?

Mr Hamilton: The legislation clearly places an imperative on us all, including the Member's party, to get engaged in developing a long-term resolution to that issue. That, in one respect, is a fallback, and I do not believe that there will be some awful set of circumstances, or that Northern Ireland would be allowed to continue without having any policing and justice powers resting anywhere. It is crazy to think that that would be the case. Services would not just simply end at the end of May 2012, as Mr Attwood suggested.

Mr Attwood claimed that these matters cannot be sorted out or that it would take a long time and that there was simply no chance of getting them sorted out by 2012. By tabling the amendments, his party is attempting to precipitate a crisis much earlier in the process than he suggested might already be the case. The SDLP amendment would mean that, within seven days of this Bill receiving Royal Assent, the First Minister and deputy First Minister have to make a report on what the fallback position is. Within seven days of that, the Assembly must then endorse the current arrangements or other arrangements. Therefore, instead of having the time between Royal Assent and May 2012 to see how the arrangements work and to see whether

people are content or whether they want to look at other possibilities, the SDLP is proposing, much earlier, within a fortnight, to force a crisis on the Assembly.

I am in no doubt that, in that fortnight, SDLP members would do absolutely nothing to assist in coming to a long-term arrangement. They would happily sit on their hands and do nothing, because it is the SDLP's belief that the fallback is that the d'Hondt principle would kick in. In fact, the amendment proposes that d'Hondt become the de facto position for nominating a Minister of justice. That is at the heart of the SDLP amendments.

4.45 pm

The amendments have not been tabled out of a genuine concern about what will happen after 2012 and a fear that violence and chaos will run amok across the streets of Northern Ireland. That is not what it is about. That concern is feigned and synthetic; it is not genuine. It is about d'Hondt and the SDLP's belief, as Mr O'Loan and others enunciated, that, under that principle, the SDLP is entitled to the position of justice Minister. That is what it comes back to. It is nothing to do with a genuine concern about law and order in Northern Ireland.

The SDLP wants to force a crisis onto the Assembly within a fortnight of the passage of this legislation. It wants to force a crisis in advance of the actual devolution of policing and justice powers. The effect of that would be that the likelihood of devolving the powers to the Assembly would be little or nil, because the SDLP would be forcing a crisis that would take a long-term decision. That is why we want the interim measure. It will allow us the advantage of space and time, until 2012, to agree on something long-term to which everybody can subscribe. As Mrs Long said, if the SDLP fails to kill clause 2, this is its fallback position. It is about the SDLP trying and wanting to become justice Minister. It is not about any genuine concern.

Mr Attwood: Will the Member give way?

Mr Hamilton: Yes. I was trying to conclude, but I will give way.

Mr Attwood: I anticipated that the Member was trying to conclude, and that is why I asked him to give way. For Mr Hamilton to say to the SDLP, never mind its constituency, that it does not have genuine concern for law and order flies in the face of any objective evidence base or realistic assessment about where the SDLP stands on the issues. Does Mr Hamilton think that that accurately reflects the SDLP position? Although Mr Hamilton might say it, I have enough confidence that he does not believe it.

Does Mr Hamilton accept that, under the SDLP's amendment Nos 2, 3 and 4, the outcome will be that we have a Minister who is either elected under d'Hondt

or under cross-community provision? That will not create a crisis; it will create certainty and the appointment of a Minister who knows, one way or the other, the terms under which he or she will act until May 2012.

Mr Hamilton has to get his head around what will happen in 2012. Will there or will there not be a vacuum? Mr Hamilton, as a considered man and as a potential legislator, has an obligation to himself and his constituency to explain and understand that. That is the issue before the House. I ask him at this late stage, as he concludes, to address that issue.

Mr Hamilton: Mr Deputy Speaker, perhaps you can correct me if I am wrong, but I am under the apprehension that I am an actual legislator. The Member may not like how I vote on particular pieces of legislation, but a legislator I am, as is he.

Mr Weir: You have a better chance of getting something on the statute books.

Mr Hamilton: I will leave that comment. With regard to Mr Attwood's first point, I believe that his party supports law and order. If he cares to check the Hansard report tomorrow, he will see that I said that I did not believe that his tabling of the amendments was motivated by a genuine concern about what happens with law and order in Northern Ireland post May 2012. It is not about his party's support for law and order in general.

In tabling the amendments, Mr Attwood and his party are asking for a long-term solution to be put in place before we have even tried the short-term solution and, indeed, before we have even had policing and justice powers devolved to the Assembly. Unfortunately, they are supported by members of the Ulster Unionist Party. If by some miracle his amendments are accepted by the House, I ask Mr Attwood to reflect on how helpful those would be in getting policing and justice powers devolved in the first place, never mind achieving a long-term solution.

In conclusion, I go back to my first point: I think that we are all committed to having policing and justice powers devolved to the Northern Ireland Assembly, yet there are outstanding matters that must be dealt with, not least community confidence. Community confidence has as much to do with finance as it has to do with the institutional arrangements. Those institutional arrangements and community confidence, particularly in the unionist community, are predicated on clause 2 standing part, to ensure that whoever holds the sensitive post of justice Minister is capable of commanding support on both sides of the Chamber. That is why, in the spirit of consensus and cross-party support, I support clause 2 and oppose the SDLP's argument that that clause should not stand part of the Bill. I also oppose the SDLP's other amendments and ask the House to do the same.

Mr Deputy Speaker: Once again we have the vexed problem of mobile phones and Blackberries. I ask all Members to switch off their mobile phones, Blackberries or other electronic equipment as they are interfering with the sound system in the Chamber.

Ms Anderson: Go raibh míle maith agat, a LeasCheann Comhairle. I oppose the first group of amendments — amendment Nos 1, 2, 3 and 4 — and I declare an interest as a member of the Policing Board. The Bill demonstrates that the process of delivering policing and justice powers into the hands of locally elected politicians is moving forward. Key stages in that process have been reached, including the report of the Assembly and Executive Review Committee and legislation passing through the Executive to the Assembly.

I note the positive comments from the joint First Ministers' office that a significant offer has been made regarding a financial package. However, I want to deal with the sunset clause. Many people in our society will agree that the 2012 deadline creates an imperative for all Members to try to secure agreement before that deadline. That is particularly important because a local Minister will do a better job than a British Minister.

We must build confidence across society, because people want a local Minister so that they can discuss the policy framework within which policing and justice functions will reside. I reminded the SDLP both this morning and the last time that we discussed the Bill in the Chamber that that party flagged up the success of the sunset clause in the St Andrews Agreement, which ensured that the DUP went into government by 26 March 2007. Although the SDLP claimed — rightly or otherwise — the credit for that, it agreed in principle to a sunset clause in the St Andrews Agreement. Therefore, one would imagine that on such a crucial matter as policing and justice the SDLP would today support the need for such a clause.

However, I am mindful of the fact that members of the SDLP might have changed their minds. The manifesto assertion that deals with the sunset clause was made before the outgoing leader of the SDLP, in a speech in Oxford, talked about "the ugly scaffolding" in the Good Friday Agreement around power sharing and representativeness and about how that needed to be dismantled. I understand what that said: some parties, including the SDLP, have difficulties with the current arrangements for the appointment of a justice Minister. However, what is proposed is a temporary measure. It is necessary to move the process forward, and I believe that our people want to see us moving forward in a positive and constructive way. It is our position that the allocation of the ministerial position should revert to d'Hondt post 2012, but all Members have a lot of work to do between now and then.

I will deal with the issue of the sunset clause.

Mr Deputy Speaker: Order. Again, there are a number of private conversations going on in the Chamber. It is distracting to me and to the Member who is on her feet. Please desist, or go to another part of the Building.

Ms Anderson: Go raibh míle maith agat. I will deal with the issue of the sunset clause. The provision for the British Secretary of State to impose a ministerial model of policing and justice becomes spent once the Assembly passes an Act. That is a fact, and the purpose of the powers as previously stated was to allow the British Secretary of State to intervene to kick-start the transfer of powers. That process falls away once the Assembly makes its own provisions. That is precisely what we are doing today as part of that process. The precondition is that the imposed solution addressed by an Order in Council will be taken forward only if it appears to the British Secretary of State that there are no reasonable prospects that the Assembly will pass an Act. However, an Act of that kind is precisely what the Bill will achieve.

As Alex Maskey correctly stated earlier, the House of Commons Hansard report of 4 May 2009 shows that Paul Goggins said:

“The Bill provides no fall-back position beyond May 2012. Frankly, it is not for us in this place”

— Westminster —

“to determine any additional model beyond that period”.

He went on to say:

“There is no fall-back position...and it is entirely a matter for the Assembly...It is important to know that central Government do not have a major hand in determining what happens in a model beyond May 2012. That is a matter entirely for the Assembly”.

The British of Secretary of State dealt with that matter on 4 May 2009. The SDLP opposition to the Bill is dressed up as concern, but it once again demonstrates the negative role that that party has played throughout the political process of dealing with the transfer of policing and justice powers. People want leadership from all the political parties in the Chamber. People know who is leading and who is not. That is probably why the SDLP has faced more than six electoral defeats.

The SDLP stated that, under the rules of democratic inclusion, as the SDLP members call it, it is entitled to the position of justice Minister. However, section 17 of the 1998 Act states:

“(4) The number of Ministerial offices shall not exceed 10 or such greater number as the Secretary of State may by order provide.

(5) A determination under subsection (1) shall not have effect unless it is approved by a resolution of the Assembly passed with cross-community support.”

Section 18 of the 1998 Act states — this is very important in the context of the SDLP amendments

— that all Ministers shall cease to hold office in the event of a resolution that causes one or more ministerial offices to become vacant. Therefore, as has been said by other Members, it is not a matter of an additional ministerial post being added on through d’Hondt. A total rerun of d’Hondt would be required, and, therefore, the Department of justice would be more likely to reside in unionist hands. I concur with what Simon Hamilton said with regard to how the republican and nationalist community would feel if a Minister for justice was from the unionist community, regardless of whether that person was from the DUP or the UUP.

We have a job of work to do to build confidence by 2012. Confidence is a two-way street. We are not talking about the confidence of the unionist community or some other community; our community, regardless of the traditions of unionism or nationalism, needs confidence instilled in it.

5.00 pm

Without doubt, the republican/nationalist community does not want a justice Department to go to a unionist Minister at this time. Hopefully, by 2012, we can build enough confidence across society so that whoever is entitled to the justice Department gets it, allowing us to move forward. Sinn Féin and the DUP have said that they do not intend to nominate and that they are prepared to set aside their party interest to show leadership. People may try to make politics and say that one party is doing that to keep the other party out, but that decision is about providing leadership, which is what people want. They want to see that from all the political parties, including the UUP, and, with particular reference to our community, the SDLP.

We regard the transfer of policing and justice as more important than one party or other holding a ministerial position. To be clear: Sinn Féin’s preferred position is that the ministerial position go to the SDLP. However, clause 2 allows us to get power back from Westminster into the hands of locally elected politicians, and the people of our society want access to a local Minister.

In my constituency of Foyle, I have dealt with cases that would be much easier if I could get access to a Minister here to discuss even some of the concerns that emanate from my constituency to do with the justice system, policy decisions that are taken and the policy framework within which they are set. I am sure that that is the case for every Member.

There is an appetite for a local Minister to be put in place, but, as the SDLP stated, the first group of amendments is an attempt to remove clause 2. However, the SDLP cannot handle the fact that clause 2 has already been agreed.

On 18 November 2008, the Office of the First Minister and deputy First Minister said that it had agreed on the transfer of policing and justice, including the steps by which it would be achieved. It outlined how a Minister of justice would be appointed: nominations would be invited from Members and the successful candidate would require the support of the majority of Members, present and voting, including a majority of designated nationalists and a majority of designated unionists. That was accepted by the Assembly and Executive Review Committee and was reflected in its report. As well as setting out an arrangement for appointing the Minister, the Committee's report contained recommendations to deal with the departmental structure and the powers that are to be transferred.

On 20 January 2009, the Assembly approved a motion that endorsed the report. Therefore, clause 2 has been agreed by the Assembly and Executive Review Committee, and the SDLP needs to explain better than it has done today why it is trying to usurp and undermine that agreement. Perhaps it is genuinely concerned from its own selfish political point of view that Sinn Féin and the DUP will make further progress on a subject that the SDLP and the UUP could not even discuss, let alone get to the advanced stage that it is with us today.

Although I can accept the SDLP's political concerns, it must show leadership on the issue and engage with people who are hungry for a local Minister to whom they can have access and to whom we, as elected Members, can have access to discuss our concerns about how the judiciary is working.

Arrangements for the appointment of a justice Minister under clause 2 are interim measures. They would last until May 2012, at which point the Department of justice would dissolve unless the Assembly were either to extend those arrangements by resolution or to devise alternative arrangements. That puts an onus on every Member in the Chamber to work to resolve arrangements beyond 2012.

Before that date is reached, there will be an opportunity, which was mentioned earlier by Simon Hamilton and other Members, to review the ministerial arrangements that would have worked up to that point and to decide then what is needed to move forward. If the Assembly supports the SDLP amendments, it will remove that opportunity by imposing an unrealistic time frame. Of course, no one wants to see the Department's dissolution in 2012. That is precisely the incentive to agree permanent arrangements.

Despite what the SDLP has said incorrectly, there would be no shortage of Assembly scrutiny of the process. The resolution that would request the transfer of power would be debated and would require cross-community support. The determination of ministerial

offices would be brought to the Chamber. The new justice Minister would be elected by the Assembly with cross-community support.

No matter what the SDLP says, the transfer of policing and justice powers away from London and into the hands of locally elected politicians is part of the St Andrews Agreement; it is not an optional extra. It is also a British Government obligation.

People demand a justice system that delivers. They want access to a local Minister who is in charge of a Department of justice. They are sick and tired of the revolving-door justice system that allows hoods and thugs back onto the streets after they have been arrested. People want to be able to go to a Minister to discuss the policy framework that allows that to happen. They have had enough of seeing death drivers walk free on bail to continue attacks in their communities.

After the transfer of policing and justice powers to the Assembly, the statutory framework that governs policies on what constitutes crime and what appropriate penalties should be would become the responsibility of the Assembly Minister. That is what society wants. Regardless of whether they come from east Belfast or the Bogside, that is what people demand and want.

Although we accept that certain issues need to be resolved, we must use the time ahead to secure consensus. We must all try to ensure that we work with each other's traditions and work together in the Chamber to show the leadership that people expect and want from the Assembly.

The process is moving ahead. The SDLP and the UUP need to face up to and deal with the choices that are in front of them. They can either continue to ignore a political reality, or they can become involved in the process. I hope that they do become involved, give that leadership, put people's demands in front of party interests, and play a constructive and meaningful role towards building the justice system that people throughout society demand and deserve. Go raibh míle maith agat.

Mr Deputy Speaker: I remind Members that mobile phones should be switched off.

Mr Shannon: For the record, Mr Deputy Speaker, my mobile phone is switched off. Just to prove it, its wee light is off. I turned it off earlier when I became aware of what was going on.

I want to speak first to amendments Nos 1 to 4, which deal with one issue. Other colleagues have already spoken on them. I commend those Members for highlighting the nonsense of those amendments, which, with respect to the SDLP, are another failed attempt by that party to establish itself as the opposition, despite the active role that it plays in the partnership Government.

I cannot speak for the people who voted the SDLP into its Assembly seats. I can speak only on behalf of my constituents. I speak with full confidence that I am representing that majority when I say that the people of the Province have been battered and bruised by years of conflict, broken promises and neglect. For too long, we hoped for better days, to no avail. Now, there is no doubt that we are emerging from the deepest darkness. I do not dispute that for a second. However, it is a fool who learns nothing from the past. We, in the DUP, are not fools.

At the outset, let us get it straight that the effect of amendment Nos 1 to 4 will be to shut down the sunset clause contained in the Northern Ireland Act 2009. Ultimately, that clause is a torch in case the lights do not come on and the Department of justice is a failure.

The sunset clause allows the Assembly the freedom to say that the process has not worked and that it must start again. That provides an essential assurance to the people of the Province that the Department of justice is not set in stone. That fail-safe mechanism means that there is light at the end of the tunnel.

I have spoken to my constituents, and it is abundantly clear that, despite their recognition of the need for a Department of justice, they fear that knowledge and power may be given to those who may use it against them and that those responsible for heinous crimes may benefit while moral and upstanding people receive no redress. The only way to dissolve such genuine fears is to build confidence slowly and to ensure that people are aware of the existence of that fail-safe mechanism should their worst fears be realised. That is why the DUP opposes the amendments.

The Assembly was set up not to railroad people but to represent them and to ensure the best for the Province. It is not best for the Province to steam ahead with no regard for people's opinions or for the justifiable reluctance of some. The ability to start anew after a few years is essential to the peace of mind of people in the Province. The DUP hopes to bring along the majority of the people with it in supporting the legislation, and it is, therefore, not possible to accept the amendments.

I am known in my constituency as a people person, and that may also apply to other Members. I speak in the Chamber not on my behalf but on behalf of many members of the public. I listen to what people tell me, and I take it on board. They tell me of the real fear that someone who has been associated with terrorism may be able to control justice, and they say that that could never be acceptable. The DUP makes that point clear on their behalf.

The DUP sits in the Chamber with Sinn Féin today because that party has a mandate. The turnabout of Sinn Féin's position to public support for the PSNI and other signs of change mean that the unionist people

have had to accept that, in a democracy, votes count. However, that does not mean that we will accept someone in the role of justice Minister who has been intimately affiliated with terrorism. Memories of the past have not been, and will not be, forgotten. It is prudent and wise to learn from the past.

It is, therefore, essential that clause 2 remains as is. Were the DUP to accept the SDLP amendment, instead of a system requiring a cross-community vote that incorporates a veto security lock, the appointment of a Minister of justice would be left in the hands of the d'Hondt system. For many unionists, that would mean the end of their confidence not only in a justice Minister and Department but in the Assembly as a whole. That is a critical factor.

The Province's unique history has left it in a unique situation. We have suffered as no other country in the UK has suffered, and the scars, mistrust and fear run deep. That is a natural result of years of terrorism, and it is simply not realistic to expect people who have been terrorised and abused for years to welcome a Bill that would allow for a Minister of justice from the Sinn Féin Benches. It would be an insult to the memory of those who suffered and made sacrifices to ensure that genuine justice is achieved. The DUP will not allow it.

It is possible that the game playing in which the SDLP is engaging today may cause the majority of people in the Province to lose faith in the Assembly and its ability to govern Northern Ireland. When I read amendment Nos 3 and 4, which seek to rush the process, I wonder exactly what the SDLP seeks to achieve. It wants to apply pressure so that the system is in place before the people are ready to trust and believe in it. That must not happen, because unionist confidence is vital.

Members are here to represent, not railroad, the people. I will have no part in what the SDLP is trying to achieve. The establishment of a Department of justice and the appointment of a Minister of justice can come about only when the electorate places sufficient trust in the process and the system. At present, the people whom I represent have no confidence in the d'Hondt system and badly need reassurance that the appointment can happen only with the approval of the largest unionist parties. The SDLP must consider what the people whom it represents want. If they had wanted a Sinn Féin Minister in charge, they would have voted for Sinn Féin instead of the SDLP. The SDLP would do well to remember that it is the party that is playing games.

I have a fair idea who voted for me, and I know that cross-community voting happens in my constituency. I am more than satisfied that I represent all my constituents when I say that the security of clause 2, as it stands, is required. We are nowhere near reaching the level of

trust required for the SDLP amendment to be acceptable.

We cannot treat the Bill as if we were travelling in the rush hour. If the people of the Province are not comfortable with the arrangements being steamrolled through by the SDLP within seven days, there cannot be a designated day or dissolution.

This is a delicate business that must be treated with care and consideration. Reading the proposed new clauses, I honestly do not know what reality the SDLP is living in, but I know that it is not the one that the rest of the Province faces daily. That is why I support the Bill but not the amendments.

5.15 pm

As a Member of the Committee for OFMDFM, I have sat through evidence sessions on the Bill, and I have listened today to Alex Attwood defend his stance on and reaction to the Bill. I know that he will not be entirely convinced by what other Members have said in the Chamber.

I know for a fact that the people of the Province are watching and listening to this debate with great interest. I reiterate the point that we will ensure that controls and safety measures are in place and that there is confidence in our ability to protect that position and the people whom it represents. We will also ensure that the Bill is not steamrolled through and that the appropriate measures are in place. In fact, we believe that those are in place in the Bill already without the SDLP's changes, schemes or amendments.

We have listened to our constituents, and we will abide by what they want and need. They need the sunset clause and the cross-community vote to apply to ensure safety. We will ensure that that happens. Our constituents need us to dismiss the SDLP's amendments and to ensure that common sense and wisdom prevail. We will do that, too. They need us to ensure that the process is not rushed by unreal deadlines. That is what we will do.

For the sake of the people of Northern Ireland, I ask the SDLP to stop playing games and to do what it is elected to do. It must represent its voters, who wanted it, not Sinn Féin, in a position of power. We need devolution of policing and justice, but only at the right time and with the right person at the helm. Rather than furthering the case for devolution, the amendments do the opposite and, therefore, cannot be supported. I subsequently support the Bill as it stands, and I oppose amendment Nos 1 to 4.

Mr McFarland: I declare membership of the Assembly and Executive Review Committee. I wish to speak about clause 2 in particular, which Members on this side of the House will be voting against. That is because the entire Bill is a back room deal between the

DUP and Sinn Féin. My party was neither involved in nor consulted on the Bill, which was pushed through the Committee by the two big parties.

Mr Hamilton: The Member said that this is a back room deal that he and his party were completely unaware of. Was the Member not sitting three seats down from me throughout the Assembly and Executive Review Committee's deliberations on this issue and the proposals?

The First Minister (Mr P Robinson): He was here during the Second Stage debate, too.

Mr Hamilton: As the First Minister pointed out, the Member also sat through the Second Stage debate in the Chamber. Therefore, for him to say that he and his party are unaware of what has been proposed is a complete and utter fallacy.

Mr McFarland: Mr Hamilton knows that the Member for Foyle made it clear in her speech earlier that this came out of a deal that was done at St Andrews. That is what she said, and she quoted bits and pieces of the sunset clause that was agreed at St Andrews. The clause was agreed between the DUP and Sinn Féin at St Andrews. *[Interruption.]*

Mr Deputy Speaker: Order.

Mr McFarland: As everyone will recall, the deal then got stuck for 154 days before it was unlocked when the First Minister and deputy First Minister came to the Committee, at which the Member was present, and announced a 35-point plan that they had agreed privately, without any reference to my party. Therefore, I am correct in saying that this is a deal between the DUP and Sinn Féin.

The First Minister: Will the Member give way?

Mr McFarland: No, I want to progress my argument a bit. *[Interruption.]*

I will give way in a minute, so I ask that the First Minister bides his time.

Clause 2 is a complete perversion of the system that is used to elect Assembly Ministers. It is not for the benefit of the Assembly; rather it is for the benefit of the First Minister and deputy First Minister, who have dug themselves into a hole and are now trying to get out of it by using this system.

It is not the first time that the DUP, in particular, has ended up interfering with Assembly procedures. We all know that the DUP, at St Andrews, messed around with the system for electing the First Minister and deputy First Minister. That will, I suspect, lead to Mr McGuinness being elected Prime Minister of Northern Ireland at the next Assembly election. People need to remember that about the Democratic Unionist Party.

The First Minister: Will the Member tell the Assembly how the DUP messed around at St Andrews

with the positions of the First Minister and deputy First Minister? If the Member took the time to read the St Andrews Agreement, he would see that it states that the position of First Minister goes to the largest party in the largest designation.

Mr McFarland: The First Minister knows that, subsequent to the St Andrews Agreement and the dealings around it, his party acquiesced — it did not die in a ditch, or object — to a change that Sinn Féin very cleverly managed in agreement with the DUP. That change was that the position of First Minister would, from then on, be given to the largest party. Given the way in which the TUV is fracturing the DUP, we will end up with three unionist parties, Sinn Féin as the largest party, and Martin McGuinness as Prime Minister of Northern Ireland, thanks to the DUP.

The First Minister: Will the Member give way?

Mr McFarland: No; as the DUP keeps telling us, I must progress and move on.

We can see that the DUP and Sinn Féin are fearful of each other and that neither party is willing to take the justice Department. However, the damage to the Assembly system by putting a Member from the Alliance Party into the position of justice Minister is plain wrong.

Electorally, the Alliance Party is a tiny party, and it has no right to the justice Ministry. It is sad, as has been mentioned, that the Alliance Party is so ready to ditch the principled position of opposition that we have heard so much about for the past two years. Almost the first thing that Mrs Long said when the Assembly was formed in 2007 was that the rest of us were in the Executive together, that the Alliance Party was the only party of principle and the only party in opposition, and that it would hold the Government to account. It is interesting that all that has been ditched. The Alliance Party has sacrificed its principles to save Ulster.

Clause 2 clearly shows that the justice Minister will be selected — *[Interruption.]* Shush — *[Laughter.]* The justice Minister will be selected and, if necessary, deselected by the First Minister and deputy First Minister.

Dr Farry: Will the Member give way?

Mr McFarland: Yes, go on then. *[Laughter.]*

Dr Farry: Will the Member clarify whether his party is against saving Ulster?

Given that his party has seats on the Executive, will the Member clarify whether his party is part of the Government or is an opposition party. The Alliance Party is clear that it is not in the Executive, and, because of that, it plays the role of opposition. We have ambitions to win our place in the Government, perhaps in the near future or some time in the future.

The Alliance Party never said that opposition is a party principle. Good governance is a principle of the party, and we are happy to play our role in providing that, whether outside the Executive or in the Government. If the Alliance Party is in the Government, it will know that it is. Unlike the Member's party, we will not be in the Government and in opposition at the same time.

Mr McFarland: Jolly good: we have Her Majesty's principled opposition. Crack on.

It is perhaps a bit strong to call the justice Minister a puppet. However, the threat to remove that Minister if he or she does not behave is real and will remain so. The ability of the two largest parties to influence the justice Minister, even through a quiet word in the ear, exists. No Minister should be put under such pressure.

The DUP tells us that community confidence must be in place before the devolution of policing and justice, and that the DUP is going to be able to measure that confidence. If that is so, and if that confidence exists, which will have to be the case before anybody moves forward, why can the justice Minister not be a normal Minister and be elected by the d'Hondt mechanism?

Mr Ross: I have listened to the Member's argument as it has progressed. He said that he has no confidence in the Alliance Party taking the justice Ministry and that he wants to run d'Hondt. Does that mean that the Ulster Unionist Party thinks, as it did in 2002, that Sinn Féin should be eligible to take the post of justice Minister?

Mr McFarland: Sinn Féin has made it clear that it will not take the post, as has the DUP. Why should Sinn Féin — *[Interruption.]*

Let me kill this canard completely, because the DUP goes on and on about it. If d'Hondt is run, the largest party has first choice. The largest party in the Assembly is the Democratic Unionist Party. If the Democratic Unionist Party does not want to take the justice Ministry, that is its choice as the largest party. If the DUP wants to give the Ministry to Sinn Féin, that is its problem. Do not ask the Ulster Unionists about that. Unfortunately, we are not the largest party in the Assembly, although the way that the DUP is going, we may be again in the future.

Mr Beggs: Does the Member accept that he has illustrated the lack of confidence that surrounds the devolution of policing and justice?

Mr McFarland: There seems to be a lack of confidence all round; there is caveat upon caveat upon caveat.

I end my remarks on the group 1 amendments by making reference to the sunset clause. The way we are going, the Minister of justice will have two years in post at best. As it does not look as though there will be

agreement before Christmas, devolution will probably happen in the spring. A date of May 2012 for closure on the matter gives the Minister two years in post before he or she — presumably Lord Ford or Baroness Long — is removed. *[Interruption.]* Shush.

What happens if the justice Minister is not re-elected in 2012? If you put all the questions together, it shows that the system is a daft one to introduce when we have one that works perfectly well.

Alex Attwood covered the default system over the sunset clause and the intervention that the Secretary of State will make when no agreement can be found on the way ahead. The way things are going between the DUP and Sinn Féin, agreement is unlikely before the next election. After the election, the party positions may change. Why get into a situation of delayed crisis in 2012 when the standard Assembly system could be adopted, regardless of private agreements between the DUP and Sinn Féin about not taking the job? Why not run the d'Hondt system and, if confidence exists, have a fully operational Assembly right from the off?

The Bill is deeply flawed, and we will not support any measure that damages the integrity of the Assembly.

Mr Durkan: I support the group 1 amendments and oppose clause 2 standing part of the Bill.

Confidence has been talked about quite a lot in relation to the devolution of justice and policing. Inside and outside the Chamber, there has been much emphasis on the necessary confidence that people need before the devolution of policing and justice powers can take place. People want to have confidence, not just on matters now but on matters in the future. People want to have confidence in the budget situation, not just for the next two years but for the years ahead. People want confidence and assurance on the operational independence of the Chief Constable, although some of those who are insisting on it have been trying to put pressure on the operational independence of the Chief Constable by introducing various preconditions in our deliberations this week. Nevertheless, confidence is an issue not only for the short term but for the long term.

5.30 pm

In the past, parties have said that, in their experience and interpretation, one reason why the devolution of justice and policing should not be rushed is that people need to gain confidence in these institutions and that the building of such confidence would provide grounds for confidence in the devolution of justice and policing. On the basis of the issue of confidence, which has been stressed so emphatically by many other parties, we have tabled the amendments, which go to the core of an issue that projects a serious lack of confidence and creates serious grounds for concern: the so-called

sunset clause that was built into the Northern Ireland Act 2009, which was passed in Westminster.

That clause states that the Department of justice, which will be created on the basis of public confidence in 2009 or 2010, will automatically dissolve on 1 May 2012 if there is no agreement to continue the current arrangement, which we are told is an interim arrangement that is proposed in the Bill. However, the Bill provides that the interim arrangement might be the long-term arrangement. We must agree to that if we are to prevent the dissolution of the Department of justice in May 2012. Alternatively, we can agree to another model from the menu that was provided by Secretaries of State in various pieces of legislation. That will prevent dissolution in 2012. Of course, we could agree to use d'Hondt.

Our amendments would ensure that, at this time, the Assembly has the option to still use d'Hondt for the appointment of the first devolved justice Minister and not rely solely on election by cross-community vote. Our amendments do not absolutely exclude the possibility that parties will use their numbers in the Assembly to have an election by cross-community vote. They mean that we will retain the possibility of electing by d'Hondt if the Assembly, on the basis of the statements and reports that would be made by the First Minister and the deputy First Minister, has the confidence to go that way.

Amendment No 2 creates the obligation on the First Minister and the deputy First Minister to report to the House. It would allow the First Minister and the deputy First Minister to demonstrate and advertise political and public confidence in the prospects for the devolution of justice and policing.

Mr Elliott: Will the Member provide clarity: if the Ministry of justice falls in 2012, where will the powers be designated?

Mr Durkan: The Member moves me to a topic that is slightly astray from where I want to be. We do not know the answer. That is one reason why the First Minister and the deputy First Minister should make a statement to that effect. When we raised those questions previously, we were told that we were wrong, that there is absolutely no fallback or that the Secretary of State would not use the fallback that might exist. The reality is that the nature of the fallback in paragraph 8 of schedule 1 to the Northern Ireland Act 2009, which was passed in Westminster, means that the Secretary of State will impose a model for the Ministry. However, that model of a Minister and a deputy Minister would still require an election in the House. Even if there is a fallback, Ministers might not be appointed.

Mr A Maskey: The Member is providing a lot of conjecture about what might be a fallback. Will he tell us whether there is a fallback position and, if so, what

it is? He argues that there is a fallback position, but he cannot tell us what it is. On the other hand, his party says that we face grave consequences because there is no fallback. Will he clarify his position?

Mr Durkan: I thank the Member for his point. We have clarified that, but the confusion is in the position that the Member and his party are defending — a position that will be in the Bill, combined with the twin Westminster legislation. At the Bill's Second Stage, Alex Maskey said emphatically that there was no fallback but, at my invitation, in a later intervention, John O'Dowd said that of course there was a fallback and that, sensibly, there had to be one.

The contradictions and the riddles are in Sinn Féin's position. On the one hand it says that there is no fallback; it makes a virtue of saying that the sunset clause has absolutely no fallback and that it is curtains if nothing else is agreed. On the other hand, John O'Dowd insisted at Second Stage that there has to be a fallback. Now Sinn Féin is saying again that there is no fallback.

From the DUP Benches, we heard the First Minister say that it could be argued that paragraph 8(3) of schedule 1 to the Northern Ireland Act 2009 provides a fallback for the Secretary of State to impose a model for appointing a Minister of justice and a deputy Minister of justice after 2012 but that he thought that it would be politically unlikely that a Secretary of State would use such powers. Legislatively and theoretically, there could well be a fallback, but whether that is politically feasible is seriously open to question.

The question for us as legislators is whether any of that is satisfactory. We should be saying that the confusion about whether there is a fallback or whether a notional fallback is politically feasible and achievable is, from our point of view as legislators, simply not good enough. The devolution of policing and justice is so fundamentally important that we should not leave it on a wing and a prayer, against all the vicissitudes, vagaries and try-ons that could be used in the run down to the 2012 deadline for the dissolution of the justice Department. The Sinn Féin, DUP and Alliance Party Members are defending the twin Westminster legislation. They are saying that the sunset clause that dissolves the justice Department in May 2012 is a good thing.

To all the people who are defending the dissolution of the justice Department in 2012, what does that mean? It means that the Department will cease to be, but the Minister will not. Perhaps we do not have a problem, so long as we have a Minister. However, as Alex Attwood pointed out, under our system, with the exception of a few laws that make specific reference to the Minister of Finance and Personnel, the power and authority are vested in the Department.

When the Department ceases, what happens to its various functions? Members have decried the list of interests that Alex Attwood mentioned, such as the Prison Service. The Prison Service does not exist as a non-departmental body; as it stands, it is simply part of the NIO. On the basis of everything that we have been told by the First Minister and the deputy First Minister, the functions that are intended to be transferred will be part of the Department of justice. As things currently stand, that is where the Prison Service will be. If the Department of justice is dissolved, what will happen to the Prison Service? The same applies to the Youth Justice Agency; it will be in exactly the same position. It is part of the NIO; it is not a Next Steps agency or a non-departmental public body. The Compensation Agency and Forensic Science Northern Ireland are in a similar position; they would be integral parts of the Department of justice that would be dissolved.

The people who insist on the need for confidence and certainty for the future are the people who are giving us this legislation. They say that it is a good enough basis for them. They say that it will be all right. They do not care about the difficulties that there were when the Executive did not meet, the big ticket issues or the strategic issues that we could not agree on, that we are disagreeing on and that we are running into the ground. They are confident that everything will be worked out just fine, just in time by May 2012. Who seriously believes that? If there are going to be difficulties in May 2012, is it not better to ensure that we do not get there in the first place by making sure that we do not rely on such a dangerous device or ensuring that, in the absence of agreement, there is a safe, clear, known fallback? Our amendments would provide that the safe, known, absolutely reliable fallback in 2012 would be d'Hondt.

Martina Anderson said that Sinn Féin's preference is a return to d'Hondt in 2012. If Sinn Féin really believed that, it would support our amendments. Our amendments would stipulate that, by law, we would revert to d'Hondt in May 2012 if other issues were not agreed. If Sinn Féin wants to be believed on that, it can prove it by supporting our amendments. Of course, nobody believes Sinn Féin on that.

Mr O'Dowd: The Member says that nobody believes Sinn Féin. I think that you will find that the vast majority of the nationalist, republican electorate believe Sinn Féin. Let us not have such sweeping comments. In relation to a number of points that you are making, I have sat through several hours —

Mr Deputy Speaker: I ask the Member to refer all his remarks through the Chair.

Mr O'Dowd: I was following the example set by the First Minister earlier, but I will take my lead from the Deputy Speaker.

Mr Deputy Speaker: Order. You are questioning my ruling, Mr O'Dowd. When the First Minister spoke, he did not use the word "you"; he referred his remarks through the Chair, and I ask that you do the same.

Mr O'Dowd: I am always enlightened by the Deputy Speaker. As for the SDLP amendments and contributions, they seem to base their arguments on the premise that Armageddon will commence if agreement is not reached within 30 months. However, their amendments state that, if agreement is not reached within 14 days of the devolution of policing and justice, Armageddon will commence. I would much prefer to place my bet on a 30-month timescale than a 14-day one. I believe that we can achieve agreement. It is not guaranteed — nothing is guaranteed in life, especially not in politics — but I am sure that agreement will not be reached within 14 days.

Mr Durkan: The Member seems to be referring to amendment No 3 when he raises the issue of 14 days. Amendment No 3 would provide that, within 14 days of the relevant date, if the Assembly has not received the report by the First Minister and deputy First Minister that would be required by amendment No 2 and if the Assembly has not voted to appoint a Minister by cross-community vote, a Minister would be appointed through the d'Hondt mechanism. It would not be Armageddon; nothing would stop. The process would move on.

Amendment No 3 would provide that we would know within 14 days that the election would either be by cross-community vote, which some Members appear to favour, or by d'Hondt. Our amendment would allow everyone who supports d'Hondt, both now and in the future, if it is departed from in the short term, to fully do so. Equally, it would allow those who still insist that a justice Minister could be elected only by a cross-community vote to do so. The amendments would not prevent the first devolved justice Minister from being appointed by cross-community vote; they would ensure that d'Hondt would still be an option.

The test is that the First Minister and deputy First Minister come before the Assembly to deal with the issue of the target date of May 2012. The First Minister and deputy First Minister gave us the sunset clause. We did not ask for or seek it. They said that the devolution of policing and justice would occur on the basis that the Department would be dissolved in May 2012. Sinn Féin is telling the nationalist community that it will really put it up to the DUP and will insist on terms, because there is no fallback otherwise. That will end up in a serious game of chicken that will go right down to the wire. The Assembly has the right to know whether that is happening. We cannot pretend that there are not all sorts of political games going on in what Members are telling their electorate and saying what each clause means or does not mean. We cannot pretend that Members are not telling people in their backwoods that

there is a fallback, that there really is a way around this and that the sunset clause is not a bad thing.

5.45 pm

As a competent legislature and Chamber of accountability, we have a right to demand clarity and openness if different sections of the community are being given different assurances. It is a legislature's job to know the basis on which legislation is being adopted. That basis must not be confounded later by all sorts of other interpretations and hidden understandings.

Mr A Maskey: There has been much conjecture about the nature of the fallback position. Some people claim that there is no fallback position, but the Member tells us that there definitely is. However, no one other than the First Minister and deputy First Minister has said that they have agreement to do anything until May 2012. It has been stated clearly that there is no agreement on what to do beyond May 2012. Will the Member tell us whether his party can get agreement with anybody here to take matters forward until 2012, never mind beyond that date?

I do not know what the Member needs to hear for the situation to be clearer to him. Agreement has been reached to transfer powers if we can agree a date between now and May 2012. There is no agreement beyond that date; there must be agreement by May 2012 if the matter is to be taken forward. The sunset clause is in the Bill to ensure that people's minds are concentrated. Will the Member tell the House with whom his party will get agreement to take devolution forward tomorrow, next week or at some other stage within 14 days if the amendment is agreed? He has not told the House of a single way in which his party can take matters forward.

Mr Durkan: The Member is entirely wrong, and, not for the first time, he made a statement that distracts and misrepresents. The Member said that there is agreement on how to deal with these matters until 2012. Of course there is agreement between Sinn Féin and the DUP on how to deal with these matters until 2012 and on how to shaft the SDLP. There is agreement on how to depart from the rules of inclusion according to democratic mandate, show patronage to one party and discriminate against another that has a democratic entitlement. I resent that agreement between Sinn Féin and the DUP, but I am not jealous of it.

Earlier, the Member decried the fact that the UUP will support some of the SDLP amendments but not others. I have no qualms about agreeing with another party where possible, but we will always retain our position. Unfortunately, when Sinn Féin agrees with the DUP, it ends up adopting the DUP's position. I am proud that we have not adopted the UUP's position of not wanting a deadline or target date for devolution.

We do, and that is our clear position. We have not surrendered our position or been distracted from it for the sake of agreement with the UUP or any other party.

Sinn Féin claims to believe in inclusion under d'Hondt, but it has departed from that position completely. Where did the deadline of May 2012 and the sunset clause come from? The sunset clause was the fig leaf that Sinn Féin produced in desperation to cover up the fact that, in July 2008, the deputy First Minister agreed with the First Minister that the justice Ministry would be established on the basis of a cross-community vote at all times. In our recent talks, the DUP boasted that it had a permanent veto and would be able to use that to veto any Sinn Féin Minister. The DUP also told us that it may agree to a member of the SDLP being appointed Minister of justice at some stage — that was nice of them — but its main point was that it would permanently be able to veto anyone from Sinn Féin being appointed Minister. It was only when we pointed out the folly of Sinn Féin's negotiation and its concession to depart from d'Hondt and democratic inclusion for this post, not just temporarily or for the first appointment but for all time and in perpetuity, that Sinn Féin desperately tried to recover its position.

When we pointed out Sinn Féin's folly, the First Minister asked us to ease off because the process was going nicely for the DUP. He told us that difficulties had been created only because we had alerted Sinn Féin to the problem. Perhaps we contributed to making sure that Sinn Féin saved itself, to a degree, from its mistakes.

However, its answer has given the rest of us a serious problem because of the effect of the sunset clause as it is framed. We did not frame it in that way; we did not invite the threatened dissolution of the Department. The fact is that, as things stand, the dissolution of the Department will have fundamental implications, not for the Police Service of Northern Ireland — it is constituted outside of the Department and has a separate legal constitution — but for the Prison Service, the Youth Justice Agency, the Compensation Agency and Forensic Science Northern Ireland.

We are told that that situation will not come to pass. I really hope not. All of us will have to work very hard to make sure that that does not come to pass in those terms. All of us will have to make every effort, because we cannot afford it. However, whether all of us will be allowed to play a role in that regard is another matter because, as we have seen in a large part of this process, we are told that we have responsibilities but that we have to wait until we get the call, cue or invitation before we are able to say or address anything that is relevant to our responsibilities. Sometimes the rest of us only get a role in trying to unravel some of the problems

and difficulties and in trying to unhook people from some of the hooks onto which they have climbed.

If things can be done to avoid having an impasse in 2012, let us do them. The first thing that we could do is correct this legislation. That would help. We could make sure that we have an option now, in the short term, so that we do not have to go only by the cross-community-vote, departing-from-the-agreement route; or we could make sure that, as a way out of the dissolution crisis that we could face in 2012, we would have the safe fallback of d'Hondt.

People tell us that we should think positively about this process and that we should forget all the experiences of the past two and a half years and have wonderful expectations of the next two and a half years. That is great; I hope that it is all sweetness and light and Shangri-La in May 2012. However, if people are so confident that it will be so good and will all work very well and very positively, why not have d'Hondt as the fallback? The danger is that, by having the device of the sunset clause with the dissolution of the Department, we are creating a temptation for parties to play chicken, to use leverage, to manipulate things, to grandstand and to barter on other issues.

Even this week, we have seen how an issue like the devolution of justice and policing is being used to gain leverage and purchase on all sorts of other issues that are completely unrelated, hardly related or, in some cases, are being quite dangerously interrelated in a way that is unwarranted. When we know how people use those devices to create trouble and difficulties and to create stand-offs and all sorts of stand-and-deliver tactics, why so casually legislate again for that on a matter such as this?

Everything that I have said so far has related very much to the issue of the Department. I listened to Naomi Long from the Alliance Party and somebody from Sinn Féin trying to say that the SDLP goes on about the Minister as though it is its Ministry and that people are not talking about the Department. The questions that I have raised are about the Department and its role and stability. We cannot say that this legislation absolutely guarantees the stability of the Department, because it is the one Department whose dissolution is legislated for. If we want to have confidence to say that its stability is guaranteed, we should be addressing these issues. That is what our amendments are about.

I do not believe that it would be too tall an order for the First Minister and deputy First Minister to make the sort of report that is requested in proposed clause 2A, which would require them to come to this House and soberly, clearly and plainly address those issues on the basis of the best legal and Government advice.

I do not doubt the capacity of the House to make the judgements that must be made within a week or two weeks, conscious of the parties' voting strengths. Thus, despite people trying to say, as Simon Hamilton did, that we are not being "real" politically, the fact is that we are being very real politically about where the balance of forces lies in the House. However, we are trying to take at their word people who say that they still want d'Hondt; the amendment gives them the chance for that, either in the near future or by 2012. Similarly, the amendment gives those who say that they are concerned about stability, about ensuring that there is confidence and about making sure that the Department is durable a way of avoiding the very dangerous, potentially nightmarish, sunset clause.

Regardless of which party nominates for the position of justice Minister or what means of appointment is used — d'Hondt or cross-community vote — May 2012 may not be the first test of that Minister's position. An Assembly election is scheduled for May 2011 but may take place sooner. The Minister may or may not be re-elected to the subsequent Assembly. Whether or not the Minister is re-elected, a cross-community vote will still be required for the election of a justice Minister in the new Assembly.

After the Assembly election, parties will be thinking very seriously about the May 2012 sunset clause. Therefore, while the parties negotiate the formation of the Government, how to run d'Hondt and the Programme for Government, there will inevitably be negotiations about who should be elected as the justice Minister by cross-community vote. Parties will be tempted to front up some issues in relation to May 2012, and, in those circumstances, they might be naive not to indicate some of their ambitions and intentions in respect of May 2012.

Hence, it might well be that after the Assembly election we wait some time before we appoint a Minister, because the relevant 2009 Westminster legislation provides that the Executive can be formed on the basis of running d'Hondt for all the other ministerial posts. The Executive can be formed on the basis of the First and the deputy First Minister being appointed and all the other posts being filled. The Executive can continue without the justice portfolio being allocated.

At least after May 2011, there would be a justice Department and there would not be a question mark over the Prison Service, the Compensation Agency and the Youth Justice Agency. In those circumstances, there would be a Department without a Minister, whereas in May 2012, we could potentially have a Minister without a Department. Therefore, under the Bill's current provisions, we may not have to wait until May 2012 before difficulties emerge and games of chicken are played.

Mr O'Dowd: The Member is indicating that the legislation, as it is currently penned, is not competent. His argument is that the legislation could create the scenario of having a Minister but no Department. Surely, as the report went through the Assembly and Executive Review Committee, the Assembly and Westminster and is now back in the Assembly, some of the highly qualified individuals in all those places would have copped on that we were putting legislation that is not competent through Westminster and the Assembly. However, the Member is telling us that the legal eagles in his Front Bench have spotted it, revealed it and are now bringing it to the public's attention.

Mr Durkan: I advise the Member that this is not a recent discovery. When the legislation was going through Westminster, I and others pointed out that issue, and the Government did not contest it. The Government did not contest that that scenario would be the effect of dissolution. The only thing that the Member, because he is not contesting —

Mr O'Dowd: On a point of order, Mr Deputy Speaker. Is it in order for the Assembly to debate or discuss legislation that is not competent?

Mr Deputy Speaker: The legislation that is in front of the Assembly, Mr O'Dowd, has been deemed by the Speaker to be competent.

6.00 pm

Mr Durkan: I am not the first Member to refer to the sunset clause, which is also part of the twin legislation in Westminster that, similarly, provides for a departure from d'Hondt. In the Second Stage debate and today, Sinn Féin strongly relied on and invoked the sunset clause, and it talked about there being no fallback position.

(Mr Deputy Speaker [Mr Dallat] in the Chair)

The sunset clause deals with the Department's dissolution: it does not address whether there will be a Minister or not, so the position seems to be that there could be a named Minister in limbo with no Department. Of course, the twin Westminster legislation also ensures that, in the event of an election, the Assembly's failure to elect a justice Minister by cross-community vote will not prevent the Executive being formed and the other Ministers being appointed to discharge their duties. Therefore, the scenario has been legislated for.

I did not write the legislation: other parties supported it and said that it is all about generating confidence, certainty and stability. Nevertheless, in 2011, we could end up with a Department without a Minister for a long time, when other Ministers will have been appointed and will be doing their business. In 2012, we could end up with no justice Department but with a notional Minister floating in the ether like a lost

boy or girl in a strange land. Mr O'Dowd may be right to question whether that legislation is competent and sensible. For a lay person, it does not seem like a competent or sensible way to govern; however, it is the way chosen by Sinn Féin, the DUP and the British Government.

The substantive reason for clause 2 is to gerrymander the appointment of the Minister; it is the provision to bypass the laid-down rule for democratic inclusion and proportional representation in the Executive. I agree with Naomi Long: the d'Hondt mechanism is not the only mathematical formula that can be used to effect democratic inclusion. However, rightly or wrongly, it is the only one set down in the Agreement and in the Northern Ireland Act 1998. Others mechanisms may be favoured, and, during the talks, we canvassed for others, but we had no takers for any of them. Some parties liked the d'Hondt mechanism either because they had experience of it in the European Parliament or because they had suggested in proposals and talks in previous Assemblies that it would be a good way to share committee positions. However, there was no interest in other mechanisms, such as the Sainte-Laguë system. We have no problem with looking at those sorts of things in the context of a properly constituted review of the Agreement and based on the principle that it is about a finding means of democratic inclusion. We do not, however, entertain the idea of abandoning d'Hondt in favour of anything like voluntary coalition.

Contrary to what Martina Anderson said, the SDLP has been clear and consistent about what I said in the speech that I made in Oxford, when I robustly defended d'Hondt both now and in the future. I also roundly condemned Sinn Féin for departing from d'Hondt in respect of the justice Ministry and for being prepared to completely abandon the principle of inclusion by democratic mandate in the comprehensive agreement in 2004, when Sinn Féin insisted that parties had to vote for First Minister and deputy First Minister if they wanted to be included in Government.

Consequently, the SDLP and UUP would have been excluded had they not voted for DUP and Sinn Féin candidates for First Minister and deputy First Minister. It was only the SDLP's talks with the DUP before the St Andrews Agreement that prevented that from happening. The position of Sinn Féin, the British Government and the Irish Government was that inclusion would not be by democratic mandate; rather, parties would only be included if they submitted their mandate to the parties of the First Minister or the deputy First Minister. When the SDLP was negotiating d'Hondt in the Agreement, it negotiated true inclusion, not just for itself or with traps to get other parties to exclude themselves. Of course, when Sinn Féin was doing it, it did so to suit itself, and to hell with anybody else, even other nationalists.

No one else had democratic rights unless they bowed the knee to Sinn Féin. I am proud of the fact that the SDLP stood for inclusion according to mandate. That is why we stand by it now. We would stand by that principle regardless of which party found itself in this predicament or which was to be the victim of this deviation from the norm.

We are given nonsense explanations as to why this should not be the norm. Yet again, Martina Anderson misquoted section 17 of the Act and particularly subsection 4. Section 17 of the Act states that for there to be more than 10 Departments, consent must be given by the Secretary of State. That applies even now; it applies to the method, the Bill, that other Members are supporting. The approval of the Secretary of State is needed. *[Interruption.]*

Alex Maskey says that the SDLP is looking for a way that needs the consent of the Secretary of State, but the way that Sinn Féin is going needs the consent of the Secretary of State. For there to be an extra Department, consent must be given by the Secretary of State. *[Interruption.]*

Mr Deputy Speaker: Order. Remarks must be made through the Chair.

Mr Durkan: I want to make the point to Mr Maskey that the creation of an extra Department to bring the number of Departments to more than 10 needs the agreement of the Assembly on a cross-community vote. That is the point on which Martina Anderson misquotes section 17(4) of the Northern Ireland Act 1998. She said that section 17(4) means that if there is going to be an extra Department, the Minister must be elected by cross-community vote. Such a presentation is a sleight of hand. The cross-community vote is required only to agree that there should be an extra Department, beyond the total of 10. The Secretary of State's consent is required as well. That condition applies if the appointment is by d'Hondt, and it applies equally to this Bill, which is the way that Sinn Féin has chosen.

Mr A Maskey: I thank the Member for giving way. Will the Member confirm that, whatever about having to go to the Secretary of State, these decisions require agreement between people here before we go anywhere? If that is the case and the Member accepts that, can he tell us with whom he can get agreement about any of this? He has not told the House that.

Mr Durkan: That is what we are in the business of doing here by way of this legislation. It is what we are trying to do in the Assembly and Executive Review Committee. However, those are not genuine all-party negotiations for two reasons: there are questions as to how well all parties are represented in those discussions, and also because those discussions are confined —

Mr A Maskey: On a point of order, a LeasCheann Comhairle. Is it in order for the Member to question the integrity of the Assembly and Executive Review Committee? That is what the Member has just done. That is a fundamental question that must be addressed by you, as Deputy Speaker. It is a serious statement to make.

Mr Deputy Speaker: I leave it to the Member to explain.

Mr Durkan: Allow me to clarify: I said that one could not call the Assembly and Executive Review Committee an all-party negotiation because, first, there is a question as to how well-represented all the parties are. Is the Member saying that all parties are on that Committee? They are not. That is a limitation of the Assembly and Executive Review Committee.

[Interruption.]

Secondly, that Committee finds itself constrained because some things are subject to determination, decision and cues from the First Minister and the deputy First Minister. A lot of these matters were already pre-determined according to the very flawed negotiations that took place between the First Minister and the deputy First Minister. Indeed, that is where the sunset clause came from; it was an attempt to unravel some of that damage. Therefore, the Assembly and Executive Review Committee has not been getting an entirely free run on those issues.

That is where we see the “now you see it, now you don’t” game from Sinn Féin and the DUP. Sometimes it is all just them, and aren’t they the boys? It is just the two of them, and they can do everything together. Suddenly, at other times, it is everybody: all parties have responsibility and we are all involved. They speak with forked tongues and are two-faced in so many ways. Those parties are responsible for the inconsistencies and contradictions.

The reason that the SDLP opposes clauses 2 —

Mr A Maskey: On a point of order, Mr Deputy Speaker. I again ask you to reflect on the Hansard report of the debate, because the Member has clearly stated that Sinn Féin and one other party are speaking with forked tongues. Is that appropriate language for a debate in the Chamber? It is a serious allegation, and the Member may well have lost the run of himself because he has forgotten where he is.

Mr Deputy Speaker: I did not hear anything that was unparliamentary, but part of the reason for that might be that Members are ignoring the Chair and are not conducting themselves in the fashion that I expect. If Members speak through the Chair I will have a better chance of hearing what is being said.

Mr Durkan: I want to address some points that Members made in opposing the amendments proposed by Alex Attwood. Members have questioned our

position and suggested that we said that the Minister of justice post is ours and ours alone and that no other party should get it. During the Second Stage debate on the Bill and in the meetings that the SDLP held with the First Minister and the deputy First Minister, I said that the best course to follow was to create a Department of justice from within the existing 10 Departments; after all, the DUP has told the House that it already thinks that there are too many Departments, yet it wants to create another one.

Under the Northern Ireland Act 1998, it is feasible to rejig or merge Departments and create a Department of justice: it can be done. The First Minister and the deputy First Minister can put such proposals to the House and have them passed by cross-community vote. Therefore, contrary to what Naomi Long said earlier, it is entirely within the competence of the House to vote and ensure that we stay within the 10 Department limit. The First Minister and the deputy First Minister could have used their powers to do that and could have run the d’Hondt process. As such, it would neither have been the SDLP claiming that the justice Ministry was its entitlement, nor would it have been a departure from d’Hondt or the Good Friday Agreement. Rather than Members saying that the SDLP’s purpose was to bag the justice Ministry and that no other parties could have that Ministry; that was the way to go. That way is open, and the SDLP has pointed it out on several occasions.

Mrs Long: I appreciate that the Member may have been consistent in his personal position. However, the issue that I raised was not that it was outside the competence of the Assembly to create a Department of justice from within the 10 existing Departments; it was that it was not politically feasible to do so.

[Interruption.]

Again, the Member is speaking from a sedentary position. There is no agreement to create that Department from within the existing 10 Departments. Furthermore, although the Member has been consistent; his party colleagues have not. Today, SDLP Members made interventions claiming that they were entitled to the justice Ministry, not just an eleventh Ministry, and stated that the d’Hondt process should be used for the appointment of the Minister of justice. The Member may be consistent but there is no consistency in his party.

Mr Durkan: I appreciate that intervention and I will reply to it. The Member said that it would not be politically feasible to absorb the justice Ministry into the existing 10 Departments. Why not? It was politically feasible for the First Minister, when he came back from Florida, to say that he was going to kill dead things and reduce the number of Departments. If that is politically feasible, why is it not politically feasible to create a Department of justice from within the existing 10 Departments? There is no reason why it would not

be feasible: the fact is that parties were not tested on it. The only party that canvassed that position was the SDLP.

Mrs Long: I was present when the First Minister made the speech on his return from Florida, when he stated that he wanted to reduce the number of Departments. However, I ask the Member: has that happened? Has the First Minister been able to affect that change? He has not, because he would require more than just his own opinion to do so: the weight of his views would have to be carried by the House.

It is one thing to talk about it; it is quite another thing to do it. The Department of justice could not have been delivered from within the 10 existing Departments because there would not have been agreement to do that. That is the point that has been made today.

6.15 pm

Mr Deputy Speaker: I remind Members to focus their attention on the amendments under discussion.

Mr Durkan: We are speaking to clause 2 stand part as well as to the amendments, Mr Deputy Speaker, and that is why some of those issues are relevant. Members have been questioning whether d'Hondt is a viable option and asking what running d'Hondt as specified in the Good Friday Agreement would mean. It is pertinent to address those issues, particularly given that the SDLP position was questioned and misrepresented at great will earlier in the debate. Therefore, we have to be allowed some room to counter and to account for ourselves. It would also demonstrate consistency.

Therefore, to have the justice Department as one of 10 Departments would have been a feasible option. There is no reason that that should not have been proposed, thought about or discussed. The SDLP certainly did that. We made it clear in various conversations that that was our position, not just recently, but going back to last year, when we had conversations with the DUP on the third floor of this Building. Of course, the party then said that that could not be its position. The DUP could not afford to agree to run d'Hondt for the justice portfolio because that would mean that it could not exercise a veto. That is it, plain and simple.

The SDLP advocated that position all along. However, the DUP, for all its claims that it is worried about the cost of government and about having too many Departments, is insisting on creating an extra Department for its own political necessity and to be devious. That proves the hypocrisy and humbug of the DUP. It says that we do not need 10 Departments, yet it is making damned sure — sorry, Mr Deputy Speaker, darn sure — that we get 11 Departments, not including the Office of the First Minister and deputy First Minister. That is another example of doublespeak, or whatever parliamentary term accords with forked tongue, two faces, and so on.

If we are not to run d'Hondt for the justice portfolio as one of 10 Departments and there is to be an additional Department — the Secretary of State's consent and cross-community support in the House is required for that — in order to be consistent with the Good Friday Agreement and the 1998 Act, d'Hondt should be rerun to take in the justice portfolio. The SDLP is open to that. However, we gathered very quickly that the view of other parties was that a rerun of d'Hondt would be too disruptive to other Ministers, could lead to speculation games on policies and could disrupt the Programme for Government.

If other parties are agreeing to there being 11 Departments but that ministerial posts cannot be filled through rerunning d'Hondt, two things can happen. First, d'Hondt could be rerun with all the parties agreeing the order in which they are nominating Ministers. Remember, that has happened before. Parties had agreed their choices in advance of d'Hondt's being run in the Chamber in 2007. A dry run of d'Hondt had taken place, and parties were free to change their choices if they wanted in the Chamber, but that would have been in defiance of an agreement that they had reached. Legally and technically, however, it would have been within parties' rights to do that. Therefore, parties could reach an all-party agreement to let d'Hondt run and let the justice portfolio be the eleventh choice.

Secondly, on the basis that Sinn Féin and the DUP have said that they are not taking up the post, d'Hondt could be run in the knowledge that the DUP and Sinn Féin are going to pass up on the post, and it would then depend on whether the Ulster Unionist Party nominated first to the position or the SDLP did. D'Hondt would be run, consistent with the agreement.

Of course, Martina Anderson tells us that that is the great "Ha ha" — the great "Gotcha" — to the SDLP position, because such a scenario would allow unionists to nominate the justice Minister. Well, D'Hondt is run according to the principle of democratic inclusion. That is in the agreement for which the Irish people voted, and if we have confidence in the agreement and our institutions, that is that. We are not saying that for a unionist to hold the post is the worst thing in the world. Therefore, it seems strange that Martina Anderson and her party are trying to say that a great confidence is breaking out, that there will be a brave new world, that there is no question of there being any difficulties with the May 2012 date, and all the rest of it, while at the same time insisting that a unionist not be allowed to take the position and stating that the SDLP might have entertained a unionist in the role.

There are ways in which to handle the matter. A rerun of d'Hondt up to the eleventh post has been ruled out, even on the terms on which Sinn Féin and the DUP had already decided that they were renouncing taking up the justice portfolio — a renunciation that

they would simply practise during the rerun. That leaves the remaining option, which is that if there is to be democratic inclusion under d'Hondt, that that be done simply by means of a d'Hondt top-up. That would mean that parties' portfolios for none of the other 10 Departments would change, and the eleventh Ministry would be the eleventh choice under d'Hondt. If the Alliance Party had the eleventh choice under d'Hondt, I would be supporting that option. I have said that before not only in the Chamber but in other meetings, talks, negotiations and chambers.

Contrary to Naomi Long's earlier unworthy allegations, the proof that we are sincere was demonstrated when previous Secretaries of State suggested legislation for various models for devolving justice and policing. One version stated that Ministers could be appointed by a cross-community vote, and there was provision that a Minister could not be from a designation other than unionist or nationalist. Although my party and I did not agree with departing from the Good Friday Agreement by way of departing from d'Hondt, we were not going to agree that, when people were legislating to depart from d'Hondt, there should be further discrimination built in against the Alliance Party. On the Floor of the House of Commons, I protested to the Secretary of State that that was double discrimination; it was preventing the due run of d'Hondt and inclusion, and it specifically excluded one party. Even if that party were democratically entitled to the position, it would have been excluded. If the Alliance Party had a bigger representation here in the future and, therefore, was entitled to a ministerial position under d'Hondt, it would have been excluded on the cross-community basis. That would have been direct discrimination against one party, and the SDLP protested against that because it was wrong. We do not do discrimination or exclusion, unlike the parties that are opposing our amendments.

We heard earlier from the Alliance Party, and, in an intervention, my colleague Declan O'Loan spoke of how that party had strongly trailed itself here as the party of principled opposition. It is no secret that other parties are talking directly and intently about the Alliance Party's providing the justice Minister. Neither is it a secret that the Alliance Party leader, in particular, is being named. He is being named not only by Members but by the Government and the Secretary of State. Let us stop the pretence about the issue. Let us not pretend that there is not an expectation about done deals or anything else. Let us bring a bit of honesty and reality to the issue. The Alliance Party, which was the voice of principled opposition, will come into government on that basis; the opposition will be no more, and the principle never was. That is the position that we will have.

For instance, the leader of the Alliance Party has already received confidential security briefings, and I

know that he has been asked to back off and calm down on issues such as a shared future. Last week, some of us inadvertently discovered that those sorts of untoward approaches were being made to the Alliance Party leader by the British Government. The party was asked to quieten down about a shared future in the countdown to the devolution of justice and policing, and, because that was rumbled, the Alliance Party suddenly went into hot and heavy mode late last week about the devolution of justice and policing and a shared future, and it appeared to introduce its own precondition.

Mr Ford: Get your timetable right.

Mr Durkan: Mr Ford might tell me to get my timetable right, but we know the timetable of the e-mail to the Liberal Democrats in which he might not have said that it was time to be nice to Shaun Woodward, but he did say that Mr Woodward was trying to do the right thing in the current situation and that, perhaps, people should go easy on him. We do not work like that. I used to think that the Alliance Party did not work like that either, but we have discovered differently.

It is for that variety of reasons that we are in this situation. It has corrupted not only d'Hondt and the Good Friday Agreement but there is evidence that it is corrupting the Alliance Party. We are seeing that today, for instance, by virtue of the different language that is being used. We are seeing traces of the voluntary coalition that the Alliance Party wants. It wants a voluntary coalition with Sinn Féin and the DUP, so it is happy to get into the practice of voluntary coalition. Sinn Féin betrayed democratic inclusion when it supported the exclusion of parties that did not vote for the First Minister and deputy First Minister, and, at that time, it was basically opting for voluntary coalition because the principle that a party should be in government only if it votes for the heads of government is part of the theory and understanding of voluntary coalition. Sinn Féin was justifying that.

In fairness, the Alliance Party has been consistent in that, and Sinn Féin has been totally inconsistent.

Mr Ford: Are we being corrupted or consistent?

Mr Durkan: The Alliance Party is being consistent on the issue of a voluntary coalition and corrupted on various other issues, including the shared future and the whole notion of principled opposition. I recall the leader of the Alliance Party telling us that they were in opposition as a matter of principle. In one interview he said that even if they were entitled to a post, they would not take it because they thought that this place needed opposition. He even said that in relation to the justice Ministry. The Alliance Party held the position that it would not even take the justice Ministry because this place needed the Alliance Party in opposition. Of course, that has changed. *[Interruption.]*

This is very much about the Bill; this is about the problems of clause 2 and the entirely false arguments that were raised against the SDLP's amendments and its opposition to clause 2.

The SDLP has been able to demonstrate that its amendments do nothing to wreck the Bill or to prevent the devolution of justice and policing. It has not tabled its amendments as preconditions that would stand in the way of the devolution of justice and policing. None of our amendments, if they were legislated for, would be a barrier or an impediment to the devolution of justice and policing. They would not stop anything from proceeding on a given date. They would ensure that things proceeded according to the agreement if no vote had been taken to do things outside the agreement, which is what other parties want. Nothing would stop.

There is the idea that the SDLP's amendments would create a crisis in 14 days. They would not. They would create certainty in 14 days: certainty that would be well fuelled by the confidence that the public could take from the fact that in agreeing this we were agreeing that once we started a process, that process would continue to full devolution in a reasonable time. There would also be the confidence that would come from the statement that could be made by the First Minister and the deputy First Minister, not just dealing with the issues of 2012 and allaying the different concerns and interpretations that might exist around the sunset clause and whether the fallback arrangements may or may not come into play.

In addition, the statement that we are asking the First Minister and the deputy First Minister to make in our second amendment would include a statement on the functions of the Department of justice. In conversations with the First Minister and the deputy First Minister and others, the SDLP has suggested that questions regarding the functions of the Department of justice are valid and should be examined. The Department should not be defined just by taking the functions, the personnel and the premises from the NIO. If we are talking about a serious project of devolution, let us think about the character and the remit of the Department.

Some functions that are currently devolved could sensibly move to a Department of justice. This is not about party turf and party territory; in my view, the functions that deal with licensing laws, etc, which currently rest in DSD should, very sensibly, go to a Department of justice. Of course, that would have to be proposed by the First Minister and the deputy First Minister and go a vote in the House. However, there are similar functions in other Departments. Various legal functions are tied up in DFP for no other reason than it was felt at the time that there was nowhere else for them to sensibly go. However, they could fit in with a Department of justice. The licensing function rests with the Department of Justice in the South and

with the Home Office across the water, and sensibly so. Those are sensible, straightforward things that could be addressed in the report that the First Minister and the deputy First Minister would make, and they could, possibly, be adopted and reflected in the resolution that the House would adopt under the SDLP's amendments.

The SDLP's amendments are not meant to wreck anything; they are meant to achieve devolution, and to get it done in good, sound and well thought out terms. This group of amendments is not proposed to wreck anything; it is proposed to prevent the wrecking tactics that could come in 2012 and to prevent the uncertainty around the re-election of a justice Minister — or the failure to re-elect a justice Minister — that could happen in 2011. We could do without all of that uncertainty.

That uncertainty about 2011, on top of all the budget difficulties that we will have and the strains that we will be under at that time, could be too big a temptation for some parties.

6.30 pm

We do not feel, on the basis of the experience that we have had, that we can be blasé about those things and simply believe that the worst-case scenario will never come about. As good legislators, we are trying to ensure good prospects and good outcomes, rather than legislate for bad ones and just hope for the best.

Mr McKay: I declare an interest as a member of the Policing Board. This stage of the Bill is another important step towards the devolution of policing and justice, although one would not think that, given the Armageddon attitude of the SDLP. Much of what has been put forward by the SDLP runs contrary to what has been agreed by the Assembly and Executive Review Committee and the Assembly, and that, of course, is deliberate.

Although the proposer of the SDLP amendments argued that there has been no agreement on certain issues, considerable work has been done, and that work is ongoing. Agreement has been reached on a number of issues pertaining to policing and justice, and further agreements will be made in preparation for devolution. All those amendments have not been proposed in the interest of resolving those matters. Indeed, the SDLP Members seem to be very good at telling us what they want but not how they would go about getting what they want while taking account of the stark political reality, as everyone else has to do.

It is similar to the debate about academic selection, when, for more than two years, they criticised the Minister for her proposals but gave absolutely no alternative. What alternative did they give at the end of that debate? The retention of the 11-plus — the status quo. That is no surprise.

Similarly, today, they have no alternative based on the political reality of what we in Sinn Féin are doing in regard to policing and justice. They would probably not mind if the status quo were to remain in this case too, so that they could engage in further politically opportune attacks on us. That is all the SDLP is about these days: attacking Sinn Féin at every opportunity, regardless of how serious the consequences might be. We, however, will continue to build on the political progress made and will not feed into those negative political agendas.

The devolution of policing and justice should happen sooner rather than later, as the Minister of Finance and Personnel has already said, especially given the substantial amount of money that has been secured from the British Government. It would be extremely foolish of us to look that gift horse in the mouth. The sunset clause and the 2012 date create an imperative on everybody to secure agreement, and people will want to see a locally accountable Minister in position post 2012; not a fly-in, fly-out British Minister from across the water.

I have been listening to much of what Mr Durkan said. He mentioned side issues, and Members in his party have referred, in recent weeks, to the full-time Reserve and parades, and they have given out misinformation, particularly in regard to the comments that they made about members of the strategic review into parading, which were simply untrue. The SDLP needs to check its facts. Perhaps that party was feeding the public misinformation for political opportunism.

We should not spend too much time discussing the proposed amendments, because they are mischievous and a waste of time. The reasons for tabling the amendments are politically opportune; they demonstrate the SDLP's negative attitude and the fact that that party is about nothing but scoring points against Sinn Féin. One could be forgiven for thinking that the SDLP is working hard to ensure that the devolution of policing and justice does not come to pass. To date, its contribution to the Bill has been extremely unhelpful and stands in the way of the devolution of policing and justice, rather than helping it. Go raibh maith agat.

Mr O'Dowd: Go raibh maith agat, a LeasCheann Comhairle. It has been a lengthy debate on policing and justice, and perhaps rightly so, but I suspect that the SDLP contributions have relied on quantity rather than quality. SDLP Member's contributions can be condensed down; they have probably lasted around two and a half hours so far.

Despite that party's valiant attempts at the end of each contribution to claim that its opposition to the Bill as it stands is based on concerns to do with d'Hondt and concerns about the Good Friday Agreement, the vast majority of its Members' contributions so far have

been on the needs of the SDLP: they have been about the Social Democratic and Labour Party; the party, rather than the people whom it is supposed to serve.

We would not even be at this stage of discussion on policing and justice if the SDLP's view had been upheld in the previous debate. If the SDLP had had its way in September 2009, policing and justice would have stopped. Transfer of those powers would have been over. We would have gone back to year zero because the SDLP wanted to vote down the Bill.

Despite the SDLP's valiant attempts, we have now reached Consideration Stage of the Bill. We are currently discussing the amendments that the SDLP tabled, as it was perfectly entitled to do. However, it cannot table those amendments on the basis that the Bill is not competent, because the Deputy Speaker has already made a ruling on that. The Assembly can only discuss legislation that is competent. I assume that the same rules are adhered to in Westminster, and I am confident, despite the comments of Mr Durkan, that the Assembly and Executive Review Committee is more than capable of producing a report that fits in with the competency of the Assembly.

The SDLP's argument, through its amendments, is that the Assembly and the public are incapable of reaching agreement within 30 months. According to that argument, Armageddon will fall upon us all at the end of those 30 months, and the creatures of the night will come out to rule society.

However, let us consider the position of 30 months ago. This institution had not elected its Executive, we were at the tender beginnings of that process and we were not involved in the legislative process. A few months before even that, few commentators or politicians were convinced that we would be able to reach agreement, but Sinn Féin and the DUP worked to reach a deal. In fact, the SDLP laboured on that issue at great length. At the height of the negotiations among Sinn Féin, the DUP, the British Government, the American Government and the Dublin Government, it proposed that we should abandon those talks and introduce a commission of businesspeople because the politicians would not be able to work it out.

Mr Durkan: I have a direct correction to make. The SDLP never made that proposal during negotiations.

Mr O'Dowd: Is that right?

Mr Durkan: The SDLP made that proposal during a prolonged period of suspension that had no end in sight and when no talks were in prospect. It was not made during any talks or any negotiations. Again, Sinn Féin has completely misrepresented the facts.

Mr O'Dowd: I am sure that the Deputy Speaker will allow me some latitude as I deviate from the Bill to explain where the SDLP stood on that matter. Does

the SDLP honestly believe that negotiations never stop? Does the SDLP really believe that the public forum is the only forum in which political negotiations take place? Of course negotiations were going on. They may not have been intense or pointed, but they were going on. In the middle of that, the SDLP said that politicians would never agree; the Shinniers and the DUP would never agree. It suggested that an unelected and unaccountable commission of 10 businesspeople be introduced, not by d'Hondt or by cross-community support, to run this place.

The SDLP amendments to the Bill try to convince us that, despite its serious concerns, its observation is that we will not reach agreement until after 30 months. I do not know whether we will or not. I know that the politicians and the community outside are capable of reaching an agreement. Despite all the odds, they have proven that. However, the SDLP —

Mr Boylan: The note that John has been passed can be read some other time.

Mr O'Dowd: It says:

“Can you advise John to sit down?” *[Laughter.]*

The SDLP tells us that, although we will not reach that agreement in 30 months, under its proposals, we will reach it within 14 days. Later, in the second part of the debate, we will discuss amendment No 6, which asks for 7 December 2009 to be inserted into the Bill as devolution day. Therefore, the SDLP tells us that, by 21 December, we will have reached political agreement on the way forward, everything will be rosy in the garden, and the SDLP will have corrected all of Sinn Féin's — in its opinion — negotiating mistakes. The DUP will have explained where Sinn Féin is going wrong, and the SDLP will have sorted everything out. The SDLP suggests that, by 21 December 2009, there will be a permanent, immovable, unshakeable justice Department.

Mr Hamilton: The Member says that that will occur by 21 December 2009. Having listened to previous contributions from Members on the SDLP Benches, will he accept that that will actually occur within two weeks of Royal Assent being granted to the Department of Justice Bill; not within two weeks of devolution day? Potentially, therefore, it would be earlier than 21 December.

Mr O'Dowd: I am glad that Mr Hamilton pointed that out, because that makes it even more stark; there is even less time to reach agreement. We will not reach agreement within 30 months; however, we will do it within a couple of weeks. That is the logic of the SDLP's argument. Despite the two-and-a-half-hour-long contributions that have been made by the amendments' sponsors, I have not heard anything that contradicts that logic.

Why has the SDLP tabled those amendments? Are they an attempt to make the SDLP relevant to the discussion on the transfer of policing and justice? That is, quite possibly, the case.

Mr Durkan: The Member has castigated my party for its target date of 7 December 2009. He says that it is unrealistic. Does that, therefore, mean that Sinn Féin no longer takes the position that the transfer can be achieved before Christmas? That is its public and private position. It has said that it must be done before Christmas. Gerry Adams said that clearly and categorically. Have I got that wrong, or does Sinn Féin now resile from that position?

Mr O'Dowd: I am more than happy to correct Mr Durkan on that point. Sinn Féin has said that the deal is required to be done before Christmas. There is no reason why a deal on the transfer of policing and justice cannot be completed before Christmas. In legislative and practical terms, that does not mean the establishment of a policing and justice Department before December. However, an agreement on the date, process and operations of that Department is more than achievable before Christmas.

The motivation behind amendments is as important as the amendments themselves. I hope and wish that the SDLP would join with other parties who attempt to ensure that policing and justice are transferred to this institution, that they fall into local hands, and that the new Department carries out the remit for which it is required. As I said earlier, the issue is not about the needs of the SDLP, Sinn Féin, the Alliance Party, the DUP or the Ulster Unionist Party; it is about the needs of the communities whom we serve. They are crying out not only for a locally accountable policing service, but for a locally accountable justice system that meets their needs. At present, it does not.

Martina Anderson mentioned occasions when she, as an elected representative in the city of Derry, requires access to a local Minister. All Members could think of examples of times when they need access to a local justice Minister or, indeed, to a justice Committee in the Assembly to ensure that criminal legislation that is passed meets their communities' needs. That does not happen at present.

If other Members have workable, practical solutions to the problems that the Assembly faces, I can assure them that Sinn Féin is all ears. However, the amendments that are before the House do not offer those solutions. They will not ensure the transfer of policing and justice powers; they are only a furtherance of SDLP contributions to previous debates, which would mean an end to discussion of the transfer of policing and justice.

6.45 pm

I move on now to who should hold the post of Minister and why my party supports the arrangements

in the Bill. We must build confidence in the new Ministry because the lack of accountable policing and justice systems was at the heart of the conflict that we endured for more than 30 years. Members from the unionist Benches spoke about their experiences of the conflict; our experiences were clearly different. The justice and policing systems were used against, rather than on behalf of, the community.

An Ulster Unionist Party contributor to the debate talked about the Minister of Home Affairs. I assure him that I can think of no previous Minister of Home Affairs who, in the opinion of the nationalist community, served it fairly, equally or justly. Those Ministers were used to introduce repressive legislation against communities from the 1920s to the 1970s, when they were replaced by British Secretaries of State, who followed on.

The nationalist and republican communities who endured the worst of those excesses must have confidence in a Minister of justice. Cross-community support is the best way in which we can deliver that essential element of confidence at this time. I am always bemused by the SDLP's constant references to how it corrected Sinn Féin and saying that had it not been for the SDLP, the entire process would be blah, blah, blah.

I am more than happy to listen to contributions and take interventions from any political party. It would be foolish of any party, including mine, not to listen to fellow politicians during public or private negotiations. I can give an assurance, however, that Sinn Féin did not need the SDLP to point out anything during the wider debate on the transfer of policing and justice. In the words of Alex Attwood, we went into the negotiations with our "eyes wide open", and they remain wide open. We are conscious of the difficulties that we have overcome and those that we face. We continue to believe, as we have throughout a difficult process, that we can overcome any problems through co-operation with everyone around the table. If, at times, we have to go on alone, we will. Sometimes, that is the way it has to be in politics; it is a difficult post.

Sinn Féin has ruled out only one party from taking the post of justice Minister; that party is Sinn Féin. The Democratic Unionist Party ruled itself out. Why? Both parties believe that they need to instil confidence in the post. If the SDLP can agree and nominate a candidate, Sinn Féin is on record as saying that it will support that nomination. Today, Mark Durkan revealed that there has been ongoing dialogue for a considerable time between the SDLP and the DUP. I must take note not to have a private meeting with Mark in case details of it end up in the middle of a debate, but that is another matter.

If, during discussions with the DUP, Mark Durkan or the future leader of the SDLP can convince the DUP

that the SDLP has the best person for the job, so be it. That would be good, but Sinn Féin cannot convince the DUP of that. Sinn Féin cannot provide the DUP with a reference for the SDLP; it is up to the SDLP to do that.

The SDLP's current strategy as wreckers of the Executive and wreckers of the transfer of policing and justice does not allow any political party to take it seriously. Today, its role in political life is to wreck. If I were sitting on the Benches opposite, I would be placing a major question mark over approaching a party that seems intent on disrupting the whole political process or advancing its political cause above what everyone else is doing.

The transfer of policing and justice presents challenges ahead for us all. The situation is not ideal, but the Bill is what is required at this moment in our collective history in order to move forward.

It is decision time on policing and justice. We have been through a long, complex negotiation, and we have succeeded in many ways. Collectively, the DUP and Sinn Féin have succeeded in securing an extra £1 billion for the justice package from the British Government and the British Treasury. That alone is a remarkable contribution to society. However, if policing and justice powers are not transferred, that contribution will not be made, and there will be a continuing deficit in the policing and justice budget. In fact, in the run up to the next CSR period and the next Budget, the British Government may make major cuts to all our public services.

All the political parties have a lot of soul-searching and decision-making to do. The DUP and Sinn Féin have major decisions to make; the SDLP and the Ulster Unionist Party, in particular, have decisions to make too, because as long as the Ulster Unionist Party plays cheerleader for the TUV, the Members on the Benches beside it will continue to look over their shoulders and wonder what is going on.

Mr Elliott: I thank the Member for giving way. Will he enlighten me on comments that his party leader made this month? Mr Adams said that the DUP is in breach of the commitments that it entered into at St Andrews. Will the Member expand on what those commitments are and how the party is in breach of them?

Mr O'Dowd: I suspect that the Member knows the answer to that question, because any politician who asks a question that he does not know the answer to —

Mr Deputy Speaker: Order. Members must focus on the issue that is being debated.

Mr O'Dowd: We certainly agree. I assume that my party leader was referring to May 2008, which has now passed, when he made those comments.

I support the Bill and oppose the amendments for the reasons that I have given. As the days tick by, there is no point in debating the legislative process in the Chamber; we must now enact legislation to appoint a justice Minister and a justice Committee and start dealing with the matters that affect all in our community. Go raibh maith agat.

Mrs Hanna: Through its amendments to the justice Bill, the SDLP is seeking to ensure that the public is best protected and served. It is important to remember that the Bill is about providing good community policing and robust local justice powers. Sinn Féin, in particular, has stated that there should be no further hurdles to the devolution of justice and policing. The deputy First Minister and other Sinn Féin members are on record calling for devolution before Christmas. I, therefore, ask that they consider supporting our amendments today and committing to devolution by December 2009.

I want to focus on some of the issues mentioned. I was interested to hear Anna Lo highlight one such issue that is of concern to the community. She said recently:

“It would be nearly impossible for progress to be made on issues such as policing and justice if we don’t have a shared future strategy agreed urgently.”

We remember the whirlwind of bad publicity worldwide over the intimidation that forced Romanian families out of their Belfast homes. We are in the teeth of a financial crisis; yet cash is being wasted on maintaining the division. Therefore, the best way to safeguard vital front line health and other services is to sort out our shared future.

It was my understanding that the Alliance Party signed up to the Good Friday Agreement and its protections, but, apparently, they are not now entirely supportive of it. The Alliance Party has no qualms about accepting the post of justice Minister that is provided for under legislation that bars half the community from applying for that post.

Mrs Long: Let me make it crystal clear for anyone who has not been listening: the Alliance Party has not said that it would have no qualms in accepting the justice Ministry. The Alliance Party has not been offered the post; therefore, it has not responded to any such offer. As I have said in the past, although Members seem unwilling to listen, the Alliance Party has not said that it would have no qualms in accepting a justice Ministry. However, we have been crystal clear about wanting to see reform of the institutions with regard to how the Executive is formed.

Mrs Hanna: I apologise; I obviously took the Member up wrong.

Nevertheless, it begs the question: what is the DUP’s job description for the justice Minister’s post,

which openly excludes an SDLP Member? It says, in other words, that no nationalist need apply. According to Ms Anderson, a unionist justice Minister, from either the Ulster Unionist Party or the DUP, would not be acceptable to the Sinn Féin electorate. Therefore, it is a mutual veto.

Ms Anderson: I did not say that that would not be acceptable to the Sinn Féin electorate. Under its outgoing leader, the SDLP has had six electoral defeats. I said that the republican and nationalist community will not accept a DUP or UUP Minister. If the Member had her finger on the pulse of the community she would know that.

Mrs Hanna: That is exactly what I said. However, I do not believe that the SDLP electorate would be opposed to either a unionist or nationalist justice Minister who was appointed fairly.

How much has really changed? Is this about community confidence or is it about discrimination and sectarianism? Whichever it is, it is extremely depressing.

As a solution, we have heard the DUP, Sinn Féin and Alliance Party cross-community design to ensure that a nationalist Minister may not be appointed. That principle — that a nationalist need not apply — is what the SDLP is concerned about. What if the DUP and Sinn Féin change their minds and throw out an Alliance Party justice Minister? What mechanism will we use then?

Mr A Maskey: The Member referred to the relationship between different parties. However, her own party lauded the fact that the SDLP, the Ulster Unionist Party and the Alliance Party are great wee parties that could work together and govern the place fine, as long as the rest of the parties were kept out. If I remember correctly, the SDLP fought a number of election campaigns on that basis.

Mrs Hanna: I do not agree with that statement; the SDLP has always supported inclusive politics.

For most of the population of the North, community confidence is about how we deal with victims of crime, the imprisonment of offenders, the provision of youth justice services and ensuring that we have the best resources, such as state-of-the-art forensic science technology, so that we can catch criminals. All those issues are dealt with in the amendments that have been proposed by the SDLP. None of those issues appears to have been considered by the other parties.

In September, the SDLP held a conference on youth justice, during which we outlined our plans and proposals for the reform of the current youth justice system. At that conference, party members heard testimony from Sarah Holland, the daughter of murdered west Belfast greengrocer, Harry Holland. Mr Holland’s killers were given lenient sentences after it emerged

that that the Public Prosecution Service had struck a bargain that resulted in some of the charges being dropped. Ms Holland told the assembled audience that her family had learned the hard way the failings of the criminal justice system. Her family described the PPS and judiciary as inefficient and not fit for purpose to address crime in the twenty-first century.

7.00 pm

So, there are many questions. How do people experience policing in their neighbourhoods? What powers will come our way? Will the system that we inherit need a radical overhaul? It is clear — and not only from the experience of the Holland family — that the fear of crime in communities is high while the level of public confidence in the justice system is low. Our justice system must exist to serve the public by offering protection, by instilling competence in its agencies, by serving the needs of victims and by preventing reoffending. Only when we recognise those issues — as the SDLP has done in its amendments — can we even begin to think about tackling the real problems.

It is in our interest as a society to ensure that crime and antisocial behaviour are tackled effectively. Society as a whole will benefit from such a system. We must begin at the most basic level by calculating benefit through increased public savings.

I recollect speaking about two years ago in this Chamber about the disparity in child protection regulations and the registration of sexual offenders across the island of Ireland. In today's amendments, the SDLP recognises the need for further consideration of the management of offenders. Rather than the squabbling between the DUP and Sinn Féin, we should be debating the best way to cope with the issues on an all-island basis. It is imperative that our child protection system should be safe and have the confidence of the people of Ireland on both sides of the border. It is imperative that there be full co-operation in both jurisdictions to adopt the best possible practice —

Mr Deputy Speaker: Order. I ask the Member to return to the issue that we are discussing.

Mrs Hanna: I understood that we were talking about competence in the justice system and how we can achieve that. I apologise if I misunderstood.

Mr Deputy Speaker: We are talking about the amendments to the Bill.

Mrs Hanna: I beg your pardon, but I am talking about community confidence. My remarks have been far more direct than some of what I have been listening to since noon. *[Interruption.]*

Mr Deputy Speaker: Order. I ask Members to respect the Chair and to make their remarks through it. I am doing my best to chair the debate, and I need the

support and help of those Members who are shouting across the Chamber.

Mrs Hanna: We need to concentrate on community confidence.

It is interesting that, in August last year, David Ford recognised that the Executive were failing in their duties and not dealing with the substantive issues. He said:

“The Alliance Party will not be taking the Policing and Justice Ministry. This Executive is failing in its duties, so Northern Ireland needs a strong and coherent opposition. We are providing that opposition and we will continue to do so.”

What has the DUP promised the Alliance Party in order to change its mind? Has it promised to publish the long-overdue and fought-over cohesion, sharing and integration strategy? It would be great if that strategy was published, but surely it would happen anyway. Securing that should not require the rights of half the population to be neglected.

All the parties in the Chamber should consider supporting the SDLP amendment to oppose clause 2 standing part of the Bill, in order to protect the democratic voice of all communities in Northern Ireland. All parties must then agree a date for devolution so that we can get on with dealing with the substantive issues, such as youth justice, helping victims of crime, the imprisonment of offenders, enhancing North/South work on policing, child protection and the provision of the best up-to-date ways to catch offenders. I support the SDLP amendments.

Dr Farry: We are a considerable way through what has been a very long and unproductive debate. There have been close to six hours of discussion, and I hesitate to say that we are any further on.

Frankly, we have heard approximately three hours of contributions from the SDLP, which has not made one iota of progress towards convincing anyone of the merits of its proposals. If anything, the party has illustrated its own confusion and highlighted the quite destructive role that it is playing in the potential devolution of policing and justice.

I have strong ambitions for this society and strong liberal principles. I have a clear notion of how society should be organised and governed. However, as a politician, I am a pragmatist, and I must recognise that policing and justice powers have not been devolved. I dearly want that to happen. I think that we are ready for it, and I think that society needs it. The Bill is part of the mechanism by which we will achieve that. Therefore, although we might need interim arrangements and a fix of some description to get there, we must be clear that our actions are making progress in society. Over the past 10 to 15 years, progress has sometimes been extremely tortuous. However, it is important to keep making progress.

Although it is in everyone's interest to gain as much clarity as possible, we must be realistic about what is achievable at the moment. We have reached a measure of agreement on how devolution can occur, but we must find further agreements in the immediate future through which to make further progress. We should be thankful that we can make those steps in the right direction. We should not create a situation in which the perfect becomes the enemy of the good.

My colleague Naomi Long gave a substantial tour de force on the issue, and I do not intend to repeat everything that she said. Indeed, I will endeavour to be in the lower half of Members' speaking times during the debate. I will seek, as far as possible, to discuss the amendments. I will respond to the comments of the Member from the SDLP who spoke previously. My colleagues and I are more than happy to engage in full and detailed discussion on criminal justice policy in Northern Ireland. There is much to be said and much to be done. Frankly, that is not the topic of discussion today; we are having a supposedly focused debate on the amendments.

The central issue of the debate and the amendments is, perhaps, the notion of a cross-community vote versus the use of d'Hondt. Mrs Hanna referred to the Alliance Party's support for the Good Friday Agreement. The Alliance Party did support the Good Friday Agreement; we were extremely proud to do so and extremely proud of the role that we played for 30 years to help Northern Ireland to reach that point. However, although we were not comfortable with some aspects of governance in the Good Friday Agreement, we made a decision to support it in the round. We gave our support despite those aspects, not because of them. It is perfectly legitimate for us to make arguments for improvement.

On 10 April 1998, it was not the case that a group of individuals who were infused with some special wisdom laid out a set of institutions and mechanisms that were right for that time and for every day in the future. Our society is constantly changing, and our institutions need to evolve. The Alliance Party has been clear about its agenda for reform of the institutions. Indeed, we published a substantive document about seven years ago named 'Agenda for Democracy', which set out our proposals, particularly those for moving towards a voluntary coalition approach to Executive formation and for changes to the voting system and designations. There are different ways to provide cross-community power-sharing governance. We are open to such a debate.

The principles that lie behind the Good Friday Agreement are important. The d'Hondt process is not a principle; it is purely a mechanism of proportionality, although not a very good one.

Although the Alliance Party has an agenda for reform, we embrace the mechanisms that are set out in the Bill as positive influences on that agenda. Not for one minute, however, do we think that it represents a sudden lurch towards the voluntary coalition in which we believe. I want to make it clear that, from our perspective, any party could be a part of a voluntary coalition.

We have several criticisms of d'Hondt. First, it creates a system under which Ministers can make solo runs. I will correct Alan McFarland, who said earlier that d'Hondt was the best way of providing inclusive government. Even from the Ulster Unionist Party's perspective, there are concerns about the way in which Ministers have been able to make solo runs in the Chamber. I will give two examples: on the one hand, the Sinn Féin Minister of Education can pursue proposals that do not have the support of the Assembly, but because her party got the education portfolio, the Sinn Féin perspective dominates in that area, and everyone else has to suffer that. The DUP did something similar. There was a groundswell of support in society for the establishment of an independent environmental protection agency. However, because the DUP controlled the Department of the Environment, it was able to impose its will and frustrate that development.

The d'Hondt system does not lend itself to power sharing. It lends itself to carve-ups of power, in which different parties get control of different sections of the agenda. Consequently, we do not have collective outcomes that are fashioned across the political divide. That is the essence of power sharing: ensuring that the interests of every section of society are taken into account in decisions, and d'Hondt does not lend itself to that.

The potential move in the legislation towards giving any Minister of justice a sense of cross-community legitimacy is a positive suggestion. I will clarify how that fits into our longer-term agenda. The Alliance Party made a proposal at the St Andrews talks that even after d'Hondt had been used to select Ministers, there should be an overall —

Mr Deputy Speaker: Order. The Member must return to the amendment.

Dr Farry: OK. I am grateful for the Deputy Speaker's guidance. I am trying to make a point about how a cross-community vote, which is set out in clause 2, and which the amendment would remove, can play a positive role in providing cross-community legitimacy and making it parallel. The Alliance Party wanted that vote to ratify the entire Executive, and there is a precedent for that in the case of the European Commission.

Mrs Foster: I am loathe to challenge the Member's technical ability to talk about d'Hondt, but will he accept that it is just a mechanism for selecting Ministers

and that it does not govern the powers of Ministers when they are appointed? The Member mentioned the establishment of an independent environmental protection agency, but that has to do with the powers of a Minister and is not related to the method by which Ministers are selected.

Dr Farry: It is also a reflection of the limited breadth of the Programme for Government, which allows Ministers to make solo runs in areas that are not covered by it. I take the Minister's point and I will place it in that context.

I want to make some points about whether d'Hondt is an inclusive system. First, d'Hondt is a very blunt form of proportionality. It carries the risk of distortion in that it is biased in favour of larger parties and groupings. It is also biased in favour of sections of society that are more cohesive and united. For example, if there were a situation where there were two unionist parties and three nationalist parties, or vice versa, the section of society with the fewest parties would do better under d'Hondt. A section of society should not suffer as a consequence just because it is more fractured than another. However, that is one of the consequences of the system.

7.15 pm

Secondly, the d'Hondt mechanism runs the risk of creating substantial anomalies. To explain the risks that are inherent in a system that is supposedly so fair and inclusive, I will give three examples of where d'Hondt has gone off the rails badly. During the 1996 Forum elections, the d'Hondt system was used to allocate seats. In Lagan Valley, which I will discuss in a minute, five unionists were elected. No one from any other section of the community was elected, yet I know for a fact that at least 20% of people in that area are not unionist. Is it right and fair that d'Hondt was used to exclude those people?

Equally, in the Foyle constituency, where I accept that there is a significant unionist minority, the use of the d'Hondt system returned five nationalists and no unionist representatives whatever.

Perhaps the most farcical example of the use of d'Hondt lies in this Assembly and concerns the formation of the Executive. If one looks back to the Executive —

Mrs Foster: The Forum.

Dr Farry: Yes, the Forum. The first Assembly Executive between 1998 and 2003 had a 50:50 ratio of unionists and nationalists. Perhaps 99% of the population of Northern Ireland and most international commentators thought that that balance was written into the Good Friday Agreement.

Ms Anderson: I am sorry. I would like some clarity. I was confused when the Member spoke about what

happened in Foyle. He mentioned that the election was run by d'Hondt. Can the Member explain that, please?

Dr Farry: Without going into too much detail of electoral systems, a list system was used whereby the seats were allocated on the basis of the d'Hondt formula. I am happy to explain it to the Member after the debate so that I do not detain everyone, but it is a matter of public record that that system was used for the 1996 Forum elections.

The 50:50 split of the Executive between 1998 and 2003 was effectively an accident of how d'Hondt worked out. Given that, at that stage, unionism was fractured among a multitude of parties and nationalist parties had two seats, the system effectively brought a balance of 50:50 between the two blocs. Since then, there have been fresh elections, and we have a new Executive. The balance between unionist and nationalist politicians is now 60:40 in favour of unionists.

Since the first Executive were formed and into the formation of the second, there has been an increase in the number of nationalist politicians in the Assembly. We are in the bizarre situation of having an increased number of nationalist seats in the Chamber and a decrease in the proportion of nationalist seats in the Executive. So much for the all-inclusive, very effective system of d'Hondt.

The SDLP has now recognised the limitations of the d'Hondt system, even though it notionally seeks to defend d'Hondt at every quarter in the Chamber. In Lisburn City Council, it has quite rightly realised that d'Hondt works against the interests of inclusion of all sections of the community, particularly nationalist representatives. We support what the SDLP has sought to do in Lisburn by challenging that, but the position that its councillors have taken is completely at odds with the position of the party in the Chamber. That issue has not been addressed so far.

The SDLP has made great virtue of its opposition to all forms of discrimination and its favouring of inclusion. I remind the SDLP that it defends tooth and nail the system of designation and the associated voting system. That system discriminates against my party and any other party whose representatives in the Chamber do not align themselves with unionism or nationalism. Votes from my section of the community count for less in cross-community votes. That is not a good advertisement for inclusive governance, and that system needs to be changed significantly.

As many Members mentioned, the implications of selecting a Minister by a cross-community vote include the security of tenure of a Minister of justice, whether he or she is from the Alliance Party or another party, and the potential for that Minister to be a puppet. Naomi Long made the point that any Minister in the Executive could potentially be a puppet and that

Ministers from the Ulster Unionist Party and the SDLP are particularly vulnerable to that risk. The risk of puppetry exists across the board, but we are extremely conscious of that aspect of the legislation. Our support for that system is balanced; it is a new departure for the Assembly as regards cross-community legitimacy and it is the right way to go.

I wish to clarify how the risks relating to security of tenure can be managed. The most effective way of reducing those risks is to have as much agreement and discussion as possible on what a Minister of justice and the Executive will seek to do regarding policing and justice policy in advance of devolution. I will resist the temptation to speak in detail, as Carmel Hanna attempted to do, on what should and should not be done. However, I will say that devolution must be a process rather than simply an event that takes place on a particular day, after which we sit back and relax.

The more agreement there is on policy issues, the more protection a Minister of justice will have. The greater controversies in the Assembly have occurred in areas in which Ministers have sought to take actions as individual Ministers outside the context of an agreed Programme for Government. At the time of its inception, my party was critical of the Programme for Government's shortness, its lack of detail and breadth and its omission of some controversial issues. Progress has been relatively smooth in areas in which there has been agreement. However, the areas in which there has not been agreement have brought chaos to the Chamber.

It is in the interests of anyone taking the post, and of society as a whole, to have as much consensus as possible in advance of devolution. That may even involve an addendum to the Programme for Government. Security of tenure would thereby be addressed, because the Minister will be seeking to deliver on a Programme for Government. The Assembly, and society in general, will rely on parties to act in good faith to resolve some of the difficult residual issues.

If, as speculation suggests, a member of the Alliance Party takes on the position, that person will not be interested in being merely a caretaker in office who keeps the seat warm for two years while important decisions are taken in the outside world. If a Minister from the Alliance Party were confronted by other parties and placed in a difficult situation, I imagine that he or she would stand by the policy principles that have already been agreed.

Other amendments in the first group refer to the risk of a Department of justice collapsing after May 2012 if agreement has not been reached.

Many Members pointed out the extraordinary predictions of doom and catastrophe that have come from the SDLP Benches. It was articulated that there is

a fail-safe mechanism. It may not be the most desirable way to do things, but we must recognise its existence.

Even if we leave aside the current legislation, it is entirely within the competence of Westminster to legislate for further steps and protections at any stage at which it wishes to do so. If we faced a crisis, it would be the height of irresponsibility for any British Government to stand back. I am certain that, even under a Conservative Government, that would not happen.

Mr Durkan: Perhaps Dr Farry could enlighten us. He referred to the provision in the Westminster legislation as being a fail-safe mechanism and that at least we could rely on it being there. Three parties support the Bill: one party told us that there is no fail-safe or fallback mechanism whatsoever; another party told us that there is, arguably, a fallback mechanism but that it does not believe that that would be politically reliable; and Dr Farry said that there is a fail-safe mechanism. All three parties have different versions. Does that not press the need for the sort of report that is outlined and required by our amendment?

Dr Farry: I sense that we are almost being encouraged to panic at this stage. Many assumptions are being made about failure. The differences that Mr Durkan pointed out among parties reflect the SDLP's agenda. Perhaps we should be blunt and frank about what is happening. From Sinn Féin's perspective, there is clearly an agenda to take policing and justice out of the hands of the British state and place them in the hands of locally accountable politicians in Northern Ireland. I fully respect that agenda. I understand where that party comes from, and, to a considerable extent, I agree.

From my party's point of view, given that we support the principle of consent — and, no doubt, from the unionist parties' perspective, given that they support the Union — we do not have a fear of Westminster's legislating to provide safeguards for a situation in which the Assembly is in difficulties. It has happened in the past, and it may happen in the future, although I hope that that is not the case. I suspect that, behind many of today's discussions, the issue is not about a report from the First Minister and deputy First Minister seven days after the Act is passed but about the intra-nationalist battle over who is delivering on policing and justice and who is not and trying to paint Sinn Féin into a corner.

The SDLP has played a destructive role, particularly in the past few weeks, in trying to whip up hysteria over issues and deals that are being done behind the scenes, or in the open, to undermine A, B and C. That has not done the SDLP any credit. It certainly has not sped up the process of devolving policing and justice. If anything, it has created obstacles and barriers and has stoked up fears.

Mr Durkan: The SDLP raised issues, some of which involved criticisms. None of the issues involved obstacles, barriers or preconditions. Other parties, including the Alliance Party, create preconditions that stand in the way of the earlier devolution of policing and justice.

Dr Farry: In relation to the Parades Commission, the SDLP stands prepared to pounce if Sinn Féin gives a chink of light and says anything other than —

Mr Deputy Speaker: Order. The Member should return to the amendments.

Dr Farry: I shall endeavour to return to the matter that is before us. I shall give an example of Mr Durkan's point about the Bill and the amendments. It is a matter of record that the SDLP voted against the Second Stage of the Bill. For a party that nominally supports the devolution of policing and justice, that is completely illogical.

7.30 pm

The consistent thing to do would have been to support the Bill's Second Stage, which would have amounted to no more than supporting devolution and the creation of a Department of justice and then have the debate at Consideration Stage about how to proceed. However, the SDLP voted against the legislation at Second Stage. If its arguments, if one can call them arguments, had found favour with the majority of Members, we would not be any closer to devolution happening; we would be further away. The amendments do not do anything to advance the devolution of policing and justice; they create further distractions and obstacles. We are engaged in purposeless political games.

We must try to be as optimistic as possible about the way forward. There was a sunset clause in the St Andrews Agreement regarding devolution. That challenge was met. By debating the devolution of policing and justice today, we have partly met that challenge. We have already made some progress, and there is more to be made. If parties find agreement and devolution happens, the prospects of reaching a further understanding ahead of May 2012 will be significantly advanced. To a degree, we are talking ourselves into a false sense of crisis before one occurs.

I shall draw a parallel: the Assembly faces the challenge of agreeing Budget legislation twice a year. The consequence of failing to pass that legislation would be that no Departments would have the legal authorisation to spend money. Perhaps, that is the one scenario in which Alex Attwood's prediction of things grinding to a halt would come to pass. However, on every occasion so far, the Assembly has risen to the challenge of passing the Budget legislation, even in situations in which there were very difficult and controversial issues to be discussed. Therefore, the Assembly has a positive track record of meeting the

challenge of deadlines for finding fresh agreements and of banking agreements that have allowed us to make progress until now.

Mr Durkan: In the event of the Assembly not agreeing Budget legislation, the Department of Finance and Personnel has a reserve power that it can use. I had cause to research that matter on a particular occasion. Therefore, it would not be a case of everything grinding to a halt, which is markedly different from the dissolution provided for in the sunset clause. We do not want to see that come about, but we did not legislate for it; other people did, and they have to explain it.

Dr Farry: I am grateful to the former Finance Minister for that correction, but that is another example in which we have a fail-safe. Hence, we need not panic.

Our society is divided. There are contentious issues to handle, and we are taking steps forward gradually. It is important that Members see the Bill in the light that it enables us to get over the first major hurdle towards achieving something that we have not had so far — the devolution of policing and justice. Parties have defined their terms for how far they are prepared to go, and they can find agreement at this stage based only on temporary, interim provisions. From my perspective of wanting to see the devolution of policing and justice happen, I think that that is the positive way to go. Let us get the justice Department up and operational.

We must acknowledge that there are further challenges down the line. Things may well get rocky, in keeping with the SDLP scenario, but let us be optimistic that we can sort out the situation. If we cannot do that, the British Government have step-in powers. Frankly, if there is a sense of crisis in 2012, the crisis may be much bigger than policing and justice; it might involve the legitimacy and the continuation of the institutions as a whole. At that stage, we will have to ask about the fallback position in respect of other powers.

The notion of a potential crisis is inherent in ours or any other system. When it comes to the formation of Governments internationally, it is not unusual after elections to have an interim period during which parties have to find agreement. If parties cannot agree, the consequences are potentially severe. Time after time around the world, parties rise to that challenge, so we must back ourselves to do the job. We must have trust and faith in ourselves. If we decide to take devolution forward on the basis that we have to legislate for every contingency for failure, we will damn the whole project as unobtainable. Given that every party in the Chamber has staked its political reputation on the success of devolution, such a conclusion would be a sobering position to reach.

Finally, given that there has been much speculation on the subject, I wish to clarify the Alliance Party's position, to which my colleague Naomi Long referred. The Alliance Party is extremely supportive of the devolution of policing and justice. We want it to happen, and we see strong rationales for it. Like any other political party or set of political representatives, we have an interest in ensuring that devolution is done as well as possible in the circumstances that we find. This legislation allows that to happen.

There is a lot of speculation about the Alliance Party's role. The Alliance Party has not been invited to nominate a Minister, although that may well be the case in the future. We have not said yes or no to any offer. The party has made it clear that it is prepared to be constructive, as it always has been in the Chamber, and that it will do what is in the best interests of the people of Northern Ireland.

Mr Elliott: Surely the Member's party has already said no. Mrs Hanna clarified earlier that it said no.

Dr Farry: A lot of parties have created a small industry in interpreting what the Alliance Party has said. However, let me be clear, on behalf of the Alliance Party, about what we have said: in the summer of 2008, the Alliance Party said no to a half-baked situation whereby a Minister could be appointed outside the Executive, in essence a puppet Minister, something about which so many people have warned us. The legislation that went through Westminster in March 2009 was categorical about the fact that, just like any other Minister, the Minister for policing and justice would be a full member of the Executive. Therefore, that situation has moved on.

As things stand today, the Alliance Party's judgement will be based on what is in the best interests of the people of Northern Ireland. Unlike the SDLP, which has been making a virtue of its entitlement to the Ministry, the Alliance Party has never advertised such an entitlement. We have responded to speculation, but we have never chased the post. We have made it clear that we are prepared to be constructive on the way forward.

The Alliance Party's benchmark for determining what is in the best interest of the people of Northern Ireland will relate not only to how the legislation is taken forward today but, when further progress is made, to whether a Minister is prepared and able to deliver on behalf of those people. There is no point in a Member from the Alliance Party or from any other party serving at the top of a Department and being part of the Executive if he or she has no ability to deliver on policing and justice issues. Frankly, devolution depends on a continued process of building confidence. Confidence is not something that will be achieved before devolution; it is an ongoing process. After

devolution, confidence will depend on the system, which includes a Minister —

Mr Deputy Speaker: I remind Members that mobile phones and Blackberries are not allowed in the Chamber.

Dr Farry: Confidence depends on the ability of any Minister, the Executive and the Assembly as a whole to demonstrate the benefits of devolution and how it can make a real difference to people's lives.

I shall conclude by reiterating the point that we have been stressing: it is critical that, in advance of devolution, as much discussion as possible takes place and as much agreement as possible is found on the policy programme for the Department and on what the Assembly and the Executive will be seeking to do. For Members who have concerns about security of tenure and any potential puppetry, that is the best safeguard. It is the best signal that can be given that the Assembly is serious about devolution making a real difference to people's lives.

This legislation is an important milestone. It gets us from A to B. There is still a long journey to be made, but it is important that we take those steps, small as they may be, in the right direction. Unlike other parties that seek to play a negative role, the Alliance Party continues to play a constructive role in seeking to find peace, stability and a shared future in this society.

Lord Morrow: On a point of order, Mr Deputy Speaker. It is becoming a very cold House for unionists. I am not sure whether that affects the whole House, but it affects the unionist side. Could we have that matter dealt with?

Mr Deputy Speaker: I thought that it was quite warm.

I call the deputy First Minister, Mr Martin McGuinness, who will probably warm things up.

The deputy First Minister (Mr M McGuinness): Martina Anderson, who is sitting beside me, has been shivering for the last hour.

A vicious rumour circulated at the time of the Second Stage of the enabling legislation on the devolution and transfer of power that Alex Attwood was going to speak for an hour. In the event, he did. In retaliation, the First Minister spoke for nearly two hours. After that, I reminded the First Minister that he lives only five minutes from here, but I live two hours away. I was horror-struck when someone who lives in the same city as I do, the Member for Foyle Mark Durkan, began to speak today. As he went on and on, I thought that he was going to continue until 2012.

On the serious matter of the business in which we are engaged, the House should be in no doubt whatever about the purpose of the grouped amendments that we have been discussing: it is to remove clause 2 from the

Bill, either directly or indirectly. The direct approach is through the opposition of SDLP Members to clause 2 standing part of the Bill. The indirect approach is through amendment Nos 1, 2, 3 and 4, the combined effect of which is to create an unnecessary device of considerable legal complexity that will effectively add another stage to the legislative process. If those amendments are successful, the Bill will be returned to the Assembly for review within days or weeks of its enactment.

Let me remind the House where clause 2 comes from. On 18 November last year, the First Minister and I attended a meeting of the Assembly and Executive Review Committee. Following that meeting, we made public a letter that we had issued earlier that day to the Chairperson of the Committee in which we set out our agreed position on a number of matters, with an accompanying process paper detailing the steps by which devolution would be achieved.

In our letter of 18 November and in other correspondence with the Committee at that time, the First Minister and I indicated our preferred arrangement for appointing a Minister of justice. Our preference was that the process be one in which nominations would be invited from Members of the Assembly, and the successful candidate would require the support of the majority of Assembly Members, present and voting, including a majority of designated nationalists and a majority of designated unionists voting.

The Assembly and Executive Review Committee was clearly content with that proposal, and that was reflected in the report that it prepared on the devolution of justice and policing responsibilities. The recommendations in the report deal with the departmental structure, the powers to be transferred and, crucially for the debate on this clause of the Department of Justice Bill, the arrangements for appointing the Minister of justice. On 20 January 2009, the Assembly approved a motion endorsing the Assembly and Executive Review Committee report. That is the basis for the model of ministerial appointment set out in clause 2. It is the model originally proposed by the First Minister and me, and it is supported by the Assembly and Executive Review Committee. The Assembly approved that model when it considered the matter in January.

7.45 pm

The arrangements for appointing a Minister of justice under clause 2 are interim arrangements. The First Minister and I made that clear a year ago when we announced the basis on which we would move towards the devolution of policing and justice responsibilities. Those arrangements would last until May 2012, at which point the Department of justice would dissolve unless the Assembly were to extend

those arrangements by resolution or devise alternative arrangements. Those arrangements were also reflected in the legislation passed at Westminster earlier this year.

Before May 2012, the House will have the opportunity to review the ministerial arrangements and decide whether it would prefer an alternative. The House will have more opportunity for considered thought on the matter than the fast-track arrangements that amendments Nos 2, 3 and 4 would allow for reviewing legislation that it had only just passed.

Amendment No 2 would also compel the First Minister and me to deliver to the House a report that the amendment conveniently drafts for us. In response to the heading set out in that amendment, the functions to be exercised by the Department of justice are those that were identified in the Assembly and Executive Review Committee's report of March 2008. There is a sunset clause for the ministerial arrangements in clause 2. It is contained in schedule 1(8)(1) to the Northern Ireland Act 2009. The consequences of the dissolution of the Department of justice would be severe, but that is precisely the incentive for the Assembly to devise permanent arrangements before May 2012. That would be the gist of the report that amendment No 2 would require us to make. The objective of the report mechanism is to provide a further opportunity for criticism of the arrangements that the First Minister and I agreed last November. Those arrangements were reflected in the Assembly and Executive Review Committee's report of January 2009 and were endorsed by the House at that time.

The Assembly will have much opportunity to debate the details of the devolution of policing and justice before devolution day. The resolution request for the transfer of powers will be debated and will require cross-community support. The determination of ministerial offices will be brought to the House, and the new justice Minister will be elected by the Assembly with cross-community support. There is no shortage of Assembly scrutiny of the process, and I look forward to all those stages.

A number of points were raised during the debate. Alex Attwood again raised his claim that there is a fallback position that would prevent the sunset clause from taking effect in May 2012. He rests that claim on his reading of several sections of the Northern Ireland Act 2009 and the 1998 Act, as amended. The Department does not believe that the provisions that Mr Attwood relies on could ever have that effect, because the conditions attached to a Westminster Order in Council to impose a ministerial model would cease to exist with the passing of the Department of Justice Bill. In effect, that option among the menu of ministerial models will be spent once the Assembly legislates.

Mr Attwood: I understand the point that the deputy First Minister has made. However, I put two observations to him in reply. The first is that, although he indicated certainty with respect to the sunset clause, that is, to some degree, in tension with his own officials. At the OFMDFM Committee meeting of 14 October 2009 which considered the justice legislation, departmental officials said that, after the Second Stage of the Department of Justice Bill:

“we took the opportunity to consult people who were closer to the drafting of the Northern Ireland Act 2009. They stated that it was never the intention that the interpretation ... placed on the particular provision would apply to frustrate the operation of the sunset clause. It was not intended that there would be a hidden fallback mechanism.”

The official went on to say that, ultimately, those matters would have to be decided by a court.

There is a tension between the deputy First Minister’s certainty on that matter today and what was indicated to the Committee. In any case, the crucial point is that the deputy First Minister is quite right to say that the legislative provisions for what a Secretary of State can do will not apply to the first Department. In the legislation, however, the Secretary of State reserves unto himself the right to act in respect of a new Department that would be necessary in the event that, on 1 May 2012, the Department of justice as it then existed is dissolved. The legislation states that the Secretary of State reserves power in respect of the new Department that would be necessary to avoid what the deputy First Minister described as the severe situation that would obtain in the event of the dissolution of the first Department in May 2012.

The deputy First Minister: I thank the Member for his contribution but remind him that Paul Goggins, during the debate on the 2009 Bill at Westminster in March this year, said:

“The Bill provides no fall-back position beyond May 2012. Frankly, it is not for us in this place to determine any additional model beyond that period; it is a matter for the Assembly... There is no fall-back position, as I have said, and it is entirely a matter for the Assembly.”

He went on to say:

“The parties themselves will have to determine the model beyond May 2012. We are devolving policing and justice powers; we are not saying that we are partly devolving them and saving a little for ourselves. The matter is entirely for those parties.”

He makes it absolutely clear.

The SDLP has adopted a doom-and-gloom approach to the debate. It has been made clear that, as we agree this process, move forward and put in place a Department of justice and a Minister of justice, there will be a huge responsibility on the Assembly and the Executive to ensure that we arrive at a scenario in which we can continue seamlessly in the event of us all being returned, if we stand in the election of 2011, to

see through the process of ensuring that we have in place arrangements that will ensure that the dispensing of justice and policing is managed by this Administration.

I am not looking at this matter from a doom-and-gloom perspective or thinking that we will never succeed or that there are 30 months left and we will never agree on anything. I approach all matters that confront us in these institutions as a problem solver. If we all apply ourselves to that business, there is nothing that we cannot accomplish as we move forward and overcome the obstacles and challenges that lie before us.

Danny Kennedy raised the issue of the justice Minister being a puppet. The justice Minister, like any other Executive Minister, will have full legal authority. He or she will be bound by the Pledge of Office and the ministerial code. Consideration is being given to whether any amendments will be required to the ministerial code as a result of the devolution of policing and justice. However, any amendment to the code will come before the Assembly for approval and will not come into effect without cross-community support.

Alan McFarland asked what would happen if the justice Minister was not returned at the 2011 election. The Minister would cease to hold office, and the Assembly would have to elect another, with cross-community support. That is effectively provided for in the Westminster legislation.

The six amendments that the SDLP has tabled lie at the heart of this debate. It is my strong view that the SDLP is ignoring the political reality of the circumstances that we are dealing with at the moment and that the transfer of policing and justice powers was never really on the SDLP’s agenda until Sinn Féin put it there.

I was a Minister in these institutions from December 1999 until October 2002, during the period in which Seamus Mallon and Mark Durkan occupied the position of deputy First Minister. Not once did I have a conversation with either of my two colleagues about their views on whether policing and justice powers should be devolved. I did not hear it mentioned during any Executive meeting, and I was never invited by the SDLP to a meeting to discuss the possibility. Indeed, for many years after that, there were no discussions on the issue. The issue never raised its head from the SDLP’s perspective.

Mr Durkan: I thank the deputy First Minister for giving way. May I remind him of a conversation that took place in the office of the deputy First Minister early in my tenure, which was similar to one that I had with Gerry Adams, the Sinn Féin president? During that conversation I indicated that among the options that I was pursuing in discussions with the First Minister was the possibility of appointing additional

junior Ministers from Sinn Féin — the difficult issue was going to be whether or not there would be any from the DUP — and of having an additional adviser as a programme manager for each of the four parties in the Executive. One issue that I said that I wanted to address in that context was how to make progress towards the devolution of justice and policing, in the circumstances where we had the Patten report and the Policing Board in place. Sinn Féin was opposed to the Policing Board at that stage and was not prepared to embrace the debate around the devolution of justice and policing.

The deputy First Minister: Anybody who looks at the record of that period and at the public discourse from political parties around what were or were not priorities at the time will fail miserably to see any effort by the SDLP to raise the issue of the transfer of power in the way that Sinn Féin has raised it since we became the largest nationalist party. I say that because the issue is not important just for Sinn Féin. We argue for the need to transfer powers on policing and justice for the same reason that Ian Paisley gave for doing so in one of the first meetings that I had with him, and I know that many members of the DUP concur with this. As a member of a devolutionary party, he believed that local politicians could do a better job than Ministers who were coming over from England, Scotland and Wales. The transfer of policing and justice powers would be a good thing, and I think that many Members believe that, because all the parties agree with it in principle. As Carmel Hanna said, it would make a real difference for the people whom we represent across the community in delivering a better justice system and a more accessible court system.

As we move forward, we have to be conscious of the fact — at least, I am conscious of the facts — that the SDLP is making a huge mistake. I say that because, at its rawest, the truth is that, if the SDLP approach were to succeed, we would never see the transfer of powers on policing and justice, because the SDLP is ignoring the political realities.

I listened to Alex Attwood's contribution. He said that he had struggled so long to make this happen. That is a new one on me. We have struggled to make it happen, and many people in the community who have voted in election after election have made their own judgements as to who was delivering on policing and justice and many other issues related to the institutions. Those people have made their decisions; the people have spoken, and they have done so powerfully.

Mr Attwood: Will the deputy First Minister give way?

The deputy First Minister: I will give way in a minute; I do not want to have my train of thought interrupted. I listened carefully to the Members who were arguing for the amendments. SDLP Members

spoke for something in the region of three hours. Members gave way to them left, right and centre. I do not have a problem with that, but it was clear from the initial contributions from SDLP Members that they were more concerned with the SDLP's entitlement to the justice Ministry.

When Mark Durkan began to speak, he realised the mistake that was being made. This was being seen as a selfish demand from the SDLP, and Mark Durkan tried to move the issue from the SDLP's entitlement to a defence of d'Hondt. At that stage, I was really confused. Mark Durkan's Oxford speech clearly confused an awful lot of people several years ago and indicated clearly to many that at that time that the SDLP was prepared to move away from the election processes established under the terms of the Good Friday Agreement and the St Andrews Agreement.

8.00 pm

Mr Durkan: Will the Member give way?

The deputy First Minister: Let me finish.

At that stage, within hours of the speech being made, I remember that David Simpson, the MP for Upper Bann who was deemed an apostle, proclaimed that the speech was new light out of an old window from the SDLP. Indeed, I met many SDLP members throughout the North who were very confused by the speech. Many journalists were wondering what was going on at Oxford, because of the convoluted and very confusing speech that made no defence of the d'Hondt mechanism or the aspect of power sharing that they had all signed up to under the terms of the Good Friday Agreement.

Mr Durkan: I absolutely refute what the deputy First Minister has said. To correct the record, my Oxford speech robustly defended d'Hondt and exposed and criticised Sinn Féin's sell-out of d'Hondt on several occasions, including in respect of the justice Ministry. As regards looking 10 years ahead, and whether I envisaged anything about a possible movement away from d'Hondt; I said no. I said that, hopefully, if we had a robust bill of rights, parties in the Chamber would not have to put the same reliance on the cross-community voting mechanism as they do at the moment. I never said that the mechanism would need to be removed or reduced, but that it would not interfere with decision-making to the degree to which it does at the minute. However, I defended absolutely the democratic inclusion by mandate. Having been quite central to the negotiations and having it put it into the agreement, I am absolutely adamant that that is where it stays.

The deputy First Minister: Well, you obviously did not convince David Simpson and many other members of your own party in the North who voiced their concern to me about what the speech meant. You certainly did

not convince many people who wrote articles in the papers about what the speech meant.

Mr Durkan: You are talking about an article written by Brian Feeney, who, quite clearly, had not read the speech and went on misreports. He wrote a column that made no reference to the speech that I had made, and went on incorrect reports from the Press Association and on a completely false headline from ‘The Irish News’. I accept that people were relying on the version in ‘The Irish News’ that was fed by Sinn Féin and other distortions. However, in this legislature, we should be talking about truth. I never bear false witness against a neighbour. I hope that the deputy First Minister will stop it.

Mr Deputy Speaker: I ask Members to make their remarks through the Chair.

The deputy First Minister: I rest my case on the fact that, at the time, quite a number of people who read the speech were totally and absolutely confused by the message being delivered. Anyway, all of that is by the by. The fact is —

Mr Durkan: It was not as confusing as “at all times”.

The deputy First Minister: The fact is that we face a situation in which efforts are being made to ensure that powers are transferred so that we can put in place a Department of justice and a Minister of justice who will start to deliver for people in communities across the North.

The SDLP’s contribution to the debate is particularly negative. They are making a serious mistake and a serious misjudgement about nationalists and republicans on the issue. If the SDLP’s amendments were passed in the House today, the prospect of the transfer of policing and justice powers would be put off for a very long time. Therefore, I urge Members to reject amendment Nos 1, 2, 3 and 4 and to support clause 2 standing part of the Bill.

Mr A Maginness: The debate on the first group of amendments has been long, and many of the issues have been examined exhaustively. I do not intend to respond to each contribution in specific detail, but I will deal with the main issues that have arisen.

First, the SDLP is committed fully to the devolution of justice and policing powers. We wanted to see those powers transferred to Northern Ireland and to the Assembly long before now, and any suggestion to the contrary is absolutely untrue. Indeed, as far back as the time of the first Executive, indications were made and discussions took place on the matter. During the negotiations at Leeds Castle, the SDLP again brought forward a proposal to have a proto-Ministry of justice. Although that Ministry would have been a shell, it could nonetheless have been a useful departure for all of us in the Assembly.

Our amendments are timely, and they provide certainty in a process that is untimely and uncertain. Therefore, it is important that the amendments are seen in that context. Through the amendments, we seek to address certain problems with the Bill. In particular, we address the exclusion of the use of the d’Hondt mechanism for the appointment of the justice Minister. However, I will come back to that in due course.

We also seek to address the sunset clause, about which there has been a great deal of talk. We believe that our amendments provide a method of addressing the difficulties that that clause raises. It is important that all Members listen very carefully to what we have to say about that, because we are attempting to bring certainty to a process in which there is uncertainty.

There has been a lot of discussion about what will happen in May 2012. If anybody believes that the debate has created certainty about what will happen in 2012, they have got it wrong entirely. Our amendments deal with timing, and I believe that they are correct in their approach. My party is earnest about and dedicated to resolving this very difficult situation.

Members from Sinn Féin, the DUP, and, indeed, alas, from the Alliance Party, have attempted to misrepresent our views as negative. They have also attempted to claim that we have been obstructive and have put hurdles in the way of the devolution of policing and justice powers. We have not. We believe that our amendments are aimed at expediting the process and that that will benefit all in our society.

The issue of justice and policing is one of great importance to all in our society. Not a day passes in which some issue relating to justice and policing does not arise. There is an urgency to resolve the matter, and our amendments are a way of doing that.

The First Minister and deputy First Minister’s decision-making role in bringing about devolution must be considered, and that is dealt with in the second group of amendments. I will not address that now.

The SDLP is not fixated on d’Hondt; it is concerned with preserving the principle of inclusive democracy. D’Hondt is not a principle: Dr Farry said that it was not a principle, and I agree with him. However, the SDLP believes that the d’Hondt mechanism supports the principle of inclusive democracy. If there is one element of the Good Friday Agreement that is necessary and crucially important, it is the inclusivity of democracy and involving all the significant elements of our society in the body politic and in the Executive. Therefore, it is wrong to say that the SDLP has some sort of hang-over d’Hondt.

We are concerned with maintaining inclusivity in the democratic system in the Assembly and the Executive, and that is what our amendments are about. Under the Good Friday Agreement, d’Hondt is the system that

has been chosen to bring about inclusive democracy. That was approved and mandated by the people of Ireland, North and South. It cannot be casually thrown away, eroded or damaged.

I know that elements in the DUP want to roll back that aspect of the agreement. It is dangerous for any party in the Assembly, particularly Sinn Féin, to allow itself to facilitate the process of rolling back a very important principle of the Good Friday Agreement. Unfortunately, that has been conceded, although Sinn Féin says that that is only for a temporary period. Nonetheless, the strength of that principle is being eroded if d'Hondt is undermined, weakened or, in this instance, removed from the decision-making process of appointing a Minister.

The d'Hondt system is important because it establishes a pecking order for the appointment of Ministers. It is a proportionate system, but it also provides a pecking order so that one party cannot take all of what are regarded as the best and most important portfolios, leaving the rest to other parties. It is carefully calibrated to allow proper representation throughout the Executive, and it is very important that that be preserved.

The system also prevents vetoes. The whole point about a cross-community election is that it provides a veto so that a person can be prevented from becoming a Minister, in this instance a Minister of justice. That is no accident; the system is deliberately designed to provide a veto. The DUP privately and, on occasions, publicly boasted that it could exclude a Sinn Féin Member from becoming a Minister for justice for ever. It did so because it had a veto, and that veto was provided under cross-community election.

8.15 pm

That creates a great injustice, which is wrong. Not only would that exclude Sinn Féin members from becoming justice Minister, it would also exclude a nationalist from becoming justice Minister. On 9 July, the First Minister said that he would veto the appointment of an SDLP Minister. People say that my party makes things up, is alarmist and encourages fear. The fact is that the First Minister said in Downing Street that he would exclude an SDLP justice Minister.

Is it right and proper that the First Minister should have that power to exclude SDLP members from becoming justice Minister? That is a fair point for my party to make: it does not constitute some sort of entitlement claim. Is it right that the First Minister could exercise that veto over the crucial appointment of a justice Minister if the person happens to be an SDLP member?

Of course, Sinn Féin has said that it would support the SDLP in a cross-community vote. That is a hollow representation. That party knows that on 9 July — my birthday, incidentally — the First Minister said that he

would veto the appointment of any SDLP nominee to that position.

Surely, that is a flagrant act of discrimination. People in the North of Ireland, particularly those from the nationalist and republican community, have endured a history of discrimination. That community was deprived of all sorts of benefits — access to housing, access to employment and so forth. The history is here in this very House. The Assembly must do all that it can to stop that sort of discrimination from happening in the future.

At present, it is Sinn Féin, rather than the SDLP, which has got it wrong. The deputy First Minister said that the SDLP has got it wrong. He said that my party does not reflect opinion. If the public knew what has been designed for the appointment of a justice Minister — if they were aware that SDLP members, nationalists and Sinn Féin members are not entitled to be justice Minister — how would public opinion react?

The deputy First Minister: In the past couple of years, the debate on policing and justice has raged among the public. The SDLP has actually majored on it. However, that did not do the SDLP much good in the European elections, in which Mr Maginness was the SDLP candidate.

Mr A Maginness: Does the deputy First Minister seriously believe that, if there were a proper debate on the subject, such as the one that is under way in the House at present, and those facts were presented clearly to the people he and I represent — the nationalist and republican community, who are represented by Members on this side of the House — they would tolerate that situation? I do not believe —

The deputy First Minister: Will the Member give way?

Mr A Maginness: No, you have made your point. I put it to you and to Members of the House that the people in nationalist and republican communities would not find that acceptable. That is putting it mildly; they would be outraged.

Dr McDonnell: Does the Member accept that, after St Andrews, Sinn Féin told us that policing and justice would be devolved by May 2008 and scorned us for suggesting that it had conceded a triple lock? Will the Member give an assessment of what the outcome of that has been?

Mr A Maginness: I am grateful to the Member for his contribution. As far as Sinn Féin is concerned, the genesis of the problem was the deal that it made at St Andrews. The party came away from St Andrews saying publicly that the transfer of justice and policing would take place by May 2008. That is how Sinn Féin misrepresented the situation to the public at large. Of course, the DUP had no intention of making that

happen. Sinn Féin got itself into difficulties on that issue. Again, that is putting it mildly; Sinn Féin tied itself in knots.

Subsequently, at the Assembly and Executive Review Committee, it became clear, through a letter from the First Minister and deputy First Minister, that the arrangements would be for all time. At that stage, Sinn Féin panicked, and the result of its panic was that a further amendment, or rearrangement, was arrived at. The deputy First Minister may look incredulous, but that is what happened at the Committee.

The deputy First Minister: Will the Member give way?

Mr A Maginness: You have had your say, and there is not much more that you can add to extract yourself —

The deputy First Minister: Will the Member give way?

Mr A Maginness: No, there is not much more that you can do to extract yourself from your personal embarrassment. For all time — *[Interruption.]*

Mr Deputy Speaker: I remind all Members to speak through the Chair and to keep to the subject of the debate.

Mr A Maginness: If I offended you in any way, Mr Deputy Speaker, I am sorry. I will comply with your direction.

I outlined how Sinn Féin got itself into that difficult situation. Subsequently, the Member for West Belfast Gerry Adams said that the transfer of policing and justice would take place by November 2008 and that the DUP would not delay the process. Which member of Sinn Féin are we to believe? Sinn Féin puts a brave face and plenty of spin on the situation. However, Sinn Féin was outmanoeuvred at every point by the DUP. In that context and in the context of today's debate, the SDLP's amendments are clear, certain and timely. They provide a genuine context in which to address the extremely difficult issues.

It is important to raise those issues, because they identify the profound weaknesses that exist in the Bill, despite the fact that it is very short. Members cannot consider the Bill without considering the 2009 Act, which is full of booby traps and potential difficulties, not least the sunset clause and the provisions for reining in a justice Minister.

I invite the Alliance Party to look carefully at the Bill. I agreed again with Dr Farry when he expressed concern — I do not know whether that reflected the view of the whole Alliance Party — that a justice Minister may be removed from the Executive on a political whim. I do not think that I do any disservice to Dr Farry by paraphrasing those remarks. He is right; why should a justice Minister be different from any

other Minister in the Executive? If he or she is a full member of the Executive, why should he or she be treated differently? Those are rhetorical questions, because we know the answer.

The deputy First Minister can smile if he wants to, but he has dug a hole for himself. Anyone who is in a hole is advised to stop digging, and these amendments will help him to stop digging. I think that it was Sir Reg Empey who said that the restraints and constraints in the Bill will mean that the justice Minister will be a puppet. That flows from the fact that there is to be an election on a cross-community basis, which means that a Minister can be removed by a cross-community vote.

Mrs Long: Given that the method for removing a Minister has been put place in Westminster legislation before the Assembly has made a decision on how a Minister should be appointed, does the Member accept that it is factually incorrect to say that one flows as a consequence of the other?

Mr A Maginness: This is twin legislation. Although, the 2009 Act was passed in a different institution, the two are interconnected, and one cannot distinguish between them. The Bill could not be implemented if the 2009 Act was not in place, and that is the reality.

Mrs Long: Will the Member give way?

Mr A Maginness: No, I will not, because the Member has made her point. One of her Westminster colleagues Alistair Carmichael actually raised that issue on the Floor of that House. He expressed his deepest concern — *[Interruption.]*

He is a Liberal Democrat, as opposed to a member of the Conservative or Labour parties, and he is associated with the Alliance Party through its sister relationship. I do not have his quote to hand, but I know that he expressed deep concern about that aspect of the 2009 Act. That speaks volumes, and, when the Alliance Party starts to wriggle on the issue, perhaps it should discuss with Alistair Carmichael MP his concerns and the dangers that he saw in that aspect of the legislation. All of this flows together, all of it is interconnected, and it presents a serious danger.

8.30 pm

During the debate on the sunset clause, I listened very carefully to the deputy First Minister and other Members saying that there is nothing to worry about and that it will be all right on the night. Bar a miracle, it will not be all right on the night. If the legislation goes through, as is, the Department of justice will be dissolved.

Mr Hamilton: Will the Member give way?

Mr A Maginness: No. I want to develop that point. I will give way later.

That is a very serious problem; it is not just some sort of legal abstraction. The amendments tabled by the SDLP go some way, at least, towards addressing that. New clause 2A(b) asks the First Minister and deputy First Minister to make a report orally and in writing to the Assembly. It also asks the First and deputy First Ministers to explain:

“the provisions of paragraph 8 of Schedule 1 to the 2009 Act and, in particular, in the event that the Department of Justice is dissolved on 1 May 2012, the consequences of such dissolution for the exercise of the functions that the Department of Justice is to exercise, including such functions as may be conferred on the Department of Justice relating to—

- (i) the imprisonment of offenders;
- (ii) the compensation of victims of crime;
- (iii) the provision of services in relation to forensic science;
- (iv) the provision of services in relation to youth justice.”

The First Minister and deputy First Minister are part and parcel of the justice Department; they would suffer the consequences of that dissolution. That is not frippery or legal abstraction; it is important, and it needs to be addressed by the First Minister and deputy First Minister. They have brought about the situation, so it is their responsibility to give an explanation.

I turn to the cross-community election and the use of the d’Hondt mechanism for the appointment of a justice Minister. New clause 2A would restore the d’Hondt mechanism. However, that would not necessarily exclude the election of a Minister on a cross-community basis.

Careful examination of the amendments will demonstrate that Members who said that we are being negative and destructive and that we are creating hurdles and obstacles — all of which are accusations that have been thrown at the SDLP throughout the debate — are wrong. I ask Members to at least do us the favour of revisiting the amendments so that they can see that they will not provide the alleged outcomes.

Mr Hamilton: The Member spoke about accusations that were made about his party being negative. However, the only person that I heard being negative was the Member. He said that there was no chance of any agreement on the appointment of a justice Minister in the long term between now and 1 May 2012. If he believes that there is no chance of a long-term agreement by 2012, how on earth does he expect the Assembly to agree a long-term position in the two weeks before the Bill receives its Royal Assent? That would be the effect of the amendments that he asked us to revisit.

Mr A Maginness: The Member is ignoring the whole problem of dissolution. I am positive. We have made significant progress on a number of issues in the Assembly, but there are still many outstanding ones. Neither the SDLP nor I have ever lost our optimism during the process and before its inception. We were

positive throughout the 1970s, during the bleakest time in our history. We were positive throughout the 1980s, during the hunger strikes. We created a situation that made the Anglo-Irish Agreement possible in 1985. From that, we moved on to the negotiations, the ceasefires and the Good Friday Agreement.

Mr Deputy Speaker: Order. The Member is straying from the subject being discussed.

Mr A Maginness: Our colleague across the way Mr Hamilton is representing my party and me as being negative. I am optimistic that we can do things together. However, to use Alan McFarland’s term, a “back room deal” is not the way to move forward. We have to move together and arrive at solutions on the pressing issue of the devolution of policing and justice. We can achieve that.

If a sunset clause is built in — I wish Mr Hamilton would listen to this point — that creates more uncertainty and instability in the process. A sunset clause does not create certainty or stability. Where is the stability or the certainty if a sunset clause is built in? If a sunset clause is included, stability and certainty are absent, which does a grave disservice to the issue that we collectively seek to resolve.

A number of issues were raised that I hope to address. I answered most of the issues that were raised by the deputy First Minister, who has either misunderstood or wilfully ignored the value of the amendments. This is a way to move forward, not a way to retard progress.

Mr A Maskey: I am trying to discern from the Member’s commentary how serious the SDLP is about the need for the transfer of policing and justice powers. I ask the Member to reflect on a debate at which he and I shared a platform with the Law Society not long ago. I clearly recall that we had a fair dispute at the time. It is important to try to establish the truth about the matter.

During the Member’s contribution to that debate, he referred to what he called the impasse between Sinn Féin and the DUP over the matter at that time. Mr Maginness said that he could not understand the fuss about the transfer of policing and justice powers because, on one hand, the Policing Board was fully in charge of policing and, on the other hand, there are so many independent agencies in the criminal justice system. He asked what the fuss was about, given that a Minister would be akin to no more than a caretaker.

His view during that discussion caused risible concern among people who attended that meeting, nearly all of whom were lawyers. On one hand, Mr Maginness said that the transfer was a vital issue, whereas, on the other hand, he asked what the problem was because the Minister will be merely a caretaker. Will the Member convey his party’s position to the House? That has not happened

yet. The SDLP says that it is committed to the transfer of policing and justice powers. We are saying that it has done absolutely nothing to bring that about. In fact, the SDLP has contributed only negativity. How do the Member's comments at the debate with the Law Society square with his assertion that the SDLP is serious about the issue?

Mr A Maginness: That is an interesting point about the Law Society. When evaluating the justice Department and the justice Minister, it is fair to say — this is the point that I made to the Law Society — that the scope of the Minister's power will be limited by the fact that there are so many agencies and by the existence of the Policing Board, the independent judiciary and the independent judicial appointments commission. Therefore, the Minister's scope and powers are limited and primarily concentrate on two main issues: the Department's budget and criminal justice legislation. He or she will have an important supervisory role over the remaining issues. I never used the word "caretaker"; I would never use that word. The Member is wrong.

Mr A Maskey: You did.

Mr A Maginness: You can say what you want, but you are wrong. I said — I have said it publicly on other occasions — that people have an exaggerated fear of the justice Department and the justice Minister and an exaggerated sense of that Minister's power, which will be constrained by the factors that I outlined, not only to the Law Society but to other organisations. I do not retract one jot of my comments on that matter.

The deputy First Minister said that our proposals had been fast-track proposals. The Good Friday Agreement from 1998 contains a commitment to the transfer of policing and justice. There have been innumerable discussions at various conferences on policing and justice, not only at Leeds Castle. Since the restoration of the Assembly there have been innumerable discussions about the transfer of powers from Westminster, and so it continues.

8.45 pm

There comes a point when we can say that we have exhausted discussions and that we need to come to a decision on policing and justice. We are focusing on the real need to achieve an end result. I do not know how anyone in the House can disagree with that.

The deputy First Minister: The Member ignores the reality that the institutions that we are a part of are power-sharing institutions that work only in the context of people having the ability to rise above all the divisions of the past and recognise the importance of working together. It is legitimate to talk about the fact that the institutions have been restored for the past two years. We are now coming to make-your-mind-up time on the transfer of policing and justice powers. That is accepted by everyone, against the backdrop of a £1 billion

settlement that the First Minister and I recently negotiated with the British Prime Minister. It is incumbent on everyone to recognise that we are fast approaching the time when we must make up our minds.

The Member fails to understand the reality, which is that, if the SDLP's approach were to prevail — although it has no support, other than that from the Ulster Unionist Party — it would mean that the transfer of policing and justice powers would fail miserably, which would set back the effort to devolve policing and justice for quite a number of years.

Mr A Maginness: I listened carefully to the deputy First Minister. I am not sure whether he said that devolution would happen by Christmas of this year, but his party's spokespersons have certainly indicated that. That is what Sinn Féin was looking for. It is a bit rich of Sinn Féin to criticise the SDLP for trying to expedite the transfer of policing and justice. By the way, it is important that the Ulster Unionists are supporting at least some of our amendments.

Mr A Maskey: Only one bit.

Mr A Maginness: Well, only one bit —
[*Interruption.*]

Mr Deputy Speaker: Order. Members must make their remarks through the Chair. [*Interruption.*]

Mr Deputy Speaker: Order. Members must make their remarks through the Chair and from a standing position.

Mr A Maginness: It is important that my party acknowledges the support of the Ulster Unionists for some of our amendments. That is important because that party shares a common view that serious difficulties exist. It is not right for the House to ignore those difficulties. The deputy First Minister's remarks implicitly demeaned the fact that the Ulster Unionists were supporting the SDLP. That is not something to demean; it is something to be proud of. At least we have a common position. We do not, perhaps, have a common position on timing, but we have a common position on the problems that are extant in the Bill.

From time to time, when the First Minister takes the mood, he says that he extends a warm embrace to the SDLP and even to the Ulster Unionists and says that they should be involved in this process and that it is a collective enterprise. It is very hard to take that sort of nonsense.

Mr Elliott: For clarification, there are some embraces that the Ulster Unionist Party can do without.

Mr A Maginness: I accept that point. Nonetheless, it would be good if there were more embracing in the House. I think that the points that we have made in relation —

Mrs Long: Please, no.

Mr A Maginness: Naomi Long is rejecting my advances in that regard. During the Assembly roadshows, I was asked who my dancing partner would be, and I suggested Naomi Long. Obviously, she would reject me as a dancing partner.

I will return to my point: if the DUP and Sinn Féin seriously regard this as a collective exercise, they should make it so. They should not exclude the SDLP or the Ulster Unionists. We do not see that level of “embrace”, in inverted commas. We do not see that level of engagement by the DUP or Sinn Féin.

An internal problem that will arise from the Bill is the appointment of a Chairperson and Deputy Chairperson of a justice Committee; similar issues will arise in relation to that. I believe that this is pertinent and relevant to the problems that are being created. Once you start to chip away at or unwrap something, it will unravel more and more. That is the problem presented to the House today.

The Deputy Speaker: Before I put the Question on amendment No 1, I remind Members that amendment No 1 is a paving amendment for amendment Nos 2, 3 and 4.

Question put, That amendment No 1 be made.

The Assembly divided: Ayes 13; Noes 66.

AYES

Mr Attwood, Mr D Bradley, Mrs M Bradley, Mr P J Bradley, Mr Burns, Mr Durkan, Mr Gallagher, Mrs Hanna, Mr A Maginness, Dr McDonnell, Mr McGlone, Mr O’Loan, Mr P Ramsey.

Tellers for the Ayes: Mr P J Bradley and Mr Burns.

NOES

Mr Adams, Ms Anderson, Mr Armstrong, Mr Beggs, Mr Boylan, Mr Brady, Mr Bresland, Mr Brolly, Lord Browne, Mr Buchanan, Mr Butler, Mr T Clarke, Mr W Clarke, Mr Cobain, Mr Craig, Mr Cree, Mr Easton, Mr Elliott, Dr Farry, Mr Ford, Mrs Foster, Mr Gardiner, Ms Gildernew, Mr Hamilton, Mr Hilditch, Mr Irwin, Mr G Kelly, Mr Kennedy, Mr Kinahan, Ms Lo, Mrs Long, Mr Lunn, Mr A Maskey, Mr McCallister, Mr F McCann, Ms J McCann, Mr McCartney, Mr McElduff, Mr McFarland, Mrs McGill, Mr M McGuinness, Miss McIlveen, Mr McKay, Mr McLaughlin, Lord Morrow, Mr Moutray, Mr Murphy, Mr Neeson, Mr Newton, Ms Ni Chuilín, Mr O’Dowd, Mrs O’Neill, Mr Paisley Jnr, Mr Poots, Ms S Ramsey, Mr G Robinson, Mr K Robinson, Mr P Robinson, Mr Ross, Ms Ruane, Mr Savage, Mr Shannon, Mr Spratt, Mr Storey, Mr Weir, Mr B Wilson.

Tellers for the Noes: Ms S Ramsey and Mr Spratt.

Question accordingly negatived.

Question put, That clause 1 stand part of the Bill.

Mr Deputy Speaker: I think that we need to ask the Question again.

Question put, That clause 1 stand part of the Bill.

Mr Deputy Speaker: Order, please. If Members resume their seats, we will try to get some clarity. There may be some confusion. We have now moved to clause 1, and the vote at this stage will be on clause 1. If Members are clear, I will re-call the vote.

Question, That clause 1 stand part of the Bill, put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Minister in charge of Department of Justice)

Mr Deputy Speaker: Clause 2 — *[Interruption.]*

Order. It is difficult enough to get clarity without Members talking as well.

No amendments have been tabled to clause 2, which has already been debated. A number of Members signalled their intention to oppose clause 2. If Members wish clause 2 to stand part of the Bill, they should vote Aye. If they wish to oppose clause 2, they should vote No. *[Interruption.]* Order. It is my Scotch accent. *[Laughter.]*

Question put, That the clause stand part of the Bill.

The Assembly divided: Ayes 54; Noes 25.

AYES

Mr Adams, Ms Anderson, Mr Boylan, Mr P J Bradley, Mr Brady, Mr Bresland, Mr Brolly, Lord Browne, Mr Buchanan, Mr Burns, Mr Butler, Mr T Clarke, Mr W Clarke, Mr Craig, Mr Easton, Dr Farry, Mr Ford, Mrs Foster, Ms Gildernew, Mr Hamilton, Mr Hilditch, Mr Irwin, Mr G Kelly, Ms Lo, Mrs Long, Mr Lunn, Mr A Maskey, Mr F McCann, Ms J McCann, Mr McCartney, Mr McElduff, Mrs McGill, Mr M McGuinness, Miss McIlveen, Mr McKay, Mr McLaughlin, Lord Morrow, Mr Moutray, Mr Murphy, Mr Neeson, Mr Newton, Ms Ni Chuilín, Mr O’Dowd, Mrs O’Neill, Mr Paisley Jnr, Mr Poots, Mr G Robinson, Mr P Robinson, Mr Ross, Ms Ruane, Mr Shannon, Mr Storey, Mr Weir, Mr B Wilson.

Tellers for the Ayes: Mr P J Bradley and Mr Burns.

NOES

Mr Armstrong, Mr Attwood, Mr Beggs, Mr D Bradley, Mrs M Bradley, Mr Cobain, Mr Cree, Mr Durkan, Mr Elliott, Mr Gallagher, Mr Gardiner, Mrs Hanna, Mr Kennedy, Mr Kinahan, Mr A Maginness,

Mr McCallister, Dr McDonnell, Mr McFarland, Mr McGlone, Mr O'Loan, Mr P Ramsey, Ms S Ramsey, Mr K Robinson, Mr Savage, Mr Spratt.

Tellers for the Noes: Ms S Ramsey and Mr Spratt.

Question accordingly agreed to.

Clause 2 ordered to stand part of the Bill.

New Clause

Mr Deputy Speaker: Before I put the Question, I remind Members that —

Order, please. Let us have no more confusion.
[Laughter.]

Before I put the Question, I remind Members that amendment Nos 2, 3, 4, and 5 are interdependent. If amendment No 2 is not made, I will not call amendment Nos 3, 4 or 5.

Amendment No 2 proposed: New clause

After clause 2, insert the following new clause:

“Duty of First Minister and deputy First Minister to report on certain matters

2A. The First Minister and deputy First Minister acting jointly shall make a report orally and in writing to the Assembly within seven days of the commencement of this section—

(a) outlining the functions that the Department of Justice is to exercise;

(b) explaining the provisions of paragraph 8 of Schedule 1 to the 2009 Act and, in particular, in the event that the Department of Justice is dissolved on 1 May 2012, the consequences of such dissolution for the exercise of the functions that the Department of Justice is to exercise, including such functions as may be conferred on the Department of Justice relating to—

- (i) the imprisonment of offenders;
- (ii) the compensation of victims of crime;
- (iii) the provision of services in relation to forensic science;
- (iv) the provision of services in relation to youth justice.

(c) explaining that paragraph 8 of Schedule 1 to the 2009 Act does not apply if the ministerial office of the minister to be in charge of the Department of Justice is filled under section 18 of the 1998 Act;

(d) explaining that the ministerial office of the minister to be in charge of the Department of Justice will be filled under section 18 of the 1998 Act if the Assembly fails within seven days of the date of the making of the report to approve a resolution endorsing the arrangement under section 2 of this Act for the appointment of the minister to be in charge of the Department of Justice.” — [Mr Attwood.]

Question put, That amendment No 2 be made.

The Assembly divided: Ayes 23; Noes 54.

AYES

Mr Armstrong, Mr Attwood, Mr D Bradley, Mrs M Bradley, Mr P J Bradley, Mr Burns, Mr Cobain, Mr Cree, Mr Durkan, Mr Elliott, Mr Gallagher, Mrs Hanna, Mr Kennedy, Mr Kinahan,

Mr A Maginness, Mr McCallister, Dr McDonnell, Mr McFarland, Mr McGlone, Mr O'Loan, Mr P Ramsey, Mr K Robinson, Mr Savage.

Tellers for the Ayes: Mr P J Bradley and Mr Burns.

NOES

Mr Adams, Ms Anderson, Mr Boylan, Mr Brady, Mr Bresland, Mr Brolly, Lord Browne, Mr Buchanan, Mr Butler, Mr T Clarke, Mr W Clarke, Mr Craig, Mr Easton, Dr Farry, Mr Ford, Mrs Foster, Ms Gildernew, Mr Hamilton, Mr Hilditch, Mr Irwin, Mr G Kelly, Ms Lo, Mrs Long, Mr Lunn, Mr A Maskey, Mr F McCann, Ms J McCann, Mr McCartney, Mr McElduff, Mrs McGill, Mr M McGuinness, Miss McIlveen, Mr McKay, Mr McLaughlin, Lord Morrow, Mr Moutray, Mr Murphy, Mr Neeson, Mr Newton, Ms Ni Chuilín, Mr O'Dowd, Mrs O'Neill, Mr Paisley Jnr, Mr Poots, Ms S Ramsey, Mr G Robinson, Mr P Robinson, Mr Ross, Ms Ruane, Mr Shannon, Mr Spratt, Mr Storey, Mr Weir, Mr B Wilson.

Tellers for the Noes: Ms S Ramsey and Mr Spratt.

Question accordingly negatived.

Mr Deputy Speaker: Given that amendment No 2 was not made, I will not call amendment Nos 3, 4 or 5.

Clause 3 (Short title and commencement)

Mr Deputy Speaker: We now come to the second group of amendments for debate. Amendment No 6 deals with commencement. Amendment No 5, which related to the appointment of the Minister and to commencement, has fallen as a consequence of earlier votes.

Amendment No 6 would remove the current provisions whereby the Act is to come into operation by virtue of an Order made by the First Minister and deputy First Minister and bring the Act into force on 7 December 2009.

Mr A Maginness: I beg to move amendment No 6: In page 2, line 6, leave out from “such” to end and insert “7 December 2009.”

We have had a lot of debate and discussion today about the importance of the transfer of policing and justice powers. The aim of amendment No 6 is to advance the transfer of those powers in a timely fashion. We believe that certainty and timeliness should be brought into the process. There has been sufficient debate and discussion on the issue over many years, and we believe that now is the right time for such a transfer.

The date cited in amendment No 6 is 7 December 2009. The SDLP’s proposals have been much discussed. Indeed, the deputy First Minister said that our proposals were an attempt to fast-track the transfer of policing

and justice powers. Given the context of this debate, not to mention the delays and the length of time for which the matter has been discussed, over and over again, a level of exhaustion has entered the debate. My party believes that now is the right time to transfer power. Other Members have said that the SDLP is delaying and preventing the transfer of justice and policing powers, but one cannot have it both ways. Either we are fast-tracking the process or we are delaying it and preventing it from happening.

(Mr Speaker in the Chair)

I believe that we are acting responsibly and in a fashion that concurs with current public opinion, which wants to see policing and justice powers devolved. The public encounter many policing and justice issues daily, and they want to see local remedies to local problems. There is no better way in which to do that than to transfer responsibility for justice and policing back to the Assembly. Therefore, the SDLP makes no apology for tabling amendment No 6. The transfer of policing and justice powers should have happened a long time ago. It was promised at St Andrews, but that promise did not materialise.

Dr Farry: Will the Member clarify what the amendment seeks to do? My understanding of the amendment is that it sets a designated day for setting up the Department. It does not set a designated day for the transfer of policing and justice powers, about which the Member is talking.

Mr A Maginness: The Member misunderstands. If the date were set by way of an amendment to the Bill, the process would roll forward.

Time is running out. Before Dr Farry's intervention, I was making the point that people out there want responsibility for policing and justice to be in local hands and they want that to happen now. It is important that we comply with public opinion, and I have no doubt that public opinion favours the devolution of policing and justice powers. Other Members may disagree, but it is important that we comply with public opinion. The need is there and the demand is there. The deputy First Minister said that there is no good reason why policing and justice powers could not be transferred by Christmas this year, and amendment No 6 offers an opportunity for that transfer to be expedited.

Moreover, if the amendment were made, the decision-making process — at least in its initial stages — would be taken out of the hands of the First Minister and the deputy First Minister, and the specified date, 7 December 2009, would start the process. That is a matter for consideration. It is important that we get the devolution of policing and justice powers right. The SDLP is trying to get it right, and people are demanding that we get it right. Our amendment is very responsible, and I urge all Members to support it.

Mr Hamilton: I will make the point, as I did during the previous debate, that the Democratic Unionist Party supports the devolution of policing and justice. However, we have always made it clear that it was not simply a matter of desire, but that there were issues that needed to be satisfactorily resolved in order for devolution to occur and to have any chance of it operating properly.

One of the conditions that we have spoken about, which was accepted in the process paper that was published by the First Minister and deputy First Minister around this time last year, and on which we have been consistent throughout, is that there must be community confidence. We see that as essential. That is not DUP confidence, or even unionist confidence; it is the confidence of the whole community. That needs to be in place if devolution of policing and justice is to occur.

Everyone knows that this is a sensitive issue. Whoever takes on the post will be dealing with some of the most sensitive issues of any state, such as policing policy, prisons policy and sentencing policy; all those are issues that pertain to policing and justice. One has only to listen to the news on the radio, watch the television or pick up a newspaper to see that those are issues at the forefront of people's minds. This is a matter of grave sensitivity, even in relation to the normal, run-of-the-mill law and order issues, never mind the raft of sensitive issues pertaining to the security situation in Northern Ireland.

Mr Moutray: Does my colleague agree with me that the decision taken last Friday to axe the police Reserve does anything but give community confidence?

Mr Hamilton: There is a series of elements that factors into achieving community confidence. It is important that, even now, before the devolution of policing and justice, people have confidence in the ability of the Police Service to do the job that we all want it to do: to fight crime and tackle terrorism. I agree with the Member that getting rid of some of the most experienced officers in the Police Service is not in any way helpful to building and maintaining confidence in the Police Service's ability to do its job, never mind the prospect of having policing powers devolved.

My party has been consistent on community confidence from day one. As I said, it was one of the stages outlined in the process paper that was published by the First Minister and the deputy First Minister. I know that there are differing views in the Assembly about whether the requisite community confidence exists. It is fair to say that nationalists and republicans believe that it exists, and that unionists believe that it does not exist, at this time. Although we believe that it is not there at this time, that does not mean that we do not believe that it could exist at some stage, or that we

do not want to see the policing and justice powers devolved to the Assembly.

There are historical reasons for that. Our unionist forefathers fought to have those powers rest in this Building at the formation of the state in the 1920s. Indeed, the Parliament collapsed because of the determination of the Westminster Government of the time to take policing powers away from the Stormont Parliament. There is clearly an ideal and a desire on the part of unionists to have policing powers rest in this Building. There is a historical precedent for unionists wanting that, and it has not changed today.

I listened to some of the points that were raised by others in the previous debate — I think that Ms Anderson was one of them — about having control over those important policy areas. I do not think that anybody is under the misapprehension that gaining control of policing and justice policy will somehow mean that we will have direct control over every single case in the criminal justice system. However, at a higher policy level, having control over sentencing policy, for example, is desirable, as is having the ability to influence policy in respect of policing and justice matters and the way in which they interface with the work of other Departments.

As the Chairperson of the Committee for Social Development, I see another housing Bill, which, among other issues, will deal with antisocial behaviour, looming on the horizon. I can see the desirability of having the capacity to interact better with the police and others in the criminal justice system by making that legislation as suitable as possible. We do not currently have that ability. We want to have it, but we do not consider that the requisite community confidence is in place.

9.45 pm

Many issues and factors are involved in building community confidence. There are institutional issues, which have been and will be assisted by the passing of the Bill, particularly clause 2, which deals with the method of appointment.

Financial concerns are a further factor, and, having sat on the Assembly and Executive Review Committee for the past year and a bit, my colleagues and I have seen clearly the great financial pressures that would be placed on the Executive and Ministers if the devolution of policing and justice powers were to occur without the proper financial package being in place. Thankfully, as a result of some strenuous negotiations, it appears that a good financial package is developing. I know that some issues have yet to be finalised, but a package of around £1 billion on top of the moneys that are already in the budget for policing and justice for Northern Ireland seems to represent a good deal. It is certainly much better than the smaller figures that

some would have settled for at various stages in the negotiations.

Continuing republican support for law and order has been an issue. Much positive progress has been made on that, not least due to the strident comments of Mr McGuinness at the time of the murders of the two soldiers at Massereene barracks and of Constable Carroll in Craigavon. That and many other pronouncements made by republican politicians, as well as the engagement of the republican community with the law-and-order system, have been positive. Much progress has been made, and we will look for further progress in the weeks, months and years ahead.

Other issues that have been mentioned must be dealt with satisfactorily to build community confidence; not least is the issue of parading. Some people would like to see that issue sitting separately from that of policing and justice. If the parading issue is not dealt with satisfactorily, it will have the potential to poison any fledgling Department of justice, given the great sensitivity that surrounds it. That and other matters need to be dealt with satisfactorily.

Mr O'Dowd: I have listened carefully to the Member's contribution, at the start of which he spoke about community confidence. He emphasised that it was not DUP or unionist confidence that was required but the confidence of the entire community. I welcome that comment. Does he agree that, in any negotiation, discussion or engagement at or outside the Executive, particularly on policing and justice and other sensitive matters, parties have to be conscious that, although placing demands is perfectly legitimate, their actions may undermine confidence in the entire process? All parties have a responsibility to ensure that they ask that their legitimate demands be dealt with in such a way that does not erode community confidence, the very issue that the Member is speaking about.

Mr Speaker: Before the Member resumes his speech, I recognise that he might feel that what he is saying is relevant to amendment No 6, but Members on all sides of the House can be innovative in how they link amendments to what they might say. The Member should find a way to link amendment No 6 to what he is trying to say.

Mr Hamilton: Funnily enough, Mr Speaker, that is the very point that I was about to make. As there is a well-recognised lack of innovation in the country, I shall take it as a compliment that you reckon that the spirit of innovation has been shown by Members in the debate. If we could bottle it and use it, we could help the economy.

I understand the Member's point; I will deal with it and move swiftly on. He and his party may be used to dealing with parties in negotiations that do not raise issues of grave importance to them in the way that,

perhaps, my party does. He will appreciate that issues such as parading, in particular, are not new: my party has been consistent in raising that issue and the need for it to be dealt with satisfactorily.

The issue is certainly not new to my party's manifestoes and policy positions. The Member will know that my party has consistently raised the issue in the Assembly and Executive Review Committee, of which he is a member and I am a former member. In fact, my party put the need for a satisfactory resolution of parading on that Committee's agenda because of the interface between policing and parading and the damaging effect that such difficult, sensitive issues could have on the fledgling Department and on what we are all, ultimately, trying to achieve: the devolution of policing and justice powers to the Assembly. The Member and his party should bear that in mind.

I will now move to amendment No 6 and the date of 7 December 2009. If the Assembly has learnt anything through the years, it should be that setting totally arbitrary dates is counterproductive. Simply plucking a date out of thin air for no good reason — in this instance, just before the Assembly takes its Christmas recess — in no way advances the cause that the SDLP Members who tabled the amendment seem to espouse.

It is fantasy and fiction. Ultimately, it will be fruitless to try to force any party into devolving policing and justice powers on a date plucked out of thin air. Even if all Members agreed tonight that they wanted the devolution of policing and justice immediately, the date of 7 December 2009 is not practical or achievable for a host of reasons.

I am not even sure that the passage of the Department of Justice Bill and its Royal Assent is achievable by 7 December 2009; never mind the establishment of a Department and the transfer of powers to it quickly thereafter. The Assembly must resolve a host of issues before that could happen, including finance, which I mentioned earlier. The Assembly would have to pass a Supply resolution and Budget Bill before devolution could happen. The First Minister and the deputy First Minister need to agree on a resolution to request that those powers be transferred, which would need to go through the Executive and then, ultimately, to be agreed by the Assembly. A raft of procedures and Orders would have to pass through Westminster.

All that would need to happen before we even dealt with issues such as the identification and appointment of a Minister, and practicalities, such as staffing, accommodation and Committees, which were mentioned earlier. A host of practical reasons makes an arbitrary date such as the 7 December absolutely unachievable. Not only is it unrealistic because of the confidence issues that I talked about earlier, which is why that

was relevant to the point that I am making now, it is unrealistic practically.

The Member and the SDLP should know by now that my party will not be bullied, harried, harangued, cajoled or forced into accepting arbitrary deadlines that are set by them or anyone else. The DUP is led by the need to ensure that the required conditions are correct and in place; we will not be led by calendar dates.

Therefore, I suggest to the SDLP that to set arbitrary deadlines in the Bill, or, indeed, anywhere else, does not advance the aim that it espouses, but only hinders it. I do not want to become involved in an intra-nationalist civil war: I am sure that there will be plenty of that later; and I will leave it to other parties.

SDLP Members say that they are in favour of the devolution of policing and justice. However, plucking an arbitrary date from the air and trying to force it down people's throats hinders what that party is attempting to achieve.

It will come as no surprise that I and my party will oppose the amendment for the reasons I have outlined. We are all travelling in the same direction, but we must all recognise that community confidence is essential. The community must have confidence not only in who holds the post but in this place's ability to exercise policing and justice powers. A plan of action is required to put in place the justice powers to which everyone can subscribe. Given the need to build the community confidence that is lacking, the arbitrary setting of deadlines for any reason is not helpful and serves only to hinder. The DUP will, therefore, oppose the amendment.

Ms Anderson: Go raibh maith agat, a Cheann Comhairle. I declare an interest as a member of the Policing Board. Suffice it to say that I concur with much of the previous contribution, particularly the Member's comments on the onus on everyone in the Chamber, regardless of their political party, to work, through demonstrating leadership in society, to create the necessary community confidence.

The same Member stressed the importance of not interfering in individual cases, but said that parties can shape and determine the policy. I suggest that he reflect on what he said about the full-time Reserve, because his comment could give the impression that he wants to interfere politically to shape policing. He should not do that, and for him to send out such messages, particularly now, is unhelpful.

Amendment No 6 would create a Department of justice almost immediately, by 7 December 2009, which is before the enactment of the Bill. The selection of that date is indicative of the confusion that the amendment and contributions from SDLP Members today causes me, members of my party and others. As pointed out by the previous Member to speak, the amendment

could create a Department without responsibilities or functions. That makes no sense, because the Bill does not transfer any responsibilities.

The final step towards the transfer of policing and justice will be taken when the First Minister and deputy First Minister bring a motion requesting it to the Assembly. That will trigger the necessary reciprocal steps at Westminster, from where responsibility will be transferred. The SDLP amendment shows no understanding of that process.

The amendment is even more confusing because the SDLP voted against the principles of the Bill at Second Stage and expressed concerns about the sunset clause. We heard much about that today and about how the Minister will be appointed. Yet the Department of justice that the SDLP wants to create will include all that. It is little wonder that the SDLP lacks credibility on the issue beyond these walls.

Sinn Féin will reject the amendment because it is entirely unrealistic, and it should be rejected by everyone in the Chamber. It is up to the SDLP to reflect on the import of the amendment because it is, frankly, a shoddy piece of work. Given its potential impact, the SDLP should not pursue amendment No 6 in the Chamber this evening.

10.00 pm

Mr Elliott: Much has been said today about community confidence and sensitivities, and that goes to the heart of not only the Bill but the date proposed in amendment No 6.

Mr Hamilton outlined a range of issues that bring about community confidence and that are part of the sensitivities not just of the unionist community but of the entire community. I am concerned that a fabricated process and timescale have been proposed today. Community sensitivities are a vital consideration.

Mr Speaker, I ask you to allow me some latitude to speak about the full-time Reserve and parades. I urge caution on the parades issue, because if we get that wrong, it will cause huge damage, and it will be even more difficult to resolve after the devolution of policing and justice, which will not be resolved by 7 December.

I am concerned that the proposals in the report on the strategic review of parading will be adopted, because those will cause even more political damage and difficulties throughout the process by giving some powers to local councils and, indeed, to the Office of the First Minister and deputy First Minister. If that happens, there could be huge conflict in the days ahead. That is why I am concerned that we will not be able to meet the 7 December deadline in any circumstances or to address some of those issues on a much longer-term scale.

I was delighted to hear the DUP comment that it will use the full-time Reserve as a deal-breaker. I believe that the full-time Reserve has given a huge amount to society and community, so to try to force its members out of their positions in a short timescale is unsatisfactory, particularly given our present level of policing resources and the experiences of the Police Service at this time. That is totally unfair, unreasonable and unhelpful to the policing situation in the Province.

I have not heard the SDLP give a good reason as to why it has proposed the date. It has talked about wanting to progress the issue of policing and justice by getting it devolved as soon as possible, but it has not backed up that argument with proper reasons. Therefore, I am happy to hear any such reasons when Mr Attwood makes his winding-up speech later. We want to be absolutely sure that the community has confidence, and that point has been highlighted time and again today. We are not going to have the issue settled this year or early next year, let alone on 7 December, as is proposed in amendment No 6.

Earlier, I asked a question about a comment that the Sinn Féin leader made about the DUP being in breach of the commitments that it entered into at St Andrews. I wonder whether that has anything to do with the timescale. I did not get an answer earlier, so I am willing to listen to any answer or explanation that the party can give about those commitments. I am sure that the House is also keen to hear and understand those, because if commitments were given to one particular party, it is only right that the rest of us hear about them, too.

I think it was Mr Hamilton who mentioned the IRA army council, and, at this stage, there is no clarity as to whether that is out of operation. I am concerned that the IRA army council is still intact and very much part of the entire republican process. That is why I do not believe that there is the community confidence to bring the Bill forward and enact it by 7 December, let alone deal with the practical outworkings that we have heard about and the difficulties arising from those.

It is imperative that both sides of the House build community confidence. It was said that this issue is not just about two parties; although, it is those two parties that have driven the issue forward and taken the lead. Whether the deadline is 7 December, early next year, or the middle of next year, I am concerned about how that process will develop, particularly in relation to the powers that the justice Department and Minister will have.

I do not believe that there is any logical purpose in even trying to think of moving towards enacting the Bill by 7 December. I would like some of my questions answered; in particular, whether any commitment was given at St Andrews about the timescale. We are aware that, following the St Andrews Agreement, legislation

went through Westminster that changed the designation of the First Minister, whereby that post is filled by the largest party and not the largest party from the largest designation as was originally legislated for. That is something that the Ulster Unionist Party finds absolutely disgraceful and which it did not, and does not, support.

The Ulster Unionist Party opposes amendment No 6.

Dr Farry: The Alliance Party opposes amendment No 6. Mr Elliott referred to a fabricated deadline, and we are happy to agree, at least on that point, with the Ulster Unionists. However, we reject the argument that it is a fabricated process. We will take the small crumbs of agreement where we can get them.

The first question that we have to ask is what is the point of amendment No 6? My conclusion is that, essentially, it is empty gesture politics. The amendment sets a commencement date for the legislation and sets up a Department of justice. However, that Department of justice will be a shell, as is clearly stated in the Bill's explanatory and financial memorandum.

Amendment No 6 does not establish a date for the transfer of policing and justice powers to the Assembly. We need to be clear about what we are voting on and that the misinformation that some Members may peddle after the debate, about the so-called missed opportunities for devolution, needs to be confronted.

The process for transferring the powers of policing and justice has already been set out clearly. For better or worse, whether one is for or against it, there is a quadruple lock on that process. The First Minister and deputy First Minister are required to table a motion, which has to be voted for by the Assembly on a cross-community basis, which requires certification from the Secretary of State, and which requires a vote in Westminster. That is the process by which devolution will occur. Whether we set a date for the establishment of a Department of justice tonight will have no impact on bringing forward the devolution of policing and justice. We are being asked to sign up to an empty gesture.

I wonder whether the target of 7 December can be met. It is my understanding that the earliest date at which the Assembly could finish the legislative stages of the Bill is 1 December, six days prior to the so-called commencement date.

I am not sure about Her Majesty's availability in the intervening period, but it is asking a lot to assume that Royal Assent will be granted by 7 December. However, that is of limited consequence, because I am not sure what setting up an empty-shell Department would achieve: that probably just shows a bit of confusion about the process.

My party is committed to the early devolution of policing and justice. Society is ready for devolution, and it is important for the credibility of these institutions

that we have the appropriate powers of a regional Government, including policing and justice. The devolution of policing and justice is an important aspect of our peace process and is perhaps the most important of the outstanding aspects. There are major opportunities for joined-up government to tackle the issues that Mr Hamilton mentioned, such as antisocial behaviour and levels of offending. Therefore, there is a prize for ensuring that the devolution of policing and justice is achieved as quickly as possible.

As much as I want those powers to be devolved, I appreciate that the date for that will only come through political agreement. Setting arbitrary deadlines may make us feel a lot better about ourselves, but it will not get us any closer to agreement. In some respects, it may even be counterproductive and further feed those inside and outside the Chamber who are intent on causing mischief on the issue and on blocking further progress in our society and the building of further peace and stability.

Members mentioned the importance of community confidence. I recognise that that is an issue. However, a large degree of confidence already exists. It is not our job as political representatives to merely respond to community confidence. Every party and every Member in the Chamber can influence community confidence. The DUP, in particular, can show leadership on the issue and further enhance community confidence. That is an opportunity and a challenge for the DUP.

It is legitimate to raise issues in advance of the devolution of policing and justice, including those relating to confidence, provided they relate directly to how policing and justice will be conducted once devolved. There are two aspects to that. First, it was right to pursue a financial package, and I am pleased that significant progress has been made in that regard. However, we should note with caution that the package only addresses legacy issues and provides a contingency for addressing them. There are, and there will be, ongoing financial and resourcing pressures in the criminal justice system. Those pressures exist and, no doubt, will be even more difficult in the future. Therefore, resourcing issues still exist in the system.

Secondly, it is right to ensure that the proper policies are in place to make devolution a success. I reiterate that confidence is not something that will happen before devolution; it is part of an ongoing process and will be enhanced by the successful operation of devolution by a Minister, the Executive and the Assembly. That means providing tangible results and change. I welcome the hunger for that to happen that has been expressed from different sides of the Chamber.

Mr Alban Maginness expressed concern about the security of tenure of a future justice Minister. Agreement on policy will go a long way towards addressing the

issues raised by my party and those raised by Alistair Carmichael in the House of Commons in March.

10.15 pm

I urge Members to be cautious about bringing other issues, such as alleged issues of confidence, to the process at this stage. That will cause confusion, create needless obstacles and will, frankly, provide an opportunity for people outside the House who are intent on making mischief and on spoiling the process to intervene, to cause division and to frustrate, or even to block, the devolution of policing and justice. Those who are highlighting other issues and trying to make linkages to devolution need to be cautious.

Mr Elliott: Will the Member provide a flavour of the Alliance Party's position on the future of the full-time Reserve?

Dr Farry: The Member will probably recall that the Alliance Party supported the resolution that his party brought to the Chamber that asked the Chief Constable to conduct a further review. However, that resolution was, quite rightly, framed in such a way as to respect the Chief Constable's right to make that decision. The Chief Constable has made his decision. Rightly or wrongly, he has the operational independence to make that call.

Controversial issues on policing and justice matters already exist in our community and will continue after devolution. The suggestion that we must address all those issues in advance of devolution misses the point and ignores the Assembly's opportunity, and that of its elected representatives, to find its own made-in-Northern-Ireland solutions to those problems. That is our purpose; it is what we have electoral mandates to do. We should move on and solve those problems ourselves rather than rely on the British Government to do so at third hand. We have that ability.

The issue of parades, about which I share some of Mr Elliott's concerns, should not be linked to the devolution of policing and justice. Nevertheless, it is an important issue for our community and one that has the potential, through Lord Ashdown's review, to perhaps move towards a rights-based approach and to consider fresh institutions. However, that is a separate debate.

In conclusion, I do not see the purpose of the amendment at this stage. It is simply an empty gesture that does not move the devolution of policing and justice further forward. If anything, it will create confusion and provide further ammunition for people inside and outside the Chamber who wish to frustrate the process. I am committed to the early devolution of policing and justice, but I am realistic enough to know that it can be achieved only through political agreement. I encourage those who have the ability to make that

agreement, to do so as quickly as possible, because people are becoming frustrated as the saga continues.

Mr McFarland: I will try to be brief because I am conscious that it is late in the evening. Amendment No 6 relates to timing and to a date for devolution. That gives rise to the question of how to measure community confidence. That will directly impinge on whether 7 December 2009 is a realistic date to strive for.

I will comment briefly on issues that affect confidence. First, we do not believe that the institutions are stable. As Members know, the issues in education, the fact that the Executive did not meet for 154 days and the treatment of the SDLP and the Ulster Unionist Party on the Executive provide clear evidence of that instability and lead to suggestions that the institutions are not yet stable enough to receive policing. In that case, how does one judge when community confidence exists?

In November 2008, the First Minister and the deputy First Minister produced their report on the devolution of policing and justice, in which they indicated that community confidence, in simple terms, would exist when Peter and Martin said so. We have evidence from Jeffrey Donaldson, who, as we speak, is probably locked up in DUP headquarters awaiting court martial for sabotage after his deal-breaker interview on 'The Stephen Nolan Show'. Jeffrey Donaldson recently said that DUP MLAs would be sent to their constituencies to report on whether confidence existed. Of course, those are the same MLAs whose signed resignation letters are stashed away in their leader's drawer, so no one should be too surprised when the reports come back positive.

There is little point —

Lord Morrow: The Member talks about community confidence and tries to outline how the DUP might conclude that such confidence exists. It would be useful if Mr McFarland shared with the House his definition of community confidence.

Mr McFarland: Community confidence will exist when the community believes that the Northern Ireland Assembly is stable and ready to deal with something as contentious as policing and justice powers. Parades and other issues will have to be dealt with when those powers are devolved, so the question is whether the Assembly is stable. One has only to look at the past year of total chaos at the top, at First Minister and deputy First Minister level, and the malfunctioning Executive. Any Member who thinks that the community believes that the Assembly is stable and, therefore, ready to accept policing and justice powers must re-examine the situation.

Mr Paisley Jnr: Will the Member give way?

Mr McFarland: Oh, all right. I was trying to be quick, Mr Speaker.

Mr Paisley Jnr: I appreciate that the Member is trying to make his point. Will he explain, in light of his comments, why his party was ready to devolve those powers in 2005?

Mr McFarland: My party was not ready to devolve those powers in 2005. The organisation of the process was heavily predicated on a list of things that, had they happened at the time, would have given the community enough confidence to consider the devolution of policing and justice powers.

I will move on. There is little point in setting a date in amendment No 6. Policing and justice powers will be devolved when the Sinn Féin/DUP politburo decides that they will. However, I ask my colleagues and the House to spare a thought for the internal turmoil that the DUP is going through. We think of Nigel Dodds's phrase "a political lifetime" and of Dr William McCrea, who said that the devolution of policing and justice was several light years away.

How does the DUP square that with the clear understanding that its leader has with Sinn Féin that led to the November 2008 letter? A clear understanding exists, and the deputy First Minister has been given assurances that this is a goer. We heard tonight that it might happen before Christmas. How exciting. It is my guess that the leader of the DUP has given assurances; I wonder whether the troops on the ground can square that away.

My party will oppose amendment No 6 and the changes to clause 3.

Mr Durkan: Amendment No 6 is straightforward. We were told earlier that the Bill would be a landmark on the way to the devolution of policing and justice powers. Amendment No 6 is an attempt to enhance that landmark. It is not a wrecking amendment, nor is it intended to damage the Bill; it is intended to enhance it and to give it meaning.

Notwithstanding our objections to clause 2 and the various attempts that we made to amend the Bill, we say: let nothing stand in the way of giving effect to the Bill. If that is how the devolution of policing and justice powers is to take place, let nothing stand in the way of it; let there be no new extraneous preconditions or linkages and difficulties created here or outside.

Clause 3(2) says:

"Sections 1 and 2 and the Schedule come into operation on such day or days as the First Minister and deputy First Minister ... may by order appoint."

Amendment No 6 provides a definite date, which would be the date given in clauses 1 and 2. It is a straightforward amendment.

If clauses 1 and 2 mean so much and are so important, what is wrong with providing more certainty as to when they will come into being? As other Members have said, our amendment would not make 7 December 2009 the target date for devolution. All sorts of other things have to happen. Other votes are needed in the House, and a vote must be made on a proposal from the First Minister and the deputy First Minister. A resolution will be needed from Westminster.

Mr Ford: I must confess that I am a little bit confused. The Member's party voted against the Second Stage of the Bill and produced various amendments that would heavily qualify the ability to move forward. It is now demanding a specific date of 7 December by which to move forward, yet says that that will change nothing. Will the Member confirm that he will vote for the Final Stage of the Bill, to make up the complete set of possible alternatives?

Mr Durkan: The honourable Member is deliberately feigning confusion. The confusion is not on the SDLP's position; the confusion has been on the Alliance Party's position throughout. Not so long ago, that party was saying that there was no urgency for the devolution of justice and policing; that no one was asking for or seeking it. We were saying that there was urgency around the devolution of those powers, and have done for a number of years. We have been very clear about that.

The Alliance Party says that we are trying to block the devolution of justice and policing and create difficulties. None of the amendments that we have proposed would create difficulties. Those amendments are to try to remove difficulties. We are not doing anything to prevent devolution happening now or soon; we are trying to prevent dissolution happening unnecessarily in May 2012, and to ensure that we have full insurance against that possibility.

The SDLP wants that insurance for whoever is Minister for justice; whether they are from the Alliance Party by virtue of cross-community vote, or whoever it is. When Alistair Carmichael protested in the House of Commons about how easily the Minister appointed by cross-community vote could be dismissed, we supported that. Even though Alistair Carmichael made it very clear that he was making that point on behalf of the Alliance Party, we absolutely supported it.

Mr Ford: He did not.

Mr Durkan: He did.

Mr Ford: He did not mention the Alliance Party.

Mr Durkan: It was very clear whom he was speaking for.

Mr Ford: He never mentioned the Alliance Party.

Mr Durkan: It was very clear whom he was speaking for, and other people made it clear whom he was speaking for, to which he nodded proudly.

Mr Speaker: Order. The Member has the Floor, but I remind him to be innovative in how he might link amendment No 6 to what he is saying.

Mr Durkan: I am partly replying to the earlier contribution from Dr Farry about the amendment. He touched on that point.

We are told that the Bill will be a landmark, yet we are also told that anything that would give a definite date for the introduction of clauses 1 and 2 would be an empty gesture. If a definite date for clauses 1 and 2 is an empty gesture, it does not say very much about the meaning of those clauses. The contradictions are on the part of those who are attacking the SDLP's proposed amendments; they are not within the SDLP's position or amendments.

If these clauses are so significant, let us make the most of that. We do not want a situation where people say that there are all sorts of preconditions about the due date for clause 1, and there would be a whole new set of preconditions, issues and tensions in and around the due date for the commencement of clause 2. There would then be all sorts of issues, preconditions, contentions and jockeying around the other events that have to be dealt with, including votes in the House. That is why we are trying to remove a lot of the clutter and the temptation to grandstand and to bundle or barter various issues in ways that create difficulties, not just within this process, but possibly within the wider community.

It is good hygiene and good management for us to outline the ways in which we will move forward. If sections 1 and 2 will determine how the deal is done, let us set a definite date.

10.30 pm

Mr O'Dowd: Is it not the case that the SDLP has brought forward this amendment because of the negative public reaction to its voting against the transfer of policing and justice? Some SDLP Members did that at Westminster; others had left early. However, all the SDLP Members voted against the transfer of policing and justice in the Assembly debate on 22 September 2009. The negative public reaction to that has led the SDLP to bring forward an amendment that it knows is impractical and unworkable but that will allow it to say that it proposed a date for devolution that everyone else voted against.

Mr Durkan: The Member said that the amendment is unworkable. If that is the case, there was nothing sensible, feasible or honest in Gerry Adams's statements about the need for agreement before Christmas. The deputy First Minister also made it clear that it could all

happen before Christmas. The two sections will not in themselves deliver devolution, but a suggested date, which is before our Christmas recess, is apparently not feasible or realistic. That begs the following question: where does the importance of having agreement by Christmas lie?

We are trying to give some certainty by Christmas as a way of building confidence. We heard throughout the debate about the importance of building confidence. What is wrong with giving a definite date for the commencement of sections 1 and 2? That would help to build confidence. I understand, from the conversations that parties are having with the First Minister and deputy First Minister, that the First Minister and deputy First Minister regard the identification of a Minister of justice as a key factor in building confidence.

We are being told that the identification of the Minister of justice may not necessarily be the same as the election of the Minister of justice. However, I think that making those the same thing would be better and more straightforward. It would make people less confused and a little more confident. If a Minister has been identified and can be seen to be working on the relevant issues, people will have a feel for things and trust will be built. If a Minister of justice is identified but given no status or accompanying furniture and equipment, it may be harder for that person to have the effect of building confidence.

Members say that going ahead with section 1 would create a shell of a Department, but that is what section 1 does, so they are slugging a section that they supported. Similarly, by decrying section 2 as creating a shell of a Department, those people are decrying a clause that they fully supported. What would be wrong with identifying a Minister and creating a Department while we wait for the transfer to take place?

Mrs Long: The Member is saying that by not agreeing to the insertion of a date into the Bill, one is saying that sections 1 and 2 will create an empty shell. That is clearly not the case, because OFMDFM's agreement to deliver on sections 1 and 2 of the Bill as it stands comes with an agreement to put a motion to the House that will trigger devolution. It is very clear that that would not create an empty shell, but a Department that was created ahead of those parties agreeing to bring a motion to the House would be an empty shell. An empty shell of a Department would be created by accelerating that part of the process.

Mr Durkan: I correct Mrs Long in that we did not introduce the term "empty shell". Members making the case against our amendment said that inserting these dates would create an empty shell. Last year, the First Minister and deputy First Minister produced a list of issues that would have to be addressed. That list was not sequential, but it included the identification of a

Minister of justice. In conversations with us this week, the First Minister and deputy First Minister placed much importance and value on the Minister being identified ahead of devolution because that would help to build confidence. If it is so significant, let us give it more meaning.

Dr Farry: I am grateful to the Member for giving way. We heard a lot earlier about the need for certainty and the potential catastrophe that will ensue if we do not have it. As we stand today, there is no certainty about when we will have agreement among the parties in this Chamber about when the devolution of policing and justice powers could occur. If we go ahead with the amendment that the Member has suggested and set up a Department and put in place a Minister, that will occur without any certainty about when the devolution of those powers will follow. Potentially, in the worst-case scenario, which his party has been very good at talking about today, we could have a situation in which a Department and a Minister sit almost indefinitely waiting for devolution to occur. In whose interest would that be?

Mr Durkan: I refer the Member to what was said about the importance of identifying the Minister. We are told about the importance of this legislation and that it is a landmark Bill on which there should be such reliance. We are trying to say that if the Bill is so important, it is a step forward. It is not the precise step that we want to take, but it is the way that things must go if we are to move the situation forward. By trying to include that date, we are trying to encourage Members to get a bit more definition and purpose regarding the matter.

The Member also suggested that there are all sorts of difficulties and uncertainties ahead. The contradictions are not in our position; rather, they are in the position of those who argue against us. People told us that the situation was grand, and the Member, in his contribution, talked about agreement and those who were capable of delivering it, and gave all sorts of praise and high expectation. At the same time, however, he said that things are so uncertain that we cannot even afford to talk about dates.

Some other Members who argue against us said that it is important that the process is completed before Christmas. We are trying to take the modest step of having the two key sections in this Bill at least given effect and commencement before Christmas recess. What is wrong with that?

It is a bit dishonest of Members to attack us for putting in dates. Some of them would be the very first to attack us for having no dates or timetable, and having a completely indefinite and non-urgent position. There has been a continual misrepresentation, in today's debate and previously, from Sinn Féin about the SDLP

and the question of the timing of and commitment to the devolution of justice and policing.

We wanted to negotiate the whole issue of justice and policing as part of the Good Friday Agreement. Unfortunately, we could not get any other party to agree to negotiate at that time, which is why we had to rely on the device of an international commission. When the Patten report was implemented in 2001, we pursued the devolution of justice and policing at that stage. In various talks subsequently, including at Weston Park, Hillsborough and Leeds Castle, we always mapped out how the issue of a timetable for the devolution of justice and policing needed to be part of the implementation timetable for any agreement. Therefore, I reject fully the allegations that we have only lately developed some urgency and concentration around delivering the devolution of justice and policing.

This amendment is not the first time that we have proposed having a designated Department in place and a Minister who is ready to receive devolved powers. During meetings of the Preparation for Government Committee in 2006 and early 2007, we proposed that there should have been a Department, which could have been referred to as a proto-Department, that could have had some devolved functions and waited for the other functions to be devolved. Of course, any Minister and Committee could have worked on a lot of the issues that needed to be dealt with in the run up to the devolution of justice and policing. Some of those issues are being addressed, one way or another, by the Assembly and Executive Review Committee.

Let nobody deny that we made those proposals. Once more, we could not get any takers for them. It is not our fault that others were not prioritising the devolution of justice and policing, or that others believed that they had a better way of making it happen quicker.

Of course, those who are saying that we do not need this timetable are the same people who told us that they already had a timetable for the complete devolution of justice and policing. They were the people who went out and misled the public that the St Andrews Agreement gave a definite date, an absolute guarantee that justice and policing would be devolved by May 2008. We pointed out that that was not so, because it was quite clear that the DUP had not agreed that and was still sitting on its triple lock, which it then inflated to a quadruple lock. It is now clear who told the truth about that. Sinn Féin issued denials and lied to the public that there was a definite and absolute date and that it was a given.

Mr T Clarke: Will the Member give way?

Mr Durkan: Clearly, it was not, because May 2008 came and what the SDLP said proved correct. I would have much preferred that we had had devolution; if not in May 2008, then later in that year.

Mr T Clarke: Will the Member give way?

Mr Durkan: I will give way for the very obvious point that the Member is going to make. The Member wants to gloat.

Mr T Clarke: I thank the Member for giving way. He may want to take a breath and fill his lungs, so that we can endure a wee bit more of his speech. Perhaps he might tell us who actually got the quadruple lock? Sorry, I missed that point; perhaps it was when the Member was becoming exasperated.

Mr Durkan: Who got the quadruple lock hardly needs repeating, and I do not think that a triple or a quadruple reference to who got or allowed the quadruple lock is necessary. The issue here is the importance of deadlines and target dates. Other people took a target date that was expressed by the Governments and pretended to the public that it was a deadline. It is clear that we were telling the truth and Sinn Féin was not. We do not mislead the public on such issues.

Where we spot dangers, where we spot vetoes that will be used, manipulated and abused, and where we spot potential difficulties, we try to minimise them and point them out so that people are not shocked and surprised when they happen. That is what we have tried to do today, with our amendments. The amendments were tabled as an opportunity for Members of all parties to show a bit more commitment and purpose around delivering on policing and justice.

The amendments are also an opportunity for the SDLP to show that notwithstanding the serious misgivings that we have about how Sinn Féin and the DUP have engineered and gone about dealing with the situation, we want nothing to stand in the way of the devolution of justice and policing. We are making and have consistently made that clear. We have a fundamental issue of principle about the departure from d'Hondt, but we will not let that get in the way of the devolution of justice and policing. That is clearly shown by amendment No 6.

We are not pretending that the amendment is, of itself, a date for devolution or anything else. We are not mis-selling the amendment either inside or outside the House. Unlike other parties, we do not present dates to mislead, distract, needle or provoke people. The date in the amendment is a genuine effort to test the commitment of other parties.

I go back again to the First Minister and the deputy First Minister saying that identification of a justice Minister is key to building confidence. I believe that dealing with some of the issues around the new Department would help to build confidence. Amendment No 2 would have ensured a report from the First Minister and the deputy First Minister within the next couple of weeks. Amendment No 6 would provide a commencement date. I believe that all that would have

contributed a great deal of confidence, and would have allowed us all to move on.

Mr Speaker: Order. I again remind the Member that we have already dealt with some of the amendments that he is talking about. I know that it is late in the evening, but it is important that we focus on amendment No 6.

Mr Durkan: Thank you, Mr Speaker. I was just about to give way to another Member.

Mr Poots: I thank the Member for giving way. I remind him that 7 December is approaching fast and the timetable may be missed unless he winds up his comments reasonably soon. *[Laughter.]*

The Member has talked about the hygiene of the empty shell, the furniture and the equipment, but I do not know about the detail. However, do I detect from the Member that he is now happy enough to accept that we are ready to remove the “ugly scaffolding” of the Belfast Agreement, and to move away from d'Hondt? I detected that he is now happy to move away from d'Hondt.

10.45 pm

Mr Speaker: Order. Once again, I remind Members that it is very important that their comments refer to amendment No 6, even during interventions.

Mr Durkan: I have not said anything to indicate that we are happy to move away from d'Hondt and inclusion. We are making it clear that, notwithstanding our serious concerns and reservations, which we expressed today and previously, we see the imperative of moving on. Members are talking about building confidence, and we want to make that confidence real. We do not want the notion of confidence building to be a ruse for Members to set out partisan stalls or be a device to enable them to report back from their constituencies about this or that confidence issue in order to add to all the difficulties.

At this stage, having listened to what many parties have said about extraneous confidence issues, and in order to move the issue on, we think that we should provide Members with a bit of collective discipline and focus, and that is why we proposed a commencement date. It is an offer and an invitation to parties. It is not a trick or a trap; it is to assure Members about our good efforts and intent. *[Interruption.]*

Mr Speaker: Order.

Mr Durkan: What is wrong with trying to give a bit more shape to clauses 1 and 2? Given how far we have to go, we are better to take those steps sooner rather than later. We do not want to borrow any more difficulties or allow people to confect new issues and conflate old ones, which is what our amendments are trying to prevent.

Some Members may be hugely confident that, in the absence of the proposed commencement date, everything is going to happen quickly. I wish that I could derive some confidence from them, because they are saying that the reason for not doing so is because all sorts of other difficulties exist. Yet, at the same time, they are saying that there is great confidence, agreement is just around the corner, and they do not want to shatter it with a deadline or a date. The confusion is not as a result of us proposing a suite of amendments. It comes from those who have contradicted themselves in the various arguments that they used against the amendments, including amendment No 6.

The deputy First Minister: I oppose amendment No 6, which would mean the Department of justice being established almost instantly; indeed, arguably before the Bill is likely to be enacted. That would create an interesting legal conundrum. It would be a Department without responsibilities and functions, because the passage of the Bill does not, in itself, transfer any responsibilities.

As Martina Anderson said, the final steps towards the devolution of policing and justice will be taken when the First Minister and I bring a motion to the House to request that. That will trigger the laying at Westminster by the Secretary of State of an Order in Council under section 4 of the Northern Ireland Act 1998.

The commencement provision in clause 3 is to enable the First Minister and me, acting jointly, to activate the Department of justice shortly before devolution day, which will be fixed legally by the Order in Council. The Bill's commencement provisions will afford us flexibility for which we might be grateful in the latter stages of the process. Similar provisions are found in many pieces of primary legislation, and they will help to ensure a smooth transition at the point of devolution and in line with future decisions of the House.

The SDLP is continuing to put up a stout defence of its amendments, which, if passed by the Assembly, would prevent the transfer of policing and justice powers. Conveniently, and in a very silly way, the SDLP is ignoring the politics with which we are dealing. The fact is that there must be agreement between the First Minister and me vis-à-vis how we take the process forward.

Mark Durkan and I were part of an Administration from December 1999 right through to October 2002, at a time when the SDLP and the Ulster Unionists were in the lead. It is quite legitimate to ask why the transfer of policing and justice powers did not happen then. Why was no effort made by either the Ulster Unionist Party or the SDLP to make that happen?

Mr McFarland: The Minister is only too well aware that we spent four years trying to persuade organisations close to him to give up their weapons and allow a normal,

peaceful, society to exist. The answer to his question about why those powers were not transferred is this: the Provisional IRA would not hand in their weapons. *[Interruption.]*

Mr Speaker: Order.

The deputy First Minister: I really do not understand that contribution. The fact is that we were part of a power-sharing Administration. I was the Minister of Education, and Bairbre de Brún was Minister of Health, Social Services and Public Safety. Between the two of us, we had more than half the block grant to dispense in the interests of health and education. So, the Ulster Unionist Party and SDLP were in government with Sinn Féin at that time. I do not understand the argument that it could not have happened because there were armed groups on the outside. I was playing my part in a genuine way alongside Bairbre de Brún and all the other Ministers in that Executive in trying to make the power-sharing institutions work.

This evening, we have heard the leader of the SDLP fantasising about the role that the SDLP has played in relation to the transfer of policing and justice powers. That is a matter for the SDLP: it is late in the evening. However, no real effort was made at any stage of the process to bring about the transfer of policing and justice powers. No real effort was made by the SDLP until such time as Sinn Féin effectively put it on the SDLP's agenda.

We are at a critical juncture of the process. A major negotiation has taken place with the British Government in regard to funding. Listening to some of the contributions, particularly those of the SDLP Members, one would almost think that we are involved in a charade, that this is all for the optics and that we are not serious about making this happen unless we go down the route laid down by the SDLP. Nothing could be further from the truth. We have negotiated a very substantial financial settlement.

As late as last Saturday, the British Prime Minister made it absolutely clear to the First Minister and me that we will not get one penny of his offer of around £1 billion if we do not conclude the deal on this issue. As time goes on and the public sees that this very substantial offer is available, if there is a delay in moving forward with this, people will legitimately ask why that money is being withheld from the PSNI and the Court Service. There is an imperative on us to make progress and to ensure that we are in a position to give as much support as we possibly can to important institutions working on behalf of the people in the North.

Mr Kennedy: I thank the deputy First Minister for giving way. Is he prepared to share with us whether the Prime Minister has indicated a deadline by which time that deal should be accepted? The Prime Minister

himself has a limited shelf life, which might last only until May or June next year.

The deputy First Minister: The Member uses the word “deadline”. Responsibility for agreeing the date by which power is transferred rests with the First Minister and me. We are presently engaged in important work to make that happen. The First Minister and I would appreciate more support from the SDLP and the Ulster Unionist Party.

I know that the Ulster Unionist Party has its own agenda. I have watched very carefully how that party has behaved since the European elections, and I have said on several occasions to key negotiators in our team that the UUP is cosying up to Jim Allister and the TUV. Despite Jim Allister’s constant attacks on these institutions and the numerous claims that he has made about his desire to dismantle them and bring them down, I have yet to hear a senior member of the Ulster Unionist Party criticise him and the TUV. Therein lies the reason for the Ulster Unionist Party’s lack of support on this critical issue.

I am not going to go on all night. I know that it is very late in the evening, and I have said all that needs to be said. The important point is that we are dealing with the final amendment. I ask the House to oppose that amendment.

Mr Speaker: I call Mr Alex Attwood to make his winding-up speech. *[Interruption.]* Order.

Mr Attwood: I am deeply disappointed that no one in the Chamber has offered me any incentive to shorten my speech. That means that everyone in the Chamber will have to suffer. *[Laughter.]*

Mr A Maskey: My colleague the deputy First Minister described many of Mark Durkan’s earlier comments as “fantasy.” Given the time of the evening, I suggest that the Member keep his bedtime stories for his own house.

Mr Attwood: During the debate on the final amendment, several issues stuck out like a sore thumb. For example, why is Sinn Féin so unsettled, anxious and disturbed by the fact that the SDLP proposed an amendment to set a date for the creation of the Department of justice? What is it about 7 December 2009 that has so unsettled Sinn Féin Members tonight? The reason for that is very simple. It is because there is “no reason whatsoever” why the devolution of policing and justice powers should not happen before Christmas. However, those were not my words, or the words of any other party; they are Sinn Féin’s words. That said, when the SDLP tried to put some shape on that concept by proposing 7 December 2009 as the date for the creation of the Department of justice, Martina Anderson replied that that would be “entirely unrealistic”. The Hansard report of the debate will confirm that for Ms Anderson.

How can a Sinn Féin Member — I think that it was Alex Maskey — berate the SDLP for having no credibility outside the Chamber? How can Sinn Féin reconcile the fact that it has sent the message tonight not only to the DUP, but to the nationalist community and its own supporters that it is “entirely unrealistic” to set a date for the formation of the Department of justice? How can that party send that message to the nationalist community when, several months ago, Martin McGuinness said that there was “no reason whatsoever” that the devolution of policing and justice could not be completed by Christmas? Those contradictions and inconsistencies stick out because — *[Interruption.]*

Mr Speaker: Order. Let the Member speak.

Mr Attwood: The people who will get the greatest comfort tonight from what Sinn Féin said about timing are those elements in the DUP and outside the Chamber who are resisting the devolution of policing and justice powers and any suggested time frame in which that might happen.

11.00 pm

Mr O’Dowd: Will the Member give way?

Mr Attwood: I will give way to Mr O’Dowd in a minute. Those are the people who will be most reassured. I say that because this is not the first time, even in recent history, never mind in past history, that Sinn Féin have said to people in Northern Ireland that the time frame must be tied down, certainty created and that there should be no doubt whatever about the devolution of these powers.

Let me remind the First Minister of what he said —

Mr Molloy: Not quite yet.

Mr Attwood: I am sorry, the deputy First Minister; I stand corrected. Some people still travel in hope. This is what the deputy First Minister said in a letter dated 13 October 2008, which is nearly 400 days ago, to the Assembly and Executive Review Committee:

“I believe that as a matter of urgency the Committee should address the issue of timeframe for the transfer of policing and justice.”

That was his opening line in the letter. Before the deputy First Minister talked about anything else, such as a cross-community vote for this, that or the other, about what the powers in question might be, or whether the justice Minister would have full Executive status, the first thing that he wanted the Assembly and Executive Review Committee —

The deputy First Minister: Will the Member give way?

Mr Attwood: I will give way in a minute. What was the first thing he wanted to discuss? He wanted to talk about the:

“timeframe for the transfer of policing and justice.”

His colleague the Sinn Féin president went further. In the same month, he sent a letter to the Assembly and Executive Review Committee saying that the time frame issue should be resolved within two weeks. Now we know why Sinn Féin is going on tonight about the time frame for the creation of a Department of justice. The reason is that it has been found out time and time again —

The deputy First Minister: Will the Member give way?

Mr Attwood: Once I have finished this point, I will —

The deputy First Minister: The Member is starting to repeat himself.

Mr Speaker: Order. I ask Mr Attwood to continue.

Mr Attwood: I might be repeating myself, but at least I do not repeat the same old mistakes that Sinn Féin makes in negotiations with the DUP.

Time and time —

The deputy First Minister: Will the Member give way?

Mr Attwood: I will give way, but —

The deputy First Minister: Does the Member have the time to give way?

Mr Attwood: That is the least of my worries. I will give way when I decide to.

Mr Speaker: Order. Allow the Member to continue. *[Interruption.]* Order. The Member is winding. *[Laughter.]*

Mr Attwood: Is it not curious that all of a sudden the deputy First Minister has found his voice and his feet and is jumping up and down in an effort to rebut the evidence, not a political aspiration or a judgement, about what Sinn Féin has failed to do over the past 18 months about the time frame in which policing and justice powers might be devolved? I will give him his opportunity to intervene.

The deputy First Minister: The Member has missed the point completely. During any negotiation, it is legitimate to outline what you are aiming for. However, what is missing completely from the SDLP's analysis is the fact that Sinn Féin and the DUP went into government together only just over two years ago. The SDLP never achieved that. Those parties going into government together came about as a result of political circumstances and the negotiations in which the DUP and Sinn Féin were involved in the days leading up to the agreement that brought about the institutions.

The SDLP's analysis conveniently ignores the reality that it has not been easy for Sinn Féin, and it has probably not been easy for the DUP either, to come to this new situation. When the SDLP contributors,

particularly Mr Attwood, talk about these matters, we hear an analysis that all of this should have been plain sailing; they suggest that we should have gone into a room, sat down for an hour, worked out an agreement and come out and announced it. Unfortunately, life is not like that. We are dealing with a particular set of circumstances and a sensitive negotiation. We are also dealing with two political parties, namely the SDLP and the Ulster Unionist Party, who, when they came into the institutions, were in denial because they were not in the lead, and they decided that they were going to oppose everything that we did. They did not intend to give us credit for anything. However, I understand that people will try to take political advantage.

It is fortunate for Sinn Féin that the SDLP has put its case to the nationalist and republican people of the North, and those people have spoken loudly and clearly in election after election after election, and they will speak again in the coming period.

Earlier, I made it clear that the time frame for moving forward on the transfer of policing and justice powers would be decided by the First Minister and me acting together. My time frame will not be decided by Alex Attwood or Mark Durkan or by the SDLP plucking the date of 7 December out of the air. My job, as deputy First Minister, is to get the work done successfully. I am 100% certain that the SDLP approach would put off the transfer of policing and justice powers for a very long time.

This is the last point that I want to make in the debate. I do not want to misrepresent the situation, but I was interested to hear from one SDLP MLA that he does not agree with the SDLP position; he told me that in the past two weeks. He does not agree with the SDLP making life hard for Sinn Féin on this issue. I told him not to worry about it, because Sinn Féin was not exercised about the SDLP making life hard. We are big boys; we can fight our own corners. As election results after election results show, we come through in the end.

Mr Attwood: Where should one start with a statement that is so riddled in inconsistency? There is one fundamental place to start: "election after election after election" is a great phrase, and there was election after election after election on this island for 40 years, particularly in the years up until the IRA ceasefire of 1994 and other ceasefires. There was election after election after election after election, and the people, including the nationally-minded people of this island, spoke unambiguously, without any doubt and with absolute clarity, about how they wished political affairs to be conducted on the island. However, in election after election after election, a very small group of people chose to disregard the democratic wishes of the people of Ireland.

The deputy First Minister: What has that got to do with this debate on policing and justice? This is the argument that the SDLP —

Mr Speaker: Order.

The deputy First Minister: Will the Member give way?

Mr Attwood: I will not give way.

Mr Speaker: Order. Every Member who wanted to speak in the debate has had an opportunity to do so. No time limit is applied to debates on the various stages of Bills, so every Member who wanted to speak has been allowed to do so. Please allow the Member to continue.

Mr Attwood: The essential point — if the deputy First Minister is finding it difficult to get his head round it — is that the SDLP accepts the democratic will of the Irish people today, as it has accepted it every day for the past 40 years. Whatever the vagaries may be for any political party, the SDLP does not try to usurp that will. If somebody wants to rely on electoral mandates, which I welcome, they have to live with the consequences of rejecting the electoral mandates of the people of Ireland over so many years. Do not try to avoid it; be a bit more cautious the next time that you rely on that argument.

I, along with many Members, remember senior officials in the NIO who, without competition, will become senior officials in a devolved Department of justice. Simon Hamilton raised a curious issue cryptically this evening — or perhaps not so cryptically — that I will come back to later. The NIO officials said that the British Government could devolve justice powers by May 2008, and Members will remember the British Government saying that they could devolve powers by 2008. It is in the Hansard report. They said it because of the understanding in the St Andrews Agreement that that would happen. That was the first time frame to be introduced, and the British Government said that they would deliver on that time frame. However, that time frame was not honoured, and so the pattern began for dates to be announced, declared and publicised, only to go out in a puff of smoke.

The SDLP's amendment tries to tell the Assembly and the communities in the North to cut through the fog and create certainty instead of creating more doubt about time frames, and the evidence demonstrates that Sinn Féin wanted such time frames in writing. Whatever you do, do not send a message to the TUV and elements of the DUP that the date for the devolution of justice and policing is another movable feast. Entirely unrealistic dates are a comfort to the people in those ranks.

Mr Poots: Will the Member give way?

Mr Attwood: I will give way shortly.

I want to move on to a further point that the deputy First Minister relied on in his reply to the amendment and which he echoed much more maturely during his intervention. He said that the SDLP is playing catch-up on the devolution of justice and on Sinn Féin's leadership. I have two major points to make about that, one of which I made before, although perhaps the deputy First Minister has not read the Hansard report or perhaps he was not listening attentively in the Chamber.

There was a parameter in which the devolution of policing and justice had to be discussed, and it was not a parameter set by the SDLP or by any First Minister or deputy First Minister, whoever they might have been in the previous mandate. It was set by the democratic will of the people of Ireland in the Good Friday Agreement, which stated:

“The participants also note that the British Government remains ready in principle ... after consultation, as appropriate, with the Irish Government, in the context of ongoing implementation of the relevant recommendations, to devolve responsibility for policing and justice issues.”

To berate what Mark Durkan, Séamus Mallon and David Trimble did or did not do on that issue — despite the efforts of Mark Durkan and Séamus Mallon — in the context of what the people of Ireland said —

The deputy First Minister: What did they do?

Mr Attwood: I will come to that. I will answer that question, thank you very much.

Mr Speaker: Order.

Ms Ní Chuilín: Nothing.

Mr Attwood: “Nothing”. Let us get that on the record. The Sinn Féin Member for North Belfast said that the SDLP did nothing — I will come to that in a second.

The first fundamental point is that there was a democratic requirement laid down by the people of Ireland in the Good Friday Agreement for the context of the devolution of justice. Everybody, including Sinn Féin and the other parties, has to be judged in that context.

11.15 pm

There was negotiation after suspension, not in 2008 or 2009, but at Hillsborough in February and March of 2003. We were mindful of what the people of Ireland said the SDLP should do — that justice could be devolved if there were policing and criminal justice changes. Remember, Sinn Féin and the SDLP were on the same page when it came to criminal justice changes; we both rejected what the British Government proposed in their first criminal justice Bill. That was the context. Mark Durkan was deputy First Minister in the months leading up to suspension in 2002. Sinn Féin and the SDLP told the

Irish Government that the British Government's first criminal justice Bill was not good enough.

Mr Speaker: Order. Once again, I remind the Member, as I have reminded other Members, that, as far as possible, he must try to link his comments to amendment No 6. I know that some Members may find that difficult, but it is important that they do so. It is also important that Members' interventions should, as far as possible, relate to amendment No 6.

Mr Attwood: I will adhere to that ruling, Mr Speaker, although I may struggle to do so.

I will conclude my point. It is self-evident that when Mark Durkan was deputy First Minister the context that the Irish people required for the devolution of justice did not exist. What did the SDLP do? Contrary to doing nothing, as the Member for North Belfast said, we went about creating that context. At Hillsborough we negotiated with others, and we got changes over the line, for example, in criminal justice, and that led to the second criminal justice Bill. What did we do as a consequence of that? That is why Sinn Féin's position is just a sham and nothing more. As soon as the negotiations were over, the SDLP published documents, one of which I will read from very briefly.

The document was issued shortly after the negotiations, and the points made in it were confirmed in document after document in the public domain. It said that:

"The full implementation of these commitments secured at Hillsborough should help to pave the way for the devolution of justice and policing powers, which the SDLP is eager to see."

It then outlines all the reasons for that. Case proven. We honoured the mandate of the people of Ireland; we joined the Policing Board and the district policing partnerships, despite Sinn Féin, and others, demonising our people for implementing the Patten reforms, and we did the same in respect of criminal justice. Do not ever pretend that we did nothing.

Mr Speaker: Order. I have already warned the Member to be innovative in linking his comments to amendment No 6. I must now insist that the Member address amendment No 6 — in some form.

Mr Attwood: I will come to amendment No 6. I want to move on to the DUP's comments.

Mr Poots: Will the Member give way?

Mr Attwood: I will if you give me five minutes. *[Laughter.]* I will probably give you plenty of opportunity to come back at me. This amendment and the previous amendment — *[Interruption.]*

Mr Speaker: Order, order.

Mr Attwood: I know that Mr Maskey is getting agitated; he always does when he is losing the argument.

Mr A Maskey: — unparliamentary language.

Mr Attwood: I was not using unparliamentary language; it was you who used the word "lies" earlier to Mr Durkan.

Mr A Maskey: *[Interruption.]*

Mr Attwood: Mr Speaker, I hope that you heard what Mr Maskey just said.

The amendments, contrary to the rather shallow approach of the deputy First Minister, do not put anything back for years.

Mr Durkan: They are aimed at fast-tracking the process.

Mr Attwood: As Mark Durkan has just prompted me to say, they fast-track the devolution of justice. Now the deputy First Minister tells us that we are putting devolution back for years. How his claim can be reconciled with the proposed date for the creation of the Department on 7 December bemuses me and will bemuse others.

This amendment cuts through the fog. People spent far too long getting themselves in the right shape to do policing, and, when the time came, the opportunity and the momentum began to evaporate. The same could happen with the devolution of justice if we do not cut through the fog and bring the issue to a conclusion. I agree with the Alliance Party; unless some shape is put on what a devolved Ministry would look like, what it would do and what its programme of work might be, the opportunities might evaporate.

I shall turn to the comments that Mr Hamilton made on behalf of the DUP, and I am sure that the Member for Lagan Valley Mr Poots will have something to say shortly. It is fair to have the opportunity to reply to the issues of the full-time Reserve, the Parades Commission and of confidence, which Mr Hamilton raised. Members have said that the SDLP are being negative and are damaging community confidence, but we deliberately stayed out of some of the debates that took place in the past couple of weeks. *[Interruption.]*

Alex Maskey says that we have nothing to say and that we do not influence people. It is a strange irony, therefore, that, in the Good Friday Agreement, his party signed up to the core analysis that John Hume outlined in a 1979 document for 'Foreign Affairs', an American magazine. His analysis was of three sets of relationships and the nature of conflict in Ireland. If the SDLP was not any good at persuading people, how did we persuade American Governments, European Governments, the British Government and the Irish Government to come on to our page and our analysis? I say to Mr Maskey: case proven.

I shall return to Simon Hamilton's comments. We deliberately stayed out of the public debate. We participated in it previously and we participated in it privately in many different ways, but we did not get

involved in rubbishing the payment of a gratuity to the part-time Reserve, and, in the past number of days, we did not get involved in the full-time Reserve issue. That was not an easy decision. *[Interruption.]*

Mr Speaker: Order. Members must not speak from a seated position.

Mr Attwood: Perhaps Members from my party, even those seated behind me, might have been critical of that decision. The deputy First Minister suggested that if one member of the SDLP speaks against the party's view it represents the SDLP not knowing what it is doing. That might be the culture of other parties, but I welcome dissent in our party, in other parties and in every institution. There is much to dissent from. Dissent is different from democracy not prevailing in the SDLP on these issues.

We stayed out of the debates, although I and some of my colleagues were tempted not to do so. We stayed out of the debates because the Chief Constable makes operational decisions. The previous Chief Constable made decisions that I did not like, and I indicated that to him. Nonetheless, we will not encroach upon those operational decisions.

I understand why the issue of the part-time Reserve and the full-time Reserve is so charged; I have said a number of times in the Chamber and in other places that the part-time Reserve was deliberately targeted because its members live in vulnerable locations and that it suffered horribly and disproportionately compared with any other sector of the RUC. Over 100 of its members were killed of the total of 300 RUC members who were killed.

We do not diminish that, and members of the Policing Board will remember that we made a decision a long time ago to back the gratuity payment to members of the part-time Reserve, because we recognised that that sector of society, with many other sectors, suffered beyond conception and in ways that were particularly brutal and cowardly, given that those people were killed at their homes, in places of work and down laneways.

Similarly, in the debate on the full-time Reserve, my party decided not to try, in any way, to provoke or irritate the unionist community and parties, or to be seen to do so. That showed responsible leadership. It said to people that there are times and places when you should say little or nothing, because to do otherwise would compound problems. That was a positive effort to build community confidence.

During the past number of days, we have seen one sure and certain way to damage community confidence, which is when one side waves a flag in the other side's faces. For my party to be lectured about our amendments, including amendment No 6, given the way that people have behaved and waved flags about this issue and that during the past number of days, seemingly believing

that they have no responsibility for damaging community confidence, defies belief. That is thoughtless, utter folly. The SDLP stayed out of those debates.

As regards community confidence and the time frame that my party has suggested, the SDLP understands that the emotionality about the full-time and part-time Reserve, and the emotionality for sections of the marching Orders about the Parades Commission, carries weight. However, we ask whether it is of sufficient weight to put in any doubt, or to delay for a day longer, the enormous opportunities that could arise from devolution of justice and policing. My party believes that it is not. We do not say that those are false issues; although, for some people in the DUP and elsewhere, they are false tests. My party says that recognition of people's needs on those issues should not confuse and frustrate the opportunities that are offered by devolution of justice.

I agree with the Alliance Party: the SDLP tabled a paper at the Assembly and Executive Review Committee on the reform of the Public Prosecution Service (PPS). Unfortunately, unionist parties said that they did not want to discuss that until after devolution, and Sinn Féin said that it did not want to discuss it until some time in the future. There is no bigger issue. For the Assembly and its parties to work on the PPS would impact enormously on the quality of people's lives and the level of community confidence in the nature of devolution of justice.

I would be on the same page as the DUP and any other party if we got down to work now to deal with such issues, so that if devolution were to happen on 7 January 2010, 7 December 2009, or whenever it might be, we would have a running start.

Mr Poots: I thank the Member for giving way. That is probably the longest five minutes that I have ever endured.

At the point at which I wished the Member to give way, he was talking about people who usurped the process during the 1970s and 1980s. Now, those people are actually in the Chamber. Currently, certain people outside are usurping the process. They will do so on the parades issue and by using violence. To get rid of 400 officers at this time, as has been suggested, would diminish the community's confidence about parades and about having the appropriate personnel to deal with such issues, and, therefore, makes 7 December 2009, to which the Member has referred, an impossible deadline, even for those on the unionist side who are most pragmatic about delivering the devolution of justice.

Mr Attwood: I accept Mr Poots's point that those issues, if they are taken in isolation, may impact negatively on some unionists' feelings about devolution of policing and justice. However, that is against many other standards. Devolution has been substantially on

DUP terms. Devolution of justice will almost exclusively be on DUP terms.

Sinn Féin has read the nationalist community badly, because there is a churn going on that may take some time to mature. If DUP could not win the argument with the unionist community about devolution of justice, despite its having the whip hand and in which it has, clearly, been the party with greatest authority, compared with its colleagues in the Office of the First Minister and deputy First Minister, I do not believe that it could win the argument with the TUV. It will not turn on those issues.

11.30 pm

I accept that I now stretch myself in speaking way beyond my competence. However, the TUV and the people whom it represents are a community that made a choice from which it will not turn back. The unionist community said that it would no longer be subject to the taboo of a nationalist topping the poll. That profound statement cannot be turned round by working through policing and justice issues. That community has reached a turning point, and the DUP should, therefore, be selling other issues to it. I do not agree with the DUP about community confidence.

I want to put down a marker about a comment that affects the timing of devolution. It was made by Simon Hamilton, who has a strong position in the DUP and often makes substantial material contributions to debates in Committee and in the Chamber. Simon Hamilton flagged up that a Budget Bill will be required even after all the other issues have been resolved. If that Bill were not to receive accelerated passage, the process could take eight weeks.

Tonight, we heard Sinn Féin tell the DUP that it would be unrealistic to devolve justice before Christmas. The process will, therefore, extend into next year, and 2010 will be subject to all the vagaries that surround an election campaign. We also heard about the many staffing and accommodation issues. I got cold comfort from the First Minister when I raised the staffing issue with him and asked whether there would be, as should be the case, an open competition for the positions of permanent secretary and senior directors.

As far back as May 2008, the British Government said that they were in a position to devolve and that all the issues on their side had been addressed. Now, as we near December 2009, we discover that certain issues, such as the Budget Bill, staffing and accommodation, remain. I wonder where all that is going. I wonder whether Sinn Féin's real concern is the number of outstanding issues and whether that explains the escalation of its approach to the DUP in the past days. It is, I admit, a confused escalation, because Sinn Féin's precondition that the Parades Commission must not be dissolved before devolution has changed to one

that it must remain in place thereafter. Sinn Féin must explain that, because it makes no sense to the nationalist and republican community.

I want to conclude, because no one has come to me —

Mr Boylan: Famous last words.

Mr Attwood: The Member may regret saying that. No one suggested that I shut up, but I will do so shortly. Before I do, I simply want to say that the most positive step that we can take is to cut through the fog and cut through any discussion on preconditions. Yes, we fall out over many substantial matters, but the one thing that unites the parties in the Chamber is the commitment to partnership and power sharing. That is true of virtually every Member of every party, although some in one or two parties may have doubts. Some like to regard power sharing as voluntary and some as mandatory. Others, including the SDLP, are precious about the Good Friday Agreement because, over the past number of years, that agreement, the Patten report and the Parades Commission have been the most powerful factors in the stabilisation of politics in this part of Ireland. No one should begin to unpick that stability; anyone who tries does so at their peril.

The parties are united in having made choices. As uncomfortable, difficult and uncertain as they are, we live with those choices, which is in contrast to the TUV. I agree with the deputy First Minister in that respect. Can anyone imagine how difficult it was for Mark Durkan to negotiate with David Trimble — not only because he was David Trimble? At that time, they had to contend with the direct action against drugs, robberies, intelligence gathering, files being stolen and various loyalist activities. Loyalist activity continues in some places today. Sinn Féin may find the current negotiations difficult, but can it imagine the adverse conditions that existed then? Not everyone was signed up to policing, and the changes in the criminal justice review were not being implemented during the negotiations between Mark Durkan and David Trimble. Mark is prompting me to mention Holy Cross Primary School, and the list goes on and on.

I have sympathy with the condition that the deputy First Minister faces; however, I ask that he does not diminish the condition that people including those in his party and in other parties and organisations have faced or deny how difficult and hard it was for them.

Let us cut through the fog: if Members do not support the amendment, they will be sending out a message to the people of Northern Ireland that they not are prepared to create a justice Department on 7 December or to do anything more in respect of setting a date before Christmas, and the authority of the Assembly, which is not what it should be for reasons that are sometimes beyond our control, will be noticeably diminished. When authority is noticeably diminished, a more unstable

situation is created. That is why including a date in the Bill is important and why amendment No 6 should be endorsed.

Amendment No 6 negatived.

Clause 3 ordered to stand part of the Bill.

Schedule agreed to.

Long title agreed to.

Mr Speaker: That concludes the Consideration Stage of the Department of Justice Bill. The Bill stands referred to the Speaker.

Adjourned at 11.37 pm.

