

# Official Report (Hansard)

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They should be sent to:

The Editor of Debates, Room 248, Parliament Buildings, Belfast BT4 3XX.

Tel: 028 9052 1135 · e-mail: [simon.burrowes@niassembly.gov.uk](mailto:simon.burrowes@niassembly.gov.uk)

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# Northern Ireland Assembly

Monday 27 September 2010

*The Assembly met at 12.00 noon (Mr Speaker in the Chair).*

*Members observed two minutes' silence.*

## Assembly Business

**Mrs Foster:** On a point of order, Mr Speaker. I understand that, despite the fact that the Minister of Health, Social Services and Public Safety indicated that he was coming to the House today to apologise for his inaccuracy last Tuesday, he is not in fact coming. Not only did he indicate generally that he was coming to the House, but he told the joint Health and Justice Committee last week that he had spoken to the Speaker and would make a personal statement to the House on Monday.

I must say, Mr Speaker, that, after the belligerent and sarcastic way in which he addressed me in the House, I would have thought that he would want to come to the House as quickly as possible. However, I have a sneaking suspicion that the Health Minister is aware that I will be out of the jurisdiction tomorrow, so, if he comes to the House tomorrow, I will not be in a position to respond. Mr Speaker, I ask you to rule on the fact that the Minister indicated that he was coming to the House today but is not now coming.

**Mr Speaker:** Order. I have some sympathy for the Member on the issue. However, I met the Health Minister this morning and he told me that, for a number of reasons, he is unable to come to the House today. He intends to come tomorrow to make a personal statement. No doubt the Whips will be notified of the arrangements.

I do not have the power to force Ministers to come to the House. Nevertheless, I met the Health Minister last Thursday and this morning, and all that I can do, in the strongest possible way, is to encourage Ministers to come to the House, especially when information that a particular Minister has given is incorrect. The way to address that is to come to the House as soon as possible and correct the information.

As I said, I spoke to the Health Minister this morning. He told me that, for a number of reasons, he cannot make the statement today but intends to do so tomorrow morning. It is unfortunate that Mrs Foster will not be in the House tomorrow when the Minister intends to make his personal statement. That is what I have been informed by the Minister, and my understanding is that he intends to come tomorrow morning to make the personal statement.

**Mr Weir:** Further to that point of order, Mr Speaker, is it not the case that the Minister is required to make his personal statement at the earliest possible opportunity? Is today not the first opportunity? Is he not in breach of that requirement by refusing to answer until tomorrow? Furthermore, is it appropriate for a Minister who has to make an apology to a Member to select a time for that apology when he knows that the Member will not be in the House?

**Mr Speaker:** As I said, I have had two meetings with the Minister, and I am not prepared to get into the private nature of those meetings. Let me be clear on that issue. I have always encouraged Ministers to come to the House as soon as possible to correct statements. The Minister has indicated to me that he intends to come to the House tomorrow, and that is where the discussion should be left. As I said, it is unfortunate that Mrs Foster will not be here tomorrow, but my duty is, first and foremost, to correct the inaccuracy that was made in the House and to get that on the record.

**Lord Morrow:** On a point of order —

**Mr Speaker:** Order. I am very reluctant to take any further points of order on the issue. We have aired the issue long enough. As Speaker, I can only do so much to try to get Ministers into the House as soon as possible.

**Mrs Foster:** This sets an extremely dangerous precedent whereby Ministers can pick and choose when they come to the House. Not only was the inaccuracy uttered in the House, but the Minister then said at the joint Committee that he would come to the House on Monday to correct the inaccuracy. He has not only misled the House but the Committees as well. That is hugely disappointing and sets a hugely dangerous precedent for the House.

**Mr Speaker:** I say to the whole House that I always encourage —

**Mr Kennedy:** On a point of order —

**Mr Speaker:** Order. Allow me to finish. I encourage Ministers, especially when they give incorrect information to the House, to come to the House as soon as possible to correct that information, especially when it is totally and absolutely incorrect. I also say to the whole House that, if Members want to follow the matter through, there are avenues open to them to try to resolve the issue. They can put down motions in the House and ask questions in the House. However, for me, the key issue is to correct the inaccuracy that was made in the House and to get that on the record.

**Lord Morrow:** On that point —

**Mr Speaker:** I will take a further point of order from Mr Kennedy, and then we will move on.

**Lord Morrow:** Surely the primacy of the House is all-important. In your capacity as Speaker of the House, can you not deal with the matter in another way? You have told us that you do not have the power to force a Minister to come to the House. Are you prepared to look at the situation with the Chairperson of the Committee on Procedures to consider any future situations that may arise where, on one day, a Minister says, in writing, that he will come to the House and then, when Members come to hear what he has to say, they are told that he is not coming?

**Mr Speaker:** Yes, very much so. If the Committee on Procedures wants to look at that issue, that is maybe the appropriate place. However, once again, I say to the entire Assembly that, in speaking to Ministers, I can only do so much to get them to come to the House. Maybe the issue sits, as Lord Morrow said, with the Committee on Procedures. I will take Danny Kennedy, and then we will move on.

**Mr Kennedy:** Are you in a position to indicate to the House that, from your discussions with the Health Minister about the personal statement that he was expected to make and had hoped to make today, the matter has been complicated by a series of further developments that make it impossible, in his view, to make a personal statement today? Are you in a position to at least confirm any of those conversations?

*[Interruption.]*

**Mr Speaker:** Order, please. A meeting in my office remains private, and I expect all other Members who come through my door not to try to relate on the Floor or to any other Member the private nature of those discussions. We really should move on to the next item of business.

**Mr Wells:** On a point of order, Mr Speaker.

**Mr Speaker:** I am very reluctant, Mr Wells, to take any further points of order. The matter has been well aired. If your point of order is on a separate issue that we have not fully discussed, you may raise it. I know that the Member can sometimes be unique in how he might do that.

**Mr Wells:** I confirm that I was the Chairperson of the meeting at which the Minister of Health, Social Services and Public Safety made his undertaking in writing and orally. Not only do we expect him to come to the House and apologise for the mistake, but we expect him to come before the House to apologise to the honourable Member for Fermanagh and South Tyrone for the way in which he tried to belittle her during his response, when, in fact, it was he who did not have a grasp of his brief and did not know what he was talking about.

**Mr Speaker:** Mrs Foster has put that firmly on the record, along with the other comments that have been made this afternoon. Let us move on.

# Ministerial Statement

## Single Farm Payments

**Mr Speaker:** I have received notice from the Minister of Agriculture and Rural Development that she wishes to make a statement.

**The Minister of Agriculture and Rural Development (Ms Gildernew):** Go raibh míle maith agat, a Cheann Comhairle. With your permission, I wish to make a statement on the financial correction made by the European Commission concerning expenditure by the Department of Agriculture and Rural Development from the European agricultural funds. The purpose of my statement is to outline to the Assembly, as simply as possible, the origins of the complex problem that has arisen in relation to disallowance, to explain the actions that my Department is taking to address the problem and to clear up any misconceptions that have arisen about disallowance.

It is important to make it clear from the outset that my Department is a paying agency of the European Commission for the purposes of distributing European moneys in the North of Ireland. That role allows the Department to distribute in the region of €300 million per annum across the agricultural community, but it also means that we sign up to a body of EU rules governing that expenditure. Those rules place onerous requirements on farmers and on the Department as a paying agency. I will return to that point later.

The single farm payment was introduced in 2005. That represented a massive shift in policy on the part of the European Union away from a system where funding was linked to production to a system where funding is linked to the land farmed by the claimant. I am sure that the House will recall the years of butter mountains and milk lakes, when financial support was linked to production. I raise the move to a land-based scheme in 2005 because that had major implications for the way in which the European Commission assured itself that there was proper control of funding. A consequence was that a single scheme replaced a large number of smaller schemes. The former schemes were audited individually, whereas now there is one audit. The former schemes had individual budgets, and now there is one very large budget.

Since 2005, the Commission and, in one case, the European Court of Auditors, have carried out no fewer than six audits on the Department as a paying agency. The first audit, in July 2006, covered area aid payments for the scheme years 2004, 2005 and 2006. The second and third audits, in September 2006 and March 2008, concerned single farm payment entitlements, the basis on which funding is allocated to individual farm businesses. The fourth audit, in the summer of 2008, was, as was the first, about area aids. It covered 2007 and 2008. Those two area aid audits were highly significant in terms of the level of exposure to disallowance. Thereafter, there were two further audits by the Commission, one on area aids in November 2009 and one on agrienvironment issues in June 2010.

I wish to make some important points about the findings of those audits. First, it would not have been appropriate for the Department to have accepted and responded immediately to every audit finding without challenge. The fact remains that I have significant concerns that the Commission is being heavy-handed and is overestimating the risk to public funds. I know that I am not alone in that concern among member states. Since April 2005, over €4 billion has been disallowed across the EU, and I know that many member states are complaining about the clearance of accounts procedure and are pushing for a more proportionate system to be introduced.

### 12.15 pm

A second point is that not all the issues that were raised in the audits can be resolved quickly. Many relate to complex systems that cannot be overhauled overnight. The introduction of a new mapping system or the recalculation of all entitlements from 2005 has to be done carefully over a period of time while maintaining the ongoing business of the paying agency. In each year, there is often a knock-on impact that affects multiple farm businesses, and that includes circumstances where farmers may be deceased, may have traded their entitlements or may have had a host of other changes in circumstance.

Thirdly, the Department has a statutory obligation to make its single farm payments in a timely way to ensure that approximately 95% of the payments are made by June of the following year. Some of the audit recommendations that

impact on payment systems have the potential to cause significant delay to future payments, and I would not be happy to resolve one disallowance in a manner that resulted in us incurring a potentially even larger one.

A disallowance decision can take a long time to be confirmed. The first audit that I mentioned is illustrative of that, and Members may find it helpful if I briefly outline its timeline, which was primarily driven by the Commission. The findings of the July 2006 audit were initially communicated to the Department at the end of October 2006. There then followed correspondence between the Department and the Commission through which the Department presented arguments to the Commission. That culminated in a bilateral meeting in April 2007, and there was further correspondence between July and December of that year. The final letter from the Commission that set out the proposed financial correction was received in October 2008. That was the first correspondence that signalled that a large disallowance was a distinct possibility, but, even at that point, the Commission was at pains to point out that that was only a proposal and there was a conciliation process.

The Department brought the case through the Commission-approved conciliation process and presented it to the conciliation body in April 2009. The conciliation body reported back to the Commission on 14 April 2009, and the Commission wrote to the Department in January 2010 with its proposed final financial correction. That was formally adopted by the Commission in its decision of 15 July 2010. Therefore, it took a total of four years for that outcome to be reached.

On 15 July 2010, the European Commission published a list of financial corrections and summaries of the reasons for those corrections for several member states over several years. That included a sum of €33.7 million for the DARD paying agency for the years 2004 to 2006, most of which was attributed to the single farm payment scheme, the agrienvironment scheme and the less-favoured areas compensatory allowances scheme for 2005 and 2006. The financial correction will be deducted from a subsequent claim by the UK co-ordination body.

Two other notifications were given in 2010. On 4 January 2010, the Department was notified

about a proposed second financial correction for the scheme years 2007 and 2008 for €34.45 million. The Department has participated in bilateral meetings and in conciliation on that issue in recent months.

The Commission advised that those financial corrections were being applied to the Department due to weaknesses in mapping systems, in procedures used by inspectors, which did not ensure that ineligible land was excluded, and in processes for recovering overpayments. That was also the case in instances when two farmers claimed for one parcel of land, such as when one farmer claimed single farm payment and another claimed less-favoured areas compensatory allowance, as can occur under the conacre system. For completeness, the Department received notice on 2 January 2010 of a proposed smaller financial correction of approximately £795,000 for 2005 plus €2.7 million for 2006 and 2007 for the allocation of entitlements in 2005.

The DARD accounting officer has advised me that, in the absence of new, compelling evidence, the Commission is unlikely to reduce the proposed financial reductions. As a consequence and in giving transparency to the House, I should say that the Department has included a liability in its 2009-2010 resource accounts for the full extent of the 2004 to 2008 scheme year financial corrections that were imposed and proposed. The total amount is approximately €72 million or £64 million.

We have resolved the financial implications of the matter mainly from underspends in my Department and elsewhere. Those resources would not otherwise have been spent, and the spending power would have been lost to the Executive.

The Department cannot rule out further corrections in respect of 2009 and later years, although our current work should militate against that. At this stage, the Commission has neither proposed a disallowance nor quantified, in financial terms, what any disallowance might be. We do not expect any Commission decision on disallowance until 2011. Of course, we will seek to minimise it, both by bringing in new measures quickly and through negotiation. However, to cover contingencies prudently, given the magnitude of the sums that could be involved, we seek budget provision for up to a further £40 million.



The Commission determines corrections on the basis of what are called “flat rates” when it cannot quantify financial corrections or estimate them from extrapolations. The Commission does not have to prove that those flat rates are correct. Rather, the onus is on the member state to persuade the Commission that the rates are incorrect. As the Commission had identified concerns about the Department’s two key controls, namely the mapping system and the inspection system, it can be seen, in retrospect, that it was most difficult for the Department to furnish data that would allow the Commission to change its mind about the flat rate to be applied.

The choice of the rate — 2%, 5%, 10%, 25% or even 100% — depends on the seriousness of the deficiency in the management and control system or the individual breach and the financial implications of the irregularity. The Commission guidelines state that:

*“When all the key elements of the system function, but not with the consistency, frequency, or depth required by the regulations, then a correction of 5 is justified”.*

That was the Commission’s conclusion in our case.

Before turning to the critical issue of what the Department is doing to address the disallowance problem, I want to take the opportunity to respond to concerns about responsibility for what has gone wrong. It would be too simplistic to lay all the responsibility for what has happened at any one door, whether that is farm businesses, the Department or, indeed, the Commission.

Some have argued, simplistically, that the farming community is to blame. Of course, a small number of farmers are not blameless, but it is absolutely wrong to blame the majority. It is also wrong to simplistically state that the Department is to blame, although it is true to say that, after the first audit, the Department probably underestimated how difficult it would be to demonstrate to the Commission’s satisfaction that a 5% disallowance is too high. A mapping system that had proved largely satisfactory for the purposes of production-based schemes turned out to be unsatisfactory for the purposes of single farm payment. In turn, the scale of funding in a single scheme meant that the level of disallowance was particularly high.

It is also wrong to simplistically blame the Commission. As I have said, the Commission injects in the region of €300 million a year into farming in the North of Ireland, which places an onus on the Commission to ensure tight controls. Those controls are necessary not just here but throughout the EU. However, it seems to me that those controls are excessive at times when, for example, a quarter-of-an-acre field in County Fermanagh is treated in the same way as a 200-acre crop parcel in East Anglia. The Department has a much closer understanding of how farming works here than the Commission, understandably, could ever have. In parallel with putting our systems right, it is important that we continue to challenge, for example, what appears to be a shift in Commission thinking about what constitutes eligible forage. In summary, there has to be shared responsibility for sorting the issue out, and my Department is playing a leading role in that regard.

The Department’s actions to address the disallowance problem are in three main areas: challenge, compliance and enforcement. First, I can assure the Assembly that the Department will continue to challenge the Commission and argue its case when appropriate. The Department has had some success already. For example, we persuaded the Commission to re-examine the scope of the financial correction and exclude certain types of area aid that were unlikely to be affected by issues such as scrub encroachment. The Commission agreed and reduced the financial correction. There is enormous benefit in ongoing engagement with the Commission in bilaterals and conciliation, and that will continue.

I am most grateful to the First Minister and deputy First Minister, our MEPs, the Committee for Agriculture and Rural Development and other colleagues for assisting in making the case for a more balanced approach to those issues by the Commission. There is also challenge on the legal front, and I can confirm that the Department is taking the necessary steps today to take a case to the European Court of Justice and that it has the support of the Executive in the matter. The action will be taken by the Department, with appropriate legal advice from the member state and from the Attorney General. Members will understand that this is a matter that will take some years to progress, and there is no guarantee of success. However, our advice is that there is a reasonable prospect of success, and I am sure that Members will

agree that the sums of money involved make for a compelling case for that approach to the European Court.

I will now turn to my second area for action, which is the need for greater compliance with the Commission's requirements. There is a whole range of areas where I am taking action, but my top priorities relate to the fact that the Commission's audits have criticised the Department's key controls, which are the mapping and inspection systems. I must focus on those areas, because they are central to reducing the risk to the fund as perceived by the Commission and, in turn, to significantly reducing the disallowance.

During questions for oral answer at the end of June, I told Members about the action that my Department and I had taken to challenge the disallowance and to militate against any future disallowance. I told Members about the improvements in the on-farm inspections as a result of better training for inspectors, the introduction of mobile mapping and the investment in orthophotography since 2007, which has supported all inspections in 2009 and 2010. Orthophotography is also available to farm businesses that use DARD online. In addition, I have increased the resources available for inspection and have issued new guidance to inspectors to ensure closer compliance with Commission requirements.

The most recent action that I have taken to address the Commission's criticism is to commission the remapping of all farms in the land parcel identification system (LPIS). We are pleased to have Land and Property Services, which is the mapping authority in the North of Ireland, as our partners in that. Together we will systematically review and, where necessary, amend every field in the Department's mapping system. That involves almost 750,000 separate fields. Additional resources are being brought on-stream, including the redeployment of 60 planners to assist in the work. It represents a huge task, but it builds on a great deal of work that is already completed to ensure that we understand how to map features such as scrub, which may not be eligible to support a claim. Scrub does not have a definitive boundary. It has different densities, is not easily recognised from aerial photographs and can extend across several farmers' fields.

A pilot project is already under way and will be completed shortly, followed by two main phases of work. As well as informing the main LPIS improvement project, the pilot may be used to undertake a risk assessment exercise to provide the Commission with a further estimation of the actual risk to the fund. The first main phase of work commencing in October will amend the maps to remove any areas that the Commission considers to be ineligible. The second stage will deal with other mapping issues that are currently of less concern to the Commission. We do not expect that second phase to be completed until early 2013.

The aim is to get as many maps as possible improved over the next year. We have to make sure that the verification of the new maps and any changes that the farmers want to make do not have a negative impact on the processing of claims in future years, otherwise a risk arises of not meeting the payment targets stipulated in EU legislation and, therefore, incurring further disallowance. I am grateful to the Executive's invest to save fund for the resources for the work, and I am bidding for further funds for the remainder of the work. There is no doubt that investment in high-quality mapping and IT can bring enormous returns in a scheme of this size.

I will now turn to the issue of enforcement. The Commission is clear that there is an onus on farm businesses to ensure that their maps are correct and that they are claiming only on the parts of their fields that are eligible. Just as the culture of the Department has had to change from a production-based approach to a land area-based approach, so, too, farm businesses have to understand that the correctness of the farm map and the careful maintenance of eligible areas are at the core of their business in the way that counting cattle or sheep was central to the issue before 2005.

Let me be clear: although the Department supplies maps, it is the responsibility of farm businesses to ensure that they are correct. It is also their responsibility to ensure that claims are not made for land that contains, for example, scrub, whins, lane-ways or, indeed, bungalows.

### **12.30 pm**

My message to farmers is that the Department has an extensive network of farm advisers and other support staff. If a farmer approaches the Department, adjustments to maps and

claims can be made less severely than if the Department approaches the farmer in the form of an inspection, which can result in severe penalties.

I want to end my statement on a positive note. I am committed to working closely with those farmers who are as committed as I am to resolving the disallowance issue. To that end, I have ensured that resources are in place throughout the North of Ireland. I am also committed to working closely with the Commission to ensure that we each learn from past mistakes. Specifically, I am committed to satisfying the Commission about the quality of the mapping system by 2012 and to working closely with the UFU and NIAPA to ensure that maps are issued to farmers in an orderly way.

I am grateful for the active involvement and critical support of colleagues in the Executive and Members of the Assembly, particularly the Committee for Agriculture and Rural Development. Together, we can resolve critical issues to bring down that disproportionate disallowance.

**The Chairperson of the Committee for Agriculture and Rural Development (Mr Moutray):** I can confirm that the Committee for Agriculture and Rural Development has met the Agriculture Commissioner and her office on two occasions. The Committee argued that those disallowances are disproportionate, especially when the actual risk to the region is around £1.5 million, which has been reclaimed by farmers. My Committee remains of that view. However, I am shocked that it could end up costing the region £109 million, which would significantly reduce the Executive's spending ability.

I want to ask the Minister about responsibility. Why, when the Department was aware since October 2006 that there were significant weaknesses to its key controls, was nothing done to rectify its processes? Why, when subsequent audits that were carried out in 2006, 2008, 2009 and 2010 highlighted those weaknesses, did the Department not act? Why, in a statement of some six A4 pages, does the Minister not accept that we would not face those fines if the Department had acted to negate the weaknesses that were identified sooner, instead of rolling up those massive fines?

**The Minister of Agriculture and Rural Development:** First, I am pleased to state that that expenditure has not been lost from

other areas, such as schools and hospitals, in the North. I hope that Members will forgive me because I have to use some accountancy terminology to explain why that is the case. Ultimately, money that was used to deal with that was underspend. I accept that it is lost to the Treasury. However, it does not result in a lack of spending power to the Executive.

The adjustment in the Department's 2009-2010 accounts between the provisional and final out-turn will lead to DARD incurring overspend. However, it is fully expected that that overspend will be offset by the level of underspend that is incurred overall by the Administration. There is always a downside in some form. I understand that that will reduce the end-year flexibility that is available. However, again, that was not available to the Executive. As a result of our handling of the issue, it will not impact on in-year resources from DARD to the Executive.

To say that my Department has done nothing is untrue. We had expected disallowance. As some Members are aware, disallowance is not new. However, in the years prior to the introduction of the single farm payment, DEFRA covered the cost for England, Scotland, Wales and the North. From 2005, when it was decided that all regions would cover their own disallowance, DEFRA apportioned the remaining disallowance money. The North's share amounted to £11 million. That money was used to offset our use, and it reduced the cost of disallowance from £64 million to about £53 million.

I accept that it is an ongoing problem. I accept that it is complex, voluminous and technical in nature. I set out the timescale of the earlier audit in 2006. It took us four years to get to the point at which we knew that that was the level of financial correction that was being applied. I had also spoken to Mariann Fischer Boel and to her successor, Dacian Ciolo, about the issue to see whether any pressure could be applied politically. I was assured that absolutely no political pressure could be applied and that they could not get involved in the situation. They said that a conciliation process was available and that we should go through that process. Members would have been disappointed in me had I not engaged in that conciliation process and tried to negotiate the figure down to a more manageable sum.

In the run-up to 2005, we had a number of small schemes. If one of those schemes was audited

and had disallowance applied to it, that was what happened: disallowance was applied on that particular scheme. When we moved away from production-based to land-based schemes, all those schemes were rolled into one, and the disallowance applied to the single farm payment — on the sum total of all of the schemes. That is why the amounts have become so incredibly high and disproportionate.

As I said in my statement, €4 billion have been disallowed on member states across Europe over the past four years. We are not the only ones who object to the level of disallowance and to the way in which the European Commission applies those rules. I accept that the rules are technical and onerous, and it is up to my Department and me as Minister to take responsibility for correcting the mistakes that have been made in the past. I make no bones about that, and that is why I am here to give Members a full and frank résumé of the situation to date and how we are handling it.

I hope that I have addressed the Chairman's concerns. We have worked closely with the Committee for Agriculture and Rural Development on the issue, and I want the House to be aware of the steps that have been taken in the years in the run-up to the current position and what we are doing in the future.

**Mr Doherty:** Go raibh maith agat, a Cheann Comhairle. I thank the Minister for her statement. Before I ask my question, and with the Speaker's indulgence, may I congratulate the Deputy Chairperson of the Committee for Agriculture and Rural Development, Tom Elliott, on becoming the new leader of the Ulster Unionist Party. I hope that he has more success with his party than he has had in trying to persuade me to take my seat in Westminster.

When will the main phase of the remapping project be rolled out? Will the Minister provide some detail and elaborate on that?

**The Minister of Agriculture and Rural Development:** Go raibh maith agat, a Cheann Comhairle. I add my congratulations, comhghairdeas, to my colleague from Fermanagh and South Tyrone on his elevation. I apologise for my tardiness in not doing so sooner, but he will appreciate that I had other things on my mind.

In answer to Mr Doherty's question, the main part of the mapping project, which aims to

reduce the risk of disallowance for future years, will begin in October. That will deal with the mapping issues that are of greatest concern to the Commission. A second-phase project will deal with the remaining mapping issues at a later stage. I am sure that Members appreciate that the remapping of every single field, some 750,000 of them, will be a huge task. It is a big thing to do. Although the inaccuracies in the new mapping system may be small, we want to ensure that there will be no reason for the Commission to come back to us. We are trying our best to militate against future disallowance.

I am pleased to have the co-operation of Sammy Wilson, as the Minister of Finance and Personnel, and to be working with him and Land and Property Services (LPS). It is timely that 60 planners can be redeployed to LPS to carry out the work and to ensure that our maps are of the full quality that the Commission expects us to have.

**Mr Speaker:** Before I call Mr Tom Elliott, who will be the next Member to ask a question, I inform the House that a number of Members have their names down to ask questions on the Minister's statement. I will get everybody in if Members come to their question a lot sooner. I am merely laying down a marker.

**Mr Elliott:** I will be brief, but, first, may I thank those Members who have congratulated me, even though I am concerned about the congratulations of some of them. My question follows on from the previous question about the mapping system. A few years ago, farmers got a new GIS mapping system, which, we were told, was totally accurate and the most high-tech system available. However, the Minister has indicated here that it is still the responsibility of the farmer. A few years ago, we were told that we had the most accurate and up-to-date system available. What went wrong?

**The Minister of Agriculture and Rural Development:** I agree with the Member for Fermanagh and South Tyrone. In 2004-05, when the new digitised maps were produced, those were based on the most up-to-date information available at that time. However, as the Member knows, things have moved on. Although it is the Department's responsibility to provide farmers with maps, it is the farmers' responsibility to check those maps and make sure that they have not forgotten about the bungalow at the end of the lane or the tank that has been built

through the nitrates grant distributed last year or the year before.

We need to ensure that farmers check and make sure that the maps are up to date. The responsibility for providing the maps is the Department's; the responsibility for checking that the maps are accurate is the farmers'. The farmers are quality assuring the maps. The technology has moved on in five years, as I am sure the Member will accept, which makes a big difference. For example, my Department now has access to orthophotography. The combination of those factors means that the maps are now not as up to date as they could or should be. Although the mapping improvement project will resolve a lot of the problems, it is still important to recognise that, when the revised maps are issued, farmers will have to check them thoroughly and ensure that all ineligible areas have been removed; otherwise, we could find ourselves facing further disallowance.

**Mr P J Bradley:** I thank the Minister for her statement. I have four short questions, and Tom Elliott has more or less asked the first. Were farmers wrong to trust DARD and its earlier maps? They placed their trust in those maps, and now they are paying the price for that. Will the Minister explain why farmers are the only ones to suffer financially? Politicians, civil servants and bureaucrats at many different levels do not stand to lose one cent as a result of the disallowances, even though many of them were party to the difficulties. I welcome the recent mapping exercise undertaken —

**Mr Speaker:** I encourage the Member to come to his question.

**Mr P J Bradley:** That is the second question; I have two more. I welcome the land parcel identification system, but I seek assurance from the Minister that, when the new maps are finally produced, they will not be used as further evidence to penalise farmers in the future. I need that assurance. On a smaller point, the Minister referred to shrub land, which may not be eligible to support a claim. Does she not agree with me that a lot of that shrub land is deliberately kept to provide shelter for stock that is being out-wintered, and should not be disallowed?

**The Minister of Agriculture and Rural Development:** There was quite a lot there; I will not be able to answer all of the questions, but

I will do what I can. As the Member knows, GIS maps of owned land were issued to 54,000 farmers in March 2005 and that around the same time, maps showing land claimed by farm businesses the previous year were also issued to around 25,000 farm businesses. Back then, farm businesses were advised that, in the event of a query relating to their new maps, they should contact their local DARD office and complete the appropriate form. As it turned out, there were a large number of queries from farm businesses, many of which resulted from the fact that, over the years, farm businesses had failed to notify the Department of small changes in the land area. There were also small changes in the land area due to the improved accuracy provided by GIS.

The Member knows me well enough to know that I would not want to be in a position of penalising farmers, but, where mistakes are made and there is a heavy hit on the Department from disallowances, we have to be certain that we have complied fully with the European Commission's rules. The European Commission is giving us over €300 million per year to allocate, and it makes it very clear that we have to follow those rules. I do not want to use those rules as a big stick with which to beat farmers, but people have to work with the Department, and help us to help them. It is in nobody's interests for there to be future disallowance because mistakes are made on maps.

I want to ensure that the House understands fully that the Commission wants farmers to measure grass; nothing else. As far as the Commission is concerned, that is what constitutes eligible forage. If a farmer has a field measuring four hectares and there is a sheugh running through it, which is not grazing land, that has to be deducted from the map.

#### 12.45 pm

A field on which there are whin bushes also cannot be counted, because cattle do not eat whins. We know that cattle may use them for shelter and go to them when they are calving in a field. However — the Commission is 100% categorical about this — we can only measure land on which there is grass, because that is what constitutes eligible forage. Therefore, if there are either geographical or physical things in a field that mean that it cannot be grazed on, that field cannot be counted. For

example, a tank that is covered in slots cannot be grazed and must, therefore, be discounted from that field. Farmers must ensure that their entitlements are right and proper so that we continue to pay out money to them.

Nobody wants to penalise farmers. However, I must say that people have claimed for areas that could not — no matter how sympathetic the Department is to farmers — be considered as eligible forage. Those areas must be tackled, and the Department must take a strong stance against people who have claimed for land that is clearly not a grassy field but a scrapyard. We must weed out such examples. We must also ensure that we are paying out according to the Commission's rules and in a way that does not mitigate.

The Member talked about scrubland that is used for shelter. I am sorry, but farmers must deduct that land from eligible areas, because if there is inspection and that is found to have been included, there will be trouble. Mr P J Bradley can shake his head all he wants. However, I must do my job in a way that ensures that farmers can work with us. I am putting this in as simple terms as I can for the Member so that he understands. The point is that we can only pay out on eligible forage, which is grass. I want to avoid farmers getting into trouble with the Department because of an inspection. That is why, on numerous occasions, I have said to farmers, "Please, come and check your maps. If you come to us and we find a problem, we will resolve that much better and much more cheaply than if you wait for an inspection, in which case there will be penalties". Therefore, I reiterate that farmers should come to us and check their maps to ensure that they are accurate. Go raibh míle maith agat.

**Dr Farry:** I believe that the statement should and could have been made three months ago. Does the Minister think that it is somewhat disingenuous to argue that those disallowances will not have an implication for the public purse, schools, hospitals and the rest of the economy? Given the underspend in DARD, will the Minister tell us why was there such an inaccurate budget to begin with? Surely, monitoring rounds could have been used to surrender that money for other uses. Money now has to be spent to set the thing right. We are making provision for future disallowances, and all of that comes at a cost to the rest of the economy and public services.

### **The Minister of Agriculture and Rural**

**Development:** As I said, it is too simplistic to suggest that any one party is to blame for the disallowance situation. I would have preferred to have given this statement to the House before the summer recess. However, we were fully engaged with the Commission and did not have time before recess to prepare and give a full and frank explanation to the House about what had gone on. We would have been here earlier had it not been for timing. I tried to come here as quickly as I could in the new term to explain to Members what had gone on.

As regards the Department's responsibilities, I preface my response by saying that some of the issues are quite technical. However, in answer to the Member's first comment about underspend, my Department set aside money to meet some of its statutory obligations on, for example, animal health. We set aside, for example, a budget of £5 million for animal disease compensation, but the rates of disease were lower than we had expected at the beginning of the financial year, and we needed only £4 million. That underspend can be easily explained. Therefore, given that we are a very frontward-facing Department and that certain circumstances are beyond our control, such as animal disease and other issues, there will be fluctuations in government accounting.

I also wish to say to the House that the Commission's letter of 22 October 2008 came as a blow, because it showed that it was not moved by the Department's arguments. It was the first time that the Commission had outlined its proposal to exclude finance of over €18 million, plus over £13 million as a result of the 5% flat rate correction.

The Department argued valiantly that the corrections were disproportionate to the risk to the fund. It put forward some very strong arguments. However, the Commission refused to accept that the land parcel information system and the GIS information were sufficiently accurate and up to date with regard to eligible land. It refused to accept that the requirements laid down in articles 15 and 22 of regulation 2419/01 and articles 29 and 30 of regulation 796/04 were adequately satisfied by the on-the-spot checks carried out by the inspectorate. The Commission refused to accept that there were any difficulties in its application of sanctions and retroactive recoveries to the calculation of aid that needed to be recovered.

The Commission does not have to prove what it alleges; the onus is on the Department to persuade the Commission otherwise. It is fair to say that I am extremely concerned by the Commission's heavy-handed approach, as evidenced by its late letter and even later engagement.

From the Commission's perspective, it is essential that, for the cross-checks that are required, the information in the land parcel identification system is accurate as regards the identification of parcels of land from 2004 onwards and in relation to the boundaries of those parcels. That raised further issues about particular kinds of land cover that were not eligible. As I said, the issues that the Department has to deal with are very complex and very technical.

Owing to the Commission's heavy-handed and disproportionate approach, I am prepared, on the Department's behalf, to take a case to the European Court of Justice to challenge the way in which the European Commission is handling this matter. I genuinely believe that, if we do not passionately make our claim that the corrections are disproportionate, we could be faced with future disallowances. That is a risk worth taking. There will be future disallowances and, therefore, we have to rigorously challenge the Commission on the way that it has applied the technical rule. Pursuing a court case is the right and proper thing to do, and I have taken advice from the Attorney General and the Departmental Solicitor's Office.

The system has been in place since 2005. With hindsight, I think that a lot of things should have been done differently. There is no question about that. However, I honestly believe that we should challenge what the Commission has done and try to bring the disallowance figure back to an amount that more accurately reflects the inaccuracy of the proportion of the fund that should be paid out. The current figure of 5% is too high, and we should be able to negotiate that down. That is why we are pursuing a court case.

**Mr Speaker:** Order. I encouraged Members to come to their questions much sooner. I also encourage the Minister to complete her answers much sooner.

**Mr Irwin:** I, along with my colleagues, believe that the fines from Europe are totally disproportionate to any inaccuracies that there

were in Northern Ireland. The Minister said that the procedures used by inspectors did not ensure that ineligible land was excluded. Given that the procedures used by inspectors were set out under guidelines from her Department, is it right to assume that her Department did not know what was eligible land in Northern Ireland and what was not? Surely that is an indictment of her Department.

#### **The Minister of Agriculture and Rural**

**Development:** We are dealing with something that happened retrospectively. Therefore, we are looking back at audits that were carried out in 2004 and 2006. We recognise that there was a difference in interpretation. Members of the Committee for Agriculture and Rural Development and other Members have accused the Department of being too heavy-handed on farmers and of adopting an attitude, during inspections, that was slightly onerous towards farmers. However, the Commission's view is that we were not nearly heavy-handed enough, and that areas of land that inspectors allowed to be constituted as eligible should not have been. That is why we are dealing with this issue at the minute.

I assure the House that ongoing training is available for inspectors and that much work is being done to ensure that we are fully aware of what the Commission wants, that inspectors have available the most up-to-date technology, and that we are carrying out inspections based on what constitutes eligible land. Again, however, that is likely to result in misunderstandings and in farmers thinking that an area of land is eligible even though the Commission clearly believes that it is not. We have a responsibility to apply the Commission's rules when paying out its money.

With your indulgence, a Cheann Comhairle, I want to correct a couple small errors in my statement. I mentioned that the Commission, in its final letter in 2008, reduced its financial correction. I think that the statement said that the figure was €3 million, but I want to correct that for the House. I did not read that out at the time because the amount of reduction was closer to £500,000. I want to ensure that there is no misinformation here today. I also referred to a notice of 2 January 2010. That should have been 2 February, and I apologise for any misunderstanding.

As the matter is so technical, I do not want any Members to feel that they have been misinformed. The matter is onerous, which explains the length of my statement and answers. However, I wanted people to have a clear understanding of the issue.

**Mr W Clarke:** Go raibh maith agat, a Cheann Comhairle. I thank the Minister for her statement. Before I ask a question, I congratulate Tom Elliott on his appointment as the new party leader. I wish Tom well.

I agree with the Minister that as many maps as possible must be corrected this year.

*[Interruption.]*

**Mr Speaker:** Order.

**Mr W Clarke:** Will farmers be able to challenge any element of their new maps?

**The Minister of Agriculture and Rural Development:** It is important that farmers work with us to ensure that their new maps are correct. There is no substitute for being on the ground and visiting every field, but with 742,036 fields that is clearly not feasible. So, we must rely on aerial photographs. Therefore, farmers must closely examine their new maps as soon as they receive them, and contact us immediately if there are problems. I cannot emphasise that enough. If Members were to make farmers in their constituencies aware of that through statements, and so forth, that would help farmers to avoid any problems during future inspections.

**Mr T Clarke:** My question follows on nicely from the point about farmers checking their maps. The Department invested heavily in maps before sending them outside the UK for collation. Why, therefore, is that process being repeated so soon afterwards? Despite the amount of money spent on mapping recently, yet and all, we still put the responsibility back on the farmers to check the maps.

Given that we invest heavily in that mapping, some responsibility should fall on the company that produced the maps. If that is the case, and given that errors were made in the maps, will the Minister or her Department make a claim against the company for collating them?

**The Minister of Agriculture and Rural Development:** I again emphasise that the maps were produced in 2005 using the best

technology available to us at that time. We worked with the technology that we had. As the technology has moved on, I have not laid the blame on anybody for the maps being inaccurate. There is now a much better way to measure fields. However, that is not to say that technology will not move on again in the next five years. If we are to content the Commission that we are mapping properly and that it is not paying out money on land that is clearly not eligible forage, it must be an ongoing process.

**Mr Savage:** I, too, thank the Minister for her long and detailed statement. An underspend in the Minister's budget and the fact that those funds have now been lost, especially at a time when efficiencies are required across the board, is not good news for the agriculture industry. At what point did the Minister become aware of the issue, and what immediate action was taken and continues to be taken? Will she also outline the legal implications of the matter, the chances of a successful outcome and how long that will take?

**The Minister of Agriculture and Rural Development:** I have been advised that the legal challenge will not be heard until 2012. That is still some way off, so we must ensure that we work in a way that mitigates any future disallowance for 2010 and onwards.

I again assure the House that although there was some underspend in my Department, I hoovered up underspend in other Departments and used that as an offset. That means that some money is not available to the British Treasury, but it does not have the same financial impact on the Executive.

I fully agree that we are all making efficiency savings. We are working collectively in the Executive to try to minimise the impact of those savings on the people whom we represent. So, although there is a knock-on effect for the Treasury, I am pleased to report that the matter is not affecting individual Departments.

### 1.00 pm

During the communication that followed the 2006 audit, DARD first realised that there were difficulties. That communication was sent to the Department at the end of October 2006 and was followed by correspondence — bilateral meetings etc — between the Department and the Commission until December 2007. So, this has been an ongoing piece of work. The



Department has been aware of the situation for some time and has been working on it. The Commission has recognised that steps have been taken over the past number of years to diminish the risk to the fund, but it has still talked about applying a 5% correction. That is why we feel that there is disproportionality. However, the Department has been working very closely with the Commission on the difficulties since they were first communicated to us in October 2006.

**Mrs D Kelly:** I will attempt to put my question as simply as possible so that the Minister understands it. Minister, why is it too simplistic to state that your Department is to blame for its poor mapping and inspection systems, which have led to the mishandling of the single farm payment? Will the Minister or any of her officials take any responsibility or pay any penalty for the mishandling of the situation?

**The Minister of Agriculture and Rural**

**Development:** The maps were done in 2005, which predates my time as Minister, and the work that was done previously to that may have had more of a bearing on the outcome than the work that was done in my time as Minister.

The people we do not want to see disadvantaged by the disallowance are our farmers and our rural communities. I will explain what my Department has done to offset the cost. I am here to explain to the House that we were working with technology that was up to date at the time but is not up to date now and needs to be reviewed.

I make no apology for the fact that we were working within a system that was new to us all and to the European Commission. That system has led to €4 billion of disallowance being applied to member states across Europe. I make no bones about the fact that our disallowance is unsatisfactory; it is an awful position for the Department to be in. However, I must stress that the underspend that offset the disallowance could not have been used by the Executive and would have had to be returned to the Treasury if it could not be used for that purpose. That is obviously a matter of regret. However, it has not had an immediate financial consequence on us as a paying agency as regards payments to farmers, and farmers have not felt the effects of the disallowance. We have to ensure that things get much better in the

future, and I am prepared to stand up and take responsibility for that.

**Mr Gibson:** I thank the Minister for her statement. In cases where remapping brings about changes to farm maps, what impact will there be on the single farm payment?

**The Minister of Agriculture and Rural**

**Development:** First, if a slight change has been made to the field that makes it smaller, we will correct the payment. We will do that from this year onwards; we will not apply that retrospectively. We are also trying to ensure that some farmers will see benefits from the new maps. Some farmers will see a small negative, and many farmers will remain the same. The important thing is to ensure that, from this year on, farmers have the most up-to-date maps possible.

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

I say to the Member, as a member of the Agriculture and Rural Development Committee, to which he is very welcome, that it is important that we continue to get the message out that farmers should get their maps out to check that they are accurate, to make sure that we have not missed something that has happened in the meantime and we are doing the inspection based on the correct information. It is important that they do not stick the maps behind the clock on the mantelpiece and forget about them.

**Lord Morrow:** I listened intently to the Minister's statement. Where 10,000 words will do, she will not use 100. What the Minister says is unbelievable. She blames everyone but herself and her Department. Her Department has been negligent, indifferent and careless and has acted with a could-not-care-less attitude, yet the Minister tells us that this was not her fault or that of her Department. She says that it was the fault of the previous Minister, of Europe — the fault of anyone but herself. The Minister talks of £100 million as though it were a £5 note.

**Mr Deputy Speaker:** Will the Member come to his question, please?

**Lord Morrow:** Can the Minister assure the House that this will never happen again? It seems as though the Minister has so much money that she can squander it right, left and centre. Do she and her Department realise the economic climate that we are in? Where will she find all that money?

**The Minister of Agriculture and Rural**

**Development:** Either the Member has not read the statement or he has not been listening fully. I said clearly that the blame was shared. I said that my Department is partially to blame but also that it is simplistic to lay all the blame at one door. I said that we needed to work together — the Department with the Commission, and the Department with farmers — to ensure that there is no ambiguity on the issue. I said that we are doing everything that we can.

I stress to the House that, because we are a paying agency of the European Union, which injects more than €300 million a year into the economy of the North of Ireland, there is no guarantee that there will not be disallowance in future. I will not misinform the House. I do not say that this is something that is in the past. While we are paying out European money and while rules have to be followed to the letter, I cannot say that disallowance will never happen again. As a paying agency, there is always a risk —

**Lord Morrow:** *[Interruption.]*

**The Minister of Agriculture and Rural**

**Development:** Will the Member allow me to finish my answer?

The Department is a paying agency, and, like every other such agency in Europe, there will always be a risk that the European Commission will disagree with the way in which we allocate money and hold us accountable for it.

**Mr Deputy Speaker:** I remind the Member that remarks should be made through the Chair.

**Mr Kennedy:** I am grateful to the Minister for her statement. I wish to ask about the underspend in her Department and elsewhere that is referred to in her statement. Will the Minister assure the House that that underspend was not at the expense of the hardship fund for potato growers or sheep farmers, who suffered greatly over the period? What is the view of DEFRA and the Government of the United Kingdom — after all, it is the member state involved, however much that may irritate the Minister — of the legal action proposed by her Department?

**The Minister of Agriculture and Rural**

**Development:** I assure the Member that the underspend in the Department did not have a knock-on effect on the hardship payments. As the Member knows, in both the June and September monitoring rounds, I put bids to the

Executive for funds to cover those payments. I was very disappointed that those bids were not met. The underspend could not have been carried over, because it happened over a period of years and was applied retrospectively. The underspend happened in the past, and the issues to which the Commission refers also happened in the past, so it was possible to use that money to offset the disallowance. It was not money that we have now that had to leave the North of Ireland but money that had been underspent over a period of years by all Departments. It was that money that was used to offset the disallowance.

On the Member's question about DEFRA, regardless of what he thinks of my political allegiances, I have raised that issue with Owen Paterson, the Secretary of State, on a number of occasions in recent weeks. I have also raised it with the Minister responsible for agriculture in England. The issue is primarily one for the British Government rather than for me, but I did speak to DEFRA Ministers, and Owen Paterson has spoken to William Hague, the Foreign Secretary, about the issue.

I would have preferred it if we could have dealt with it and DEFRA, as the agency to which the European Commission made the payment, had been in a position to take the court case. It has decided not to do that, and that is a matter for the British Government rather than for us. I believe and my legal advice has been that the Department is a stand-in to take the case. That is what I propose to do. I have to say that I am disappointed that DEFRA has stated firmly that it is up to us to deal with the issue. It has not taken the view that I think it should have, given that disallowance will impact on England, Scotland, Wales and the North of Ireland.

**Mr Kennedy:** Does a view exist that is based on the legal advice?

**The Minister of Agriculture and Rural**

**Development:** My legal advice has been about the court case. DEFRA has taken a position on the matter, and that is for the British Government. DEFRA obviously does not wish to support the Department on this issue, and that is a matter of disappointment. I am sure that you, as a unionist, are equally disappointed that DEFRA has come to that conclusion.

**Mr Deputy Speaker:** Before calling Mr Gerry McHugh, I remind Members that friendly fire across the Floor is not permitted.

**Mr McHugh:** Go raibh maith agat, a LeasCheann Comhairle. I thank the Minister for her detailed statement and for the answers that she has given to the questions. Before I ask my question, I also congratulate Tom Elliott on his new position as leader of his party. Just to let him out of a corner — a corner of a field, in this case — Down and Kildare played a very important match one Saturday. Perhaps he could consider going to a match on a Saturday first, and then he could go to the all-Ireland finals.

**Mr Deputy Speaker:** Order. Please put the question.

**Mr McHugh:** The Minister mentioned East Anglia. Are there areas such as that or, indeed, parts of the bread basket of Europe that have fence-to-fence or crop-to-crop measurements? It is easy to compare such areas with places such as Fermanagh or south Tyrone, where hedges and so forth are mixed with the natural environment. That natural environment will be seriously affected if all the farmers attack it in the way that the Minister put forward, but I think that there was a misunderstanding on the part of the Commission —

**Mr Deputy Speaker:** Ask the question, please.

**Mr McHugh:** Does the Minister think that the Commission has misunderstood what the benefits are and that there is hypocrisy in asking farmers to wipe away the environment so that they can reach their levels of payments? Are there areas of East Anglia or other parts of England or, indeed, the North that are less affected than places such as Fermanagh by this measuring of maps?

**The Minister of Agriculture and Rural Development:** First, hedges are hugely important to the environment and to the biodiversity of the countryside. They are also of great importance to the countryside's aesthetic appeal. However, farmers are aware that those hedges must be kept to a maximum of two metres, and that information is in a guidance booklet that they are given. Therefore, if the hedges are not contained, the biodiversity advantage is not improved because the hedge has not been maintained and has become overgrown. The hedge has to be kept trimmed to a maximum of two metres so that it does not encroach on eligible forage.

The Commission's position is applied through a top-down approach. It considered not only

arable land across Europe but olive groves and so forth that extended halfway up a mountain. It found that the only land that was eligible for payment was that being used as feedstuff or suchlike. Therefore, land that is half grass and half gravel or land with a quarry is clearly not eligible forage. Indeed, some of our maps have found cases where a disused quarry was being claimed for. We cannot pay out on such land. We need farmers to understand exactly what they can claim entitlements for and that we can pay them only on that basis.

I made the point in my statement that the Department knows the characteristics of farming in the North of Ireland better than the Commission ever can. That is because it carries out this work on a daily basis. Therefore, we have to make the Commission understand what the particular challenges for farming in Ireland are and how we adapt to them. We have to ensure that everybody is clear about what is eligible and what is not. People can claim for what is eligible; they cannot claim for what is not. There is no getting away from that fact. Farmers complain about inspectors being overly agitated about things that farmers are relaxed about. That day has gone: farmers have to be equally agitated, or there will be a financial knock-on in the future. I stress again that farmers should tell us about what is not eligible. We will try and fix it so that those farmers do not face financial penalties.

**1.15 pm**

**Mr McCallister:** In case no unionists do so, I congratulate my honourable friend. I do not want him to be stuck with one side. *[Interruption.]* I will represent our new leader at any match anywhere — as long as the tickets are provided, Gerry.

I declare an interest as a recipient of single farm payment. I assure the House that my maps were checked recently, and all was in order. I agree with Mr McHugh: there could be serious implications for the environment if areas like the Mourne Mountains were disallowed. If huge chunks of land are disallowed, there will be huge financial implications. Has DEFRA responded in writing to the Minister with any advice or guidance on the legal advice that she has received?

**The Minister of Agriculture and Rural Development:** Not that I am aware of. A lot of what I have done with DEFRA has been done

verbally. It accepts that we are taking the case, but it has not put much more than that to us in writing.

As regards the environmental consequences, heather, providing that it is managed correctly, is eligible at the moment. We apply those rules now on the understanding that that is the case. However, there is nothing to say that the Commission will not decide in a year's time that heather is not eligible. That would have an impact on the Mourne, a lot of Ireland and an awful lot of Scotland. Providing that it is managed correctly, we pay out on heather. However, we cannot say that the Commission will not change its mind. That would have serious implications because heather, if managed and grazed, can provide a huge aesthetic benefit to the countryside. If it is not managed, it becomes of less use to us from a biodiversity point of view. It is about understanding where the Commission is coming from. Given that we are applying those rules now for 2010, if the Commission decides in 2011 that heather is no longer eligible, there will be knock-on effects for people like Mr McCallister who submitted their IACS form on 15 May on the understanding that that was what things would be like until 14 May next year. There has been a very steep learning experience for us. We are now more aware of where the Commission is, but we still do not know where it will be in the future. It would be a brave man or woman who tried to predict that.

## Committee Business

### **Transport Bill: Extension of Committee Stage**

**The Chairperson of the Committee for Regional Development (Mr Cobain):** I beg to move

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 17 December 2010, in relation to the Committee Stage of the Transport Bill (NIA Bill 29/09).*

**Mr McGlone:** On a point of order, Mr Deputy Speaker. There seems to be an increasing desire to extend the time on a number of Bills around the place for the Assembly. I note that other Bills are with the Executive. Of course, Members eagerly await a number of Bills coming to us from the Executive. Is there any indication at all that we will see the more efficient movement of those Bills to the Assembly?

**Mr Deputy Speaker:** My understanding is that that is a matter for the Committees.

**The Chairperson of the Committee for Regional Development:** The Committee Stage of the Transport Bill began on 30 June 2010. The Bill's aim is to create an efficient, effective and sustainable transport system. At Second Stage, I informed the House that the Committee for Regional Development did not oppose the principles of the Bill, and that remains the case.

Thus far in Committee, the Regional Development Committee has completed its public call for evidence, received departmental briefings and scheduled a stakeholder evidence-gathering event for 5 October 2010. Further departmental briefings are also scheduled. The Bill is complex, consisting of more than 50 clauses, the provision of which will have an impact on all citizens in Northern Ireland in determining their mode of transport and in considering sustainability.

To reflect the importance of what the Bill sets out to achieve and the need for robust and detailed scrutiny of all that the Bill entails, members seek to extend Committee Stage to 17 December 2010. That would allow Committee members time to take account of the contents of the Bill and the time to gather written evidence, hear oral evidence and compile and consider the Committee's report to the Assembly. The extension would also allow some

leeway for detailed Committee consideration of the evidence received and of any amendments that it wishes to propose.

I reiterate the Committee's support for the Bill's principles. In seeking an extension of Committee Stage, members are, rightly, being prudent and cautious in their approach to discharging their scrutiny responsibilities. The Committee is committed to the timely passage of the Bill and will endeavour to report to the Assembly on the Bill as soon as possible, and, if possible, ahead of the proposed deadline of 17 December 2010. In the interim, I commend the motion to the House.

*Question put and agreed to.*

*Resolved:*

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 17 December 2010, in relation to the Committee Stage of the Transport Bill (NIA Bill 29/09).*

### **Tourism (Amendment) Bill: Extension of Committee Stage**

**Mr Deputy Speaker:** The next item of business is the motion to extend the Committee Stage of the Tourism (Amendment) Bill. *[Interruption.]* Order.

**The Chairperson of the Committee for Enterprise, Trade and Investment (Mr A Maginness):** I beg to move

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 29 November 2010, in relation to the Committee Stage of the Tourism (Amendment) Bill (NIA Bill 30/09).*

The Committee requires some additional time to consider issues that have arisen during its present proceedings. I beg of the House to pass the motion.

*Question put and agreed to.*

*Resolved:*

*That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 29 November 2010, in relation to the Committee Stage of the Tourism (Amendment) Bill.*

### **Standing Committee Membership**

**Mr Deputy Speaker:** As with similar motions, this will be treated as a business motion. There will, therefore, be no debate.

*Resolved:*

*That Mr Paul Givan be appointed as a member of the Assembly and Executive Review Committee. — [Mr Weir.]*

## Private Members' Business

### Planning Appeals Commission

**Mr Deputy Speaker:** The Business Committee has agreed to allow up to one hour and 30 minutes for this debate. The proposer will have 10 minutes in which to propose the motion and 10 minutes in which to make a winding-up speech. All other Members who wish to speak will have five minutes.

**Mr Givan:** I beg to move

*That this Assembly calls on the Planning Appeals Commission to carry out its work more efficiently and to give priority to major planning applications on which public inquiries are to be held.*

The Planning Appeals Commission is the primary issue for debate. I will set out the context of the motion, before going into more detail. As most Members will know, the Planning Appeals Commission is a non-departmental body. It operates at arm's length from government, thereby trying to ensure its independence.

Other Members have commended Tom Elliott on his leadership, so I should probably have extended my congratulations at the start. I notice that Basil McCrea is here also, so commiserations to him. When I talk about operating at arm's length, I am referring to the PAC, and I am sure that Basil will not operate at arm's length from his new leader.

The commission is completely independent in its decision-making. However, the chief commissioner is responsible for the financial, operational and administrative management of the commission. Therefore, although the PAC is independent, that does not mean that it has free licence to act as it wishes when carrying out its work, nor that it can carry out its work inefficiently. Therefore, it is appropriate for Members, Departments and Ministers to criticise constructively and, hopefully, point it in the right direction so that it can carry out its work more effectively.

Growing the economy is a key objective of the Programme for Government, and the planning system is key to ensuring that the economy gets through these difficult challenges. The Planning Appeals Commission is an integral part of the planning process. Therefore, any delays in the PAC's carrying out of its work will impact

adversely on the Programme for Government's aim to drive the economy forward.

Currently there are 21 full-time commissioners, 17 fee-paid panel commissioners and 19 administrative staff in the PAC. Over the past number of years, OFMDFM has increased the financial resources available to the PAC, which has enabled the organisation to recruit more commissioners to carry out its work. The Department has a memorandum of understanding with the PAC. It is through that relationship that OFMDFM and the PAC operate. It is important that there is the opportunity to review or update that if appropriate; that can be looked at if it is felt to be necessary.

I acknowledge that, over the past number of years, the commission has made significant inroads in addressing the appeals backlog, which has been reduced from over 3,200 in 2007 to 495 at 31 August this year. However, has the focus on addressing the backlog been to the detriment of dealing with major planning applications, and are the commissioners setting the right priorities in dealing with the workload?

Referred work is the primary issue that I want to touch on. The PAC's functions are found mainly in the Planning (Northern Ireland) Order 1991. Referrals to the commission arise from decisions or proposals from five Departments, namely DOE, DRD, DSD, DETI and OFMDFM, as well as from district councils with regard to waste matters. Each year, the PAC conducts inquiries and hearings initiated and requested by the Department. The majority of those inquiries relate to development plans and major planning applications. The commission is required to hear and report to Departments that refer work to it, and its role here is advisory. Final decisions rest with the Departments that ask the PAC to carry out inquiries. At times, that point can be lost: ultimately, the PAC is not taking the decisions but giving advice to Departments that have referred work to it. Consequently, when the PAC is asked to give advice, getting that advice to the Department is a key component of its taking a decision. Undue delays in getting such advice impact on how long it takes Ministers and Departments to take decisions.

In recent years, the commission's referred workload has increased significantly due to the large number of article 31 planning applications that have been referred for public inquiry. From

2005-06 to 2007-08 a total of three article 31 planning applications were referred, whereas, in 2008-09, eight such cases were referred, with a further four in 2009-2010 and another two in the current financial year.

### 1.30 pm

The system for dealing with article 31 cases must change. Currently, each case is heard on its own, and only when one case is heard will another be taken. Only two commissioners are allocated to deal with article 31 cases. Therefore, only 10% of the senior permanent commissioners are being allocated to deal with article 31 cases, and they deal with those cases only on a one-after-another basis. It means that cases further down the priority list are being delayed due to other cases not yet being heard.

The first priority case waiting to be heard is the Sprucefield application, something that rests in my constituency. As members know, that application has been fraught with many legal challenges, and we are awaiting a public inquiry to allow all of that information to be sought. Again, only recently we have had another judicial review being sought to stop the public inquiry taking place next week. Those constant delays are having a ripple effect on the other article 31 cases.

Such legal challenges are a problem for the Planning Service and the PAC. In 2008-09, the Commission spent just under 4% of its total budget on legal issues. That figure has risen in 2009-2010 to £164,000 or 6% of its total budget. Clearly, there is a very litigious environment in respect of the planning process. Actions may need to be taken by Departments to try to reduce the opportunity for judicial review, and I am sure that the relevant Department may be considering whether a review of the 1991 Order needs to be taken into account. The courts also need to take a robust approach in order that they do not give judicial reviews easily, particularly when commercial vested interests are motivating the actions of individuals behind the judicial reviews.

Another piece of major work for which the PAC is responsible is the area plans. Currently, three development plans are being dealt with; the Belfast metropolitan area plan (BMAP), the Magherafelt area plan, and the Banbridge, Newry and Mourne area plan. There are four commissioners for BMAP, three for the Magherafelt area plan, and three for

the Banbridge, Newry and Mourne area plan. Therefore, considerable resources are being put in to deal with those area plans. Ultimately, the chief commissioner is operationally responsible for the Planning Appeals Commission, and she is responsible for deploying her resources to meet the prevailing workload.

The delays in bringing forward BMAP is particularly incredulous not least to those in the construction industry, which is being hardest hit in this difficult period for the economy. There has been a long history to the BMAP process. A number of Members in the House, as far back as 1999, warned against the process that was being used for taking forward the Belfast metropolitan area plan. Indeed, in 2000, when the then Minister, Sam Foster, was asked a question about establishing it, he said — I will not quote it all for the sake of time, which is pressing:

*“The programme for the preparation of the plan involves the publication of an issues paper in autumn 2001, publication of a draft plan towards the end of 2002-03 and adoption of a final plan in 2004-05. I intend the plan to include widespread and inclusive consultation, involving councils, business and community interests and the public.”*  
[Official Report, Bound Volume 8, p 108, col 1.]

He went on to say:

*“This is very good news. It was announced in the 1999 Agenda for Government and confirmed in the Programme for Government and in the draft Budget.”*

We are coming to the end of 2010. A document that it was anticipated would be finalised in 2004-05 has still not been carried out. People are asking: “Where is BMAP?” In its annual business plan for 2010, the PAC said that it would be completed by June. On the day that that work was due to be completed, a notice went up on its website to say that it would not now be completed until March 2011. Yet, we have had four commissioners dealing with that, and the evidence that was brought to public inquiries ended in 2008. They are going through the evidence from 2008 and have not been receiving any new information.

**Mr Deputy Speaker:** The Member should bring his remarks to a close, please.

**Mr Givan:** There are important questions to be asked about the BMAP. To date, it has cost over £8 million.

**Mr Deputy Speaker:** The Member's time is up.

**Mr Givan:** In conclusion, I think that it is incumbent on all of us, including the PAC, to work more efficiently and effectively —

**Mr Deputy Speaker:** The Member's time is up. I am sorry.

**Mr Givan:** — so that the Programme for Government's target of driving forward the economy can be achieved. I commend the motion to the House.

**Mr Boylan:** Go raibh maith agat, a LeasCheann Comhairle. I also congratulate Mr Elliott and wish him well in the future.

I welcome the opportunity to speak on the motion. I add my support to it, along with the proposers and other Members. We currently face dire economic circumstances, and if we are to attract tourism, investment and jobs to the North and deal with the over-reliance on the public sector, we must have a planning system that is fit for purpose.

In light of recent reports, questions must be asked on the number of appeals, public inquiries and judicial reviews and on staffing levels in the Planning Appeals Commission and the Planning Service. I recognise the fact that the Planning Appeals Commission has been dealing with a significant backlog, but surely we must now ask, given the substantial reduction in new appeals, how and why the appeals process is still taking so long to deal with relatively straightforward cases for single dwellings through to article 31 applications. It is clear that the emphasis must be placed on carrying out the inquiries and hearings for major applications, which may, if allowed, secure economic investment. However, we must also ensure that the less complex appeals are heard in a timely manner.

The Planning Appeals Commission's resources have been doubled in recent years, and although that has resulted in a vast reduction in the number of cases, some high-profile cases have highlighted the fact that the process is still flawed. At too great a cost to the public purse, the Planning Appeals Commission must now look at new, more efficient ways to handle its caseloads and examine whether the current staffing level should be restructured.

The Planning Appeals Commission's business plan states that only full-time commissioners

can deal with hearings, inquiries and major appeals. Run-of-the-mill appeals, written representations or accompanied site visits are dealt with by a panel of part-time, fee-based commissioners employed specifically on a case-by-case basis. Surely it would be more cost-effective in the current circumstances, with the number of minor appeals diminishing, to employ enough full-time commissioners to deal with both that work and the more complex cases.

At a recent meeting of the Committee for the Environment, I asked the permanent secretary of the Department of the Environment whether he had considered contacting the Office of the First Minister and deputy First Minister to determine whether there was an opportunity to transfer surplus Planning Service staff to deal with the delay in processing planning appeals. I had thought that, at that time, it was a reasonable suggestion, as it seemed absurd and totally unacceptable that the Planning Appeals Commission had enough staff at the correct level to hear only one inquiry at a time. Although there are considered to be excess staff in the Planning Service, the Minister of the Environment has opted to transfer them to general service grades rather than seek to use the skills of the professional and technical grades elsewhere.

Although I see the benefits of prioritising applications that are awaiting a public inquiry, I do not believe that fast-tracking any process is an appropriate and proper way to deal with issues of such magnitude. Short-term fast-tracking may work, but, as I have repeatedly said, consideration should be given to staffing structures, and more efficient procedures should be introduced to address those matters in the long term.

The Planning Appeals Commission should be commended for reducing the massive backlog in recent years. I understand that it has introduced measures such as single commission decisions in an attempt to make the appeals process more efficient. However, performance targets are being missed, and there seems to be a case for reviewing the staffing structures of the commission and the methodology for handling some minor appeals. Public funds are currently severely stretched, so if they are not being used efficiently by the Planning Appeals Commission, that needs to be rectified. There is a requirement to amend and streamline



the commission's procedures if it means that appeals can be dealt with more expeditiously.

**Mr Elliott:** I thank the Members who tabled the motion. To be fair, there will not be a great deal of opposition to it from these Benches. Mr Givan highlighted issues concerning the Planning Service as well as those that affect the Planning Appeals Commission.

To be fair, those are interlinked to a large degree. I think back to when the dreaded PPS 14 was introduced and the knock-on effect that it had on the Planning Appeals Commission. To me, that had the biggest impact in the past number of years and was why the PAC had to appoint more commissioners. Therefore, we cannot confuse the two areas of the Planning Service and the decisions that it makes with the PAC.

Economic progress is vital. It is hugely important to increase co-operation between the Planning Service and the PAC. I am sure that the First Minister will say during his response that the PAC must be clearly independent. However, it is important that there is recognition of each other's role and co-operation in that regard. The proposer of the motion talked about the John Lewis proposals at Sprucefield. We want to ensure that there is as little hold-up as possible on economic progress. The appeals system in other jurisdictions places a much better emphasis on such proposals. In one area, all planning applications, or most of them, are progressed within a three-month period. That allows the PAC, if required, to take up its role at an early stage.

Indeed, that area also has a third party appeal process. We cannot have a third party appeal process here because it would greatly increase the logjam in the whole system. It is unfortunate that that cannot be brought into the system, because it would give people a much more keen interest in the planning process. It tears the heart out of people to hear that their only option is a judicial review, as opposed to a third party appeal process. However, given the position at the moment, that cannot be done. Many people have invested huge amounts of money and time in planning applications, and, by the time they come through that process and get to the planning appeals system, much of the emphasis has gone from the work that they wanted to do. First and foremost, we need to keep those people in mind.

The PAC, to be fair, has made some progress over the past few years and brought in extra commissioners. Indeed, it has allowed for the single commissioner decision-making process. However, quite a lot of people in the business industry believe that that has been short-sighted and feel that the three commissioner model gave a much more balanced view on decisions. The proposer mentioned BMAP. That is not the only area without progress; we are awaiting progress on all the area plans in the community. The Fermanagh area plan, for example, which was developed in 1997, has now run its course and is out of date by three years. No one has begun to re-examine that. If that area plan is not being developed by the Planning Service, how, should it be required, will it ever reach the appeals process?

For years now, a review of the impact of PPS 4 on business in the countryside has been ongoing. That has not gone any further, and I am keen for such areas to be progressed as quickly as possible. Some may say that that does not have much to do with the Planning Appeals Commission, but it does. If good decisions are not made in those areas and under those policies, such cases will automatically go to the Planning Appeals Commission. We support the motion, but it must be interlinked with the Planning Service.

**Mr McGlone:** Go raibh maith agat, a LeasCheann Comhairle. I also congratulate Mr Elliott on his election.

I commend the Members who tabled the motion, because it brings the issues somewhat into focus. We all want to give priority to the major planning applications on which public inquiries are about to be held, and we all support the PAC as a lean, mean, efficient machine. However, everything is intertwined.

Mr Elliott referred correctly to PPS 4, which is but one of the planning policy documents.

#### 1.45 pm

We need an efficient decision-making process for the Planning Service, the Department and by the Minister because we cannot have major applications, which have serious economic implications for the amounts of money that are available for investment by investors and for the amounts of jobs that that could realise, being held up at departmental level.

It is not only the PAC that is the sticking point. Judicial reviews, which Mr Givan referred to, have the potential to stymie any development, irrespective of the merits or demerits of that. A number of issues are to be addressed around the way, and, frankly, good luck to the one that decides on that one, because I do not know how that can be resolved to prevent people taking judicial reviews. I know that some Members, such as Peter Weir, are more eminently qualified than I and will have an input into that and give a more learned view. I do not know how that issue can be alleviated or addressed.

My original point is that, where there are major issues concerning job creation and investment, the Planning Appeals Commission needs to prioritise how it can resolve and deal with an issue. The fact that only two commissioners are allowed to deal with a major planning application that has been designated for a public inquiry concerns those of us who want to see such things moved and brought off the shelf.

Inevitably, that brings us back to BMAP, which will probably be referred to in response and to which I have heard referred a number of times in my short time in the Assembly. In fact, in my constituency, I have heard the Magherafelt Area Plan mentioned a number of times. Area plans seem to be a legacy of history that go way back in time and which seem to have been there for ever and remain to be resolved. Those are key issues, and we need to see efficiency moving. If it is being held up at the PAC, we need to know why and we need to see those issues move to resolution.

However, the key issue, which will probably be mentioned in the debate, is resources and staffing requirements. It will probably be mentioned that there are not enough staff and enough staff with sufficient experience to deal with the cases, especially where the call has been made to have major planning applications fast-tracked to a public inquiry. Although I support entirely the spirit of the motion, I am a bit reluctant to say that such applications need to be fast-tracked at the expense of, for instance, a person who is in the unfortunate position of being at an appeal on foot of a disability. That brings us back to the point about the staffing requirement.

Earlier, Mr Boylan said that, at the Committee for the Environment, it was asked whether there was any potential for the deployment of

experienced staff from the Planning Service. I can hear all the noises coming from aspects in the Civil Service to say that that cannot be done for this, that and the other reason. Experienced and qualified planners are likely to be redeployed to, for example, administrative duties for which they are not particularly qualified for or particularly anxious to go into. However, their experience should be used for the public good and in the public interest. If staff need to be redeployed and if they are required elsewhere where the experience is needed, there has to be some way of tapping into that. Under good management, that would make sense.

**Mr Deputy Speaker:** Bring your remarks to a close, please.

**Mr McGlone:** Where there is a will, there is a way in doing those things.

**Mr Deputy Speaker:** Your time is up.

**Mr McGlone:** I commend the motion, and I support it fully.

**Mr Lunn:** The Alliance Party also supports the motion; I do not think that there will be too much argument about it from any quarter of the House. It seems that, in the past couple of years, the planning system has been streamlined considerably, and the Minister of the Environment deserves some credit for that.

The performance of the Planning Appeals Commission over the past few years has also been quite remarkable. I have before me figures that show that 2,765 appeals were notified to the PAC in 2006-07, and 515 in 2008-09. Perhaps part of the reason for that improvement is that less business has been offered to the commission. However, the PAC has considerably reduced its backlog, and its anticipated timetable for dealing with an appeal has also decreased from six to four months. I also have figures that show that there are 679 appeals outstanding. Mr Givan quoted a slightly lower figure, which is even better, and there are 150 outstanding cases that involve enforcement, legal or environmental issues.

Therefore, on the face of it, all is going swimmingly, except at the other end of the scale where there is a logjam of the big article 31 planning appeals and public inquiry cases. Three or four years ago, there were only one or two public inquiries in the pipeline and now there are 13. That is not the fault of the PAC,

but is the result of decisions by Ministers to refer those cases to it. I wonder what discretion Ministers, particularly the Minister of the Environment, have in directing the PAC on economic grounds to prioritise particular cases, as was done recently with the famous runway at Belfast City Airport.

I spoke to someone recently who is involved in these matters, and I was told that the public inquiry evidence sessions are quite short, with seven days considered quite long, and 10 days exceptional. The delay takes place during the year and a half beforehand, when the evidence is gathered and the legal experts earn fat fees for doing their jobs, either trying to stop things or get them moving. John Lewis is the classic case: it has been going on for six or seven years and is now hopefully about to restart.

However, can we really interfere with the system? If Mr Weir is to speak, I will be looking to him for guidance, because I do not know how people's legal right to challenge decisions can be denied. The legal system must be kept separate and people have rights that must be observed. If there is a way to speed up or tidy up the eternal conflict between the judiciary and government without restricting people's rights, I wish that we could find it.

Sometimes, we find ourselves on different sides of the argument. I plead with the PAC to get the John Lewis case over with one way or the other, but, had the debate on the Glenavy incinerator taken place later today, I would have pleaded with the Minister to allow a public inquiry. That is absolutely essential, but it seems we will not have the opportunity to discuss that matter today.

I do not know how the PAC's part of the process can be speeded up, because it is reasonably efficient. However, its complement of 21 commissioners and 17 panel members seems quite a lot, and I question why it cannot run two public inquiries at the same time. That does not seem a difficult thing to do, and there are those in the system who would agree.

I will leave it at that. The Alliance Party supports the motion. If some way of refining the current process and making it more efficient can be found, my party will support that.

**Mr Hamilton:** Some years ago, I was extolling the virtues of capitalism and the free market in a manner that was very unlike Vince Cable, and

not much in vogue at the moment. In testing my devotion to the free market, a friend, who is now a university lecturer, told me that, if I was really a free marketeer, I would have no planning system and would simply allow people to do whatever they wanted. Indeed, when we looked at the planning system in the past, we sometimes asked whether anything could be worse than what was in place.

Like others, I acknowledge that there has been significant progress on planning in the last number of years, with both the streamlining system and the strategic projects unit at the other end. However, I also echo what has been said about the article 31 public inquiry aspect of planning. I will cite the example of Newtownards, in my own Strangford constituency, where delay after delay is denying people the opportunity to have their local economy regenerated. In the early part of the last decade, the last vestiges of the traditional textile industry in the area closed down. That left the town, like so many others in Northern Ireland, with very little manufacturing.

Some hope was offered by three major retail-based planning applications, namely Castlebawn, Tesco and the existing Ards Shopping Centre. Those were not Microsoft or Google, but the people of the area took the view that beggars could not be choosers. Applications for each were submitted in 2004-05, but it was not until 2008 that they were conjoined in an article 31 application and sent to the Planning Appeals Commission. Therefore, there had already been three years of delay as the applications were shifted around within the Planning Service. The applications were put on a list, which was not chronological but based on Planning Service advice.

I and colleagues from the area met the Planning Appeals Commission in January 2010 to make the argument for the need for additional resources and for a timescale to be set, and just to reiterate the economic importance of the projects to the area. Many Members may see Newtownards as a small town, but some of the applications, if passed, have the opportunity to create hundreds of jobs and get our area going again.

At the meeting, we were given no indication of any target dates. The chief planning officer told us that they were only able to do one public inquiry at a time and that there was

no willingness to seek additional resources from elsewhere, whether from Scotland, the Republic of Ireland or anywhere else, to get the applications into the system and get things moving. We were then told in April that, with the George Best Belfast City Airport application going in, we had moved from second to third on the list. Again, no hope was offered to the people of my constituency as to if and when the applications will be dealt with in a public inquiry.

I want to raise many issues in the limited time that is left. First and foremost, I want to make a point about there being only one public inquiry at a time. That policy seems to have been set by the Planning Appeals Commission; I do not think that it was set by anyone in the Executive. I have to ask the question: is that a good policy? I would say that it is not. What warrants the prioritisation that is handed to the Planning Appeals Commission by the Planning Service? Is it tested in respect of equality or transparency? What goes into allowing that prioritisation to take place?

The motion also mentions efficiency and resources. One public inquiry was dealt with last year, namely the Banbridge one that was reported around Halloween. It looks like there will be none completed in the year since, and, thus, there is no real hope for anywhere else that appears on the list. At my meeting with the Planning Appeals Commission, we talked about the exchange of correspondence between the Planning Service and the Planning Appeals Commission about the John Lewis application. Another public inquiry could have been started while that application was being bounced back and forward.

There is a real opportunity cost to my area: the opportunity for economic rebirth and the creation of hundreds of jobs is being denied. That economic regeneration is on pause because of the inaction of the Planning Service and the Planning Appeals Commission.

**Mr Deputy Speaker:** Bring your remarks to a close, please.

**Mr Hamilton:** The Planning Appeals Commission is seen as an arm of government. I make a plea to the First Minister to show the people of my area, and other areas, that the Government are doing what they can and coming up with new ideas to get the system moving.

**Mr Deputy Speaker:** Your time is up.

**Mr Hamilton:** Nothing less than the economy of our area is at stake.

**Mr W Clarke:** Go raibh maith agat, a LeasCheann Comhairle. I, too, welcome the opportunity to speak on the motion, and I add my support to it in the same tone as everyone else. It is important to understand that it is not just the Planning Appeals Commission; judicial reviews also have a major impact on our planning process.

I am not sure how we deal with that and work our way through it. We talked about third-party appeals, and other people are of the opinion that that would slow up the process further. Across the water, consideration is being given to the introduction of a Bill that would include third-party appeals. Perhaps the House should consider that, but that is for another day.

## 2.00 pm

The crux of the matter is that people want decisions on their planning applications. It will be impossible to please everybody, but people do not want continual delays in their planning applications being processed. As Cathal Boylan and other Members said, in the current economic situation, we need to streamline the process to attract investment. When we get out of the recession, we must be able to hit the ground running and be ready to develop major schemes.

Some Members mentioned the airport runway extension at George Best Belfast City Airport. Regardless of whether people agree with Michael O'Leary or think that he used the issue as a publicity stunt, he did say that the planning system is too slow, and a decision should be made, one way or the other. It is not acceptable to wait for two or three years, go to a public inquiry for another couple of years and then throw in a judicial review in the middle of the process. If our system is not operating to its full benefit, we must examine it.

Members also talked about Sprucefield. The wrong message is being sent out to investors and others, who cannot be bothered to go through a process such as that. Those people mix in circles of friends who influence one another, and they go to dinner parties and tell people not to do business in the North because the system is too slow, cumbersome and bureaucratic. They are effectively telling

investors to go somewhere where the planning system is quicker.

The Planning Appeals Commission's resources have been doubled in recent years, which has sped up the process somewhat. If the commission has been arguing with OFMDFM that more resources are required, they should be given to them. An important element in the planning process is the lack of community involvement, community planning and the community getting its day in the sun to come together at an early stage in the planning process. That would speed up the process. People generally get involved, but their only opportunity is near the end of the process. It is argued that neighbourhood notification is a good way to consult the public, but most people do not bother with it, and, at that stage, it is generally too late. However, under the review of public administration, we had an opportunity to bring community planning on board, where people could sit down with their local authorities to develop the infrastructure of their towns and cities and have their say in area plans.

We talked about area plans, their level of resources and the delay in taking them forward. By the time that they come forward, they are outdated because it has taken so long to gather the evidence. The Ards and Down area plan was almost out of date by the time that we received it.

**Mr Deputy Speaker:** Bring your remarks to a close, please.

**Mr W Clarke:** However, we look at best practice across the water and elsewhere and continually build on our planning process.

**Mr Deputy Speaker:** As this is the first occasion on which the Assembly will hear from Mr Girvan, I remind the House that it is convention that a maiden speech be made without interruption.

**Mr Girvan:** Thank you, Mr Deputy Speaker. In supporting the motion I want to make a number of points.

My first point is that the delays in the process have created a marked problem in the area that I represent, South Antrim. My constituency has a major town, which I call a metropolis, namely Ballyclare. The town is the subject of a major planning application that is being delayed by the Belfast metropolitan area plan (BMAP), which promised all sorts of things to all sorts

of people. As yet, it has delivered nothing to the area that I represent.

As Paul Givan said, the 1999 'Agenda for Government' document identified the way forward. Sam Foster announced that the Belfast metropolitan area plan process would be completed by 2004; six years later, we are promised that it will be delivered by summer 2010. However, it will not be brought forward until spring 2011. That has identified a major problem, not only for those who wish to develop and make progress but for the infrastructure of the town that I represent. Part of that application includes a major bypass that has wide political support and which would deliver great benefits to Ballyclare.

I congratulate the Planning Appeals Commission on what it has done to reduce dramatically the number of cases that it deals with; however, although its focus on bringing forward those cases has been a big help, many of them are not of strategic benefit. More focus should be put on the delivery of area plans. As Patsy McGlone said, the commission should consider special circumstances, such as providing facilities for people with disabilities.

The Planning Appeals Commission has a major role to play. It says that it is totally independent; however, the Planning Service's delay in making decisions on applications has done nothing but sustain the backlog in the system. With regard to development control, the Planning Service had a major influx of applications during the boom time when the economy was thriving from a development perspective. That added to the commission's work because many developers allowed two months to pass and then took applications directly to it for decisions. That has done nothing but maintain the backlog that was created during 2007 and 2008.

Mr Hamilton mentioned the fact that, at public-inquiry stage, only one appeal can be heard at a time. There is something seriously wrong with the system if only one article-31 case can be heard at a time. We need to focus on how that can be advanced. The last piece of evidence for the Belfast metropolitan area plan was received at public-inquiry stage in April 2008; two and a half years later, nothing has been delivered.

I call upon the Planning Service and the Planning Appeals Commission to focus on applications that are of major importance and which will deliver strategic benefits not only to

my area but throughout the Province, as they will help the Province's economy to move forward.

**Mr Beggs:** I, too, support the motion — as far as it goes. Other issues could have had important bearing on the performance of the Planning Appeals Commission. During the past number of years, there have been lengthy delays in the planning appeals process, not only in individual appeals but in area plans and public inquiries as well.

We are all too aware of how investors have been concerned about delays in the Planning Service and what that has meant for those considering investing in Northern Ireland. Undue delays in the Planning Appeals Commission are equally detrimental to Northern Ireland's reputation as a place to invest. In the past, delays in the planning appeals process have, typically, been two or three years, and delays in area plans seem to be endless. They hold us up to ridicule in the world of investment where, increasingly, clarity is needed on the timescales of decisions, even if it is not the decision that an investor may want. If there is such clarity, investors will know that if they are not going to have to commit to one form of investment, they will have to start concentrating somewhere else or submit a fresh planning application elsewhere.

Delays in decisions are also unnecessarily painful to objectors and to those living and, perhaps, working in the vicinity of the site for which an application has been submitted, because residents often feel that they are living under a shadow of uncertainty during that period, which can last many years. Therefore, they too would benefit from a faster decision-making process.

Delays in the Planning Appeals Commission can be a reflection of its efficiency; however, they also reflect the overly complex planning legislation in Northern Ireland on which it must judge individual cases and base its conclusions. The legislation is used not only by the Planning Appeals Commission, but, increasingly, by the courts, which use our planning laws and regulations in deciding whether they have been implemented appropriately. That adds further burdens and delays. We have also found that changes to some of the Department's planning policy statements have been held up because of the courts.

If we want to improve our planning appeals process, we need to improve our planning

laws generally. I pose the question: why, after three and a half years of this Assembly, has a new planning reform Bill yet to appear formally in front of the Assembly. Without new planning laws, we leave the Planning Appeals Commission to apply the old flawed ones, which, perhaps, will be open to abuse by those who seek delays through the courts.

A key issue for the Assembly must be to get the new planning Bill through the legislative process, take whatever amendments come its way and put it into law. That will greatly improve the outcomes of our planning appeals process. If it does not, there is something wrong with the legislation that we put forward.

Many Members mentioned Belfast City Airport. I went to the trouble of looking at the Planning Appeals Commission's website, and when I examined the detail on the airport, I discovered that there is legal precedence; that explains why the Planning Appeals Commission cannot start to handle the situation and accept it as a case. The Berkeley judgement in the House of Lords, no less, created that precedence. It is not correct to ridicule the Planning Appeals Commission in that instance; the fault appears to be elsewhere. On some occasions, at least, the Planning Appeals Commission appears not to be at fault.

There has been a huge backlog of appeals; there were 2,765 at one stage. That has been greatly reduced, which is to be welcomed, but there is still a lack of clarity as to whether that reduction is due to a lack of applications being submitted. When there are fewer applications, there are fewer appeals, because people have fewer decisions with which to disagree. There needs to be more efficiency, and the backlog needs to be reduced so that there is more certainty. I support the motion.

**Mr Deputy Speaker:** As Question Time begins at 2.30 pm, and as the First Minister has 15 minutes in which to respond to the debate, I propose, by leave of the Assembly, to suspend the sitting until 2.30 pm.

*The sitting was suspended at 2.14 pm.*

*On resuming (Mr Deputy Speaker [Mr McClarty] in the Chair) —*

**2.30 pm**

## Oral Answers to Questions

### Office of the First Minister and deputy First Minister

#### Executive Work Programme

1. **Mr Doherty** asked the First Minister and deputy First Minister what work the Executive are taking forward following the recent awayday at Greenmount College.  
(AQO 119/11)

**The First Minister (Mr P Robinson):** First, I congratulate Tom Elliott on his election as leader of the Ulster Unionist Party. The deputy First Minister and I would be very happy to meet him. His election comes at a time when we have completed our review of the processes in the Executive. The deputy First Minister and I would be happy to talk to him about those issues and discuss how we might have a better relationship in the Assembly.

At a special meeting at Greenmount Agricultural College on 6 July, the Executive fully recognised the need to undertake a collective and corporate approach to the major and unprecedented fiscal challenges that we face. For that purpose, it was agreed that a Budget review group, consisting of Ministers representing all parties in the Executive, should be established to oversee the development of the Executive's response.

Extensive preparatory work was commissioned from all Departments. That was done to provide the fullest range of information and analysis on a variety of issues to inform the work of the Budget review group. That material has now been provided to individual group members for their preliminary consideration, and the group will meet formally on 30 September. On completion of its work, the Budget review group will present proposals for discussion and agreement by the full Executive.

**Mr Doherty:** I thank the Minister for his answer. The priorities arising from the Executive awayday at Greenmount are to grow the economy, protect

front line public services and tackle social disadvantage. Given that the Finance Minister has already acquiesced to the cuts being imposed by the British Government, will the First Minister outline how those objectives will be met?

**The First Minister:** We all know that the Finance Minister has done nothing of the sort. He has attempted to bring some realism to the situation. The Budget for Northern Ireland is based on a block grant, which itself is the product of a formula that cannot be negotiated out of existence. Therefore, we have to deal with the outcome of that.

The Finance Minister, the deputy First Minister and I have said that we believe that there are some special circumstances in certain areas involving Northern Ireland. We have a special case to plead, and we will do so. Indeed, the deputy First Minister and I will begin that process when we meet the Chancellor tomorrow.

**Mr Hamilton:** The First Minister referred to his and the deputy First Minister's meeting with the Chancellor. Will he assure the House that, among other issues, the dissident republican threat and its financial implications will be raised at that meeting?

**The First Minister:** We went through a lengthy process of negotiating the basis on which policing and justice powers would be transferred. We had long discussions with the then Prime Minister Gordon Brown about the financial aspects of that.

The deputy First Minister and I were seized of the importance to ensure that whatever resources were needed by the police and, indeed, the courts, to do the job that would be necessary, particularly in circumstances of heightened activity, would be provided. We successfully negotiated the ability for the police and the courts to have access to the Treasury reserve in those circumstances.

Given the recent indication of a high alert in Great Britain, the Treasury must recognise that the best way to stop action taking place in Great Britain is to stop it here in Northern Ireland.

**Mr McNarry:** On behalf of the UUP Benches, I acknowledge the First Minister's remarks about our new party leader. They are welcome and appreciated and will, I hope, set a good trend for the days and months ahead.

Would it be helpful if Ministers could agree criteria against which all government programmes across all Departments could be assessed, so that the Executive approach to those reductions could be handled in a collective way?

**The First Minister:** It is imperative that the Executive act collectively when dealing with those matters. The issues are far too important to be dealt with on a territorial, party political or departmental basis.

Very significant work has been done. I know that I am not allowed to use visual aids in the Assembly, but these are the reports that the Executive collectively asked officials for. A lot of work has gone into those reports, and we will look at them. At this stage, I cannot prescribe what the approach might be, but we intend to meet in the review group before the end of this month so that we can look for a way forward. Hopefully, we will have an agreed way forward to present to our Executive colleagues at a later stage.

I very much agree with the Member that we need agreed criteria and we need to come to a collective decision.

**Mr Gallagher:** Will the Executive's work programme include an urgent response on the recent EU General Court decision on derogation from the aggregates levy for Northern Ireland? Will he raise that matter at his upcoming meeting with the Chancellor?

**The First Minister:** That matter was raised by the Agriculture Minister at our last Executive meeting. Nothing that goes to Europe comes out of the system urgently; even if the matter goes through the speediest processes, it will probably be several years before it is determined. The decision has been taken by the Executive to enable the Minister to make the necessary legal appeal. I trust that it will be successful, because it will have implications, not just for farmers but for the Executive.

## Programme for Cohesion, Sharing and Integration

2. **Mr Lyttle** asked the First Minister and deputy First Minister for an update on the consultation process for the draft programme for cohesion, sharing and integration.  
(AQO 120/11)

**The First Minister:** The core of the programme for cohesion, sharing and integration (CSI) was agreed on 23 February 2010. Following further development of the draft programme, including detailed discussions with all Departments, the Executive agreed the draft cohesion, sharing and integration programme on 22 July this year.

The public consultation on the draft cohesion, sharing and integration programme was launched on 27 July and comprises a wide range of public and sectoral meetings. Those have been held at many different locations across Northern Ireland throughout September. The public consultation period will close on 29 October. The consultation document invites everyone to comment on the range of issues covered in the draft programme.

Copies of the consultation document can be obtained online via the Office of the First Minister and deputy First Minister (OFMDFM) website or the Northern Ireland Direct website or by contacting our officials directly. The consultation document includes details of a high-level equality impact statement, and the consultation will take the views of the public on any equality implications and the type of data information that should be considered when assessing and monitoring equality of opportunity issues that relate to the programme.

**Mr Lyttle:** I thank the First Minister for his answer and recognise the rich material that is coming from the public and sectoral meetings that are being held. Will there be any formal process to make feedback available on the key findings that are being forwarded from the consultation?

**The First Minister:** OFMDFM has a good record of taking into account the views of consultees. We will look very closely at the feedback that we get from public meetings and written comment. At the same time, we want to hear from the Committee and feed into it the comments that have been made during the consultation so that we can sit down and determine what changes, if any, should be made to the strategy.

Everyone will have additional elements that they would like to have in the strategy. However, we are coming from a situation where there was no Northern Ireland strategy, so we have to start somewhere. If we can build on what we have done, we will be very happy to do so.



**Mr Kennedy:** I am grateful for the earlier reply from the First Minister. Given that the initial response to the cohesion, sharing and integration document from some key groups could be described as underwhelming, will the First Minister indicate the robustness of the monitoring and evaluation criteria that have been incorporated into the strategy? How does he see those criteria operating?

**The First Minister:** We are delighted by the very high attendance at consultation meetings, which shows a wide interest in what we are doing. The Member's party missed its opportunity to bring forward such a strategy when it had the lead role in OFMDFM, but we have succeeded in bringing it forward.

I do not argue that the strategy is perfect or that it will be perfect after we take into account the results of the consultation process; however, it is a starting point on which to build. Although I do not think that we will ever have a perfect and final document, we will continue to work on it and improve it.

**Mr Spratt:** How significant is it that, for the first time in Northern Ireland, the devolved Administration has come to an agreement on the overarching strategy? What does the First Minister hope will be the short-term outcomes of adopting the strategy?

**The First Minister:** Our society has been through lengthy conflict and division. None of us can look at what is happening in our own areas without recognising that there are still significant elements of sectarianism, racism and other aspects in which good relations have broken down.

It is not enough simply to build up structures in here and move forward because we politicians have found a way forward; rather we must try to repair what has gone wrong, without laying blame, to ensure that we develop a society in which people can live and work together with improved relations. It is significant that, for the first time, we have a Northern Ireland-built strategy rather than a strategy imposed from London, which had previously been the case. That is a good starting point, but that is all it is. The hard work has to be done.

I pay tribute to all those who work in the community to build good relations. OFMDFM has spent a considerable amount of money in supporting them.

**Mr P Maskey:** Go raibh maith agat, a LeasCheann Comhairle. As part of driving forward the new approach to promoting good relations laid out in the CSI strategy, will OFMDFM commission a review of the structures in the Department and the Community Relations Council to assess whether they are effective, efficient and fit for purpose, as well as bringing forward development options for the future?

**The First Minister:** Yes, and not only as a result of the strategy. The Executive will have to look at all structures, including quangos and non-departmental public bodies, to see whether their tasks can be performed better, more quickly and more cheaply. That is a reality that the Executive have to face up to. There will be no sacred cows; we will consider what will yield the best result most efficiently and most effectively.

### Sexual Orientation Strategy

3. **Dr Farry** asked the First Minister and deputy First Minister for an update on the development of the sexual orientation strategy. (AQO 121/11)

**The First Minister:** With your permission, Mr Deputy Speaker, I will ask junior Minister Robin Newton to answer that question.

**The junior Minister (Office of the First Minister and deputy First Minister) (Mr Newton):** I thank the Member for North Down for his question.

The last consultation on a sexual orientation strategy took place in 2006. At the same time, under direct rule, our Department established a short-term lesbian, gay and bisexual (LGB) fund, which helped to build capacity and partnership working across the LGB sector. In addition, considerable work has been done across government and public bodies to develop and keep under review cross-departmental action plans to tackle identified inequalities that LGB and transgender people face and to tackle issues that affect the community such as homophobic crime, and through their work to encourage and promote such work across government. Many Departments now have well-established communications with key voluntary LGB groups through which issues can be highlighted and addressed by relevant authorities in a timely and responsive manner.

The recent CSI consultation document indicates that Ministers are fully committed to publishing the sexual orientation strategy. To help

inform work on the forthcoming strategy, our Department will seek to establish and build on contacts across the full range of relevant interests. We expect the newly established lesbian, gay and bisexual (LGB) and transgender forums to provide useful conduits through which key concerns can be raised, and we will seek to work collaboratively across Government and with the wider public sector to develop the sexual orientation equality strategy.

### 2.45 pm

**Dr Farry:** I thank the junior Minister for his answer, but a four-year delay is a pretty long one in government, particularly when there are issues around hate crimes and access to health services. Will the junior Minister give a firm commitment of a timetable within which the strategy will be brought to fruition? In doing so, will he bear in mind that a commitment was given to the Committee for the Office of the First Minister and deputy First Minister back in 2009 that such a strategy would be brought forward shortly?

**The junior Minister (Mr Newton):** I understand the point that the Member is making. However, a realistic assessment of the time needed to give due consideration to the issues raised and to complete consultation indicates that the timescale for publication would be no earlier than 2012. That does not mean that Departments are doing nothing to address the issues. The work is integral to the audits of the key inequalities, and the Departments' mitigating plans are recommended by the Equality Commission as key tools for Departments in implementing their section 75 obligations and tackling identified inequalities. The Office of the First Minister and deputy First Minister will convene a stakeholder group to work alongside departmental equality co-ordinators to help develop relevant sexual orientation action plans.

**Mr Humphrey:** Will the junior Minister outline the current funding provision for the sector?

**The junior Minister (Mr Newton):** Under direct rule, a package of £230,000 was awarded to support capacity building for the LGB sector, and that funding was exhausted in 2009. No funding has yet been identified as follow-up funding, but resources will be identified for work on developing the strategy that will examine the need for funding. The strategy will focus on

needs and key inequalities and on actions to address those needs.

**Ms M Anderson:** Go raibh míle maith agat. Given OFMDFM's commitment to promote equality and good relations, will the junior Minister tell me whether he or the First Minister would be willing to attend a gay pride event if asked to do so, or do they share the position of the UUP leader?

**The junior Minister (Mr Newton):** I did not get the last part of the question.

**Ms M Anderson:** Do you share the views of the UUP leader?

**The junior Minister (Mr Newton):** I do not know exactly what the position of the UUP leader is. However, as a DUP representative, I have some sympathy with the new UUP leader because, during the run-up to the leadership contest and immediately after it took place and he was appointed, some members of his party appeared not to have any sympathy. There was no honeymoon period for the new leader.

In answer to the Member's challenge to me, I have met a number of people who represent that event and who come from that type of background. I met them during the consultation process where we discussed the CSI strategy, and they have been prominent in making their case heard at those events. I have met them as groups and as individuals, and whatever an individual's view is on the issue, the group is recognised by government and must to be dealt with by government.

**Mrs D Kelly:** Will the Minister point to the section in the cohesion, sharing and integration strategy that deals specifically with equality and good relations building across the LGBT sector?

**The junior Minister (Mr Newton):** I thank the Member for her question. I have talked about meeting a number of groups. Issues are being raised about the CSI strategy by the LGB sector. That strategy is designed to tackle racism and sectarianism. A specific meeting with the LGB sector will be set aside as part of the consultation on the cohesion, sharing and integration document, but the strategy is designed specifically to tackle sectarianism and racism.

## Commissioner for Older People

4. **Mr Bresland** asked the First Minister and deputy First Minister for an update on their plans for a Commissioner for Older People. (AQO 122/11)

**The First Minister:** When dealing with issues about older people, I feel that I should declare an interest before I speak. We continually seek to improve the lives of all older people, as detailed in public service agreement 7 of our Programme for Government. We have committed ourselves to promoting social inclusion and, specifically, to delivering a strong independent voice for older people. To that end, our officials are taking forward the legislation that is necessary to establish a Commissioner for Older People.

Policy proposals and the draft Bill have been consulted on widely. Responses were gathered, and OFMDFM published its response in May. The legislation was introduced to the Assembly on 24 May, and it was debated and supported by the Assembly on 7 June. The Bill was subsequently considered by the Committee for the Office of the First Minister and deputy First Minister, which completed its clause-by-clause scrutiny on 15 September. OFMDFM awaits a copy of the Committee's report.

It is our intention to establish a Commissioner for Older People within the lifetime of this Assembly, and we are on track to do that. Our plan is that the Assembly's consideration of the legislation will be completed in the new year and a commissioner appointed as soon as possible thereafter. In the meantime, and to ensure momentum in this important area prior to the passage of the legislation and the appointment of a commissioner, Ministers asked OFMDFM officials to appoint an interim advocate for older people. Dame Joan Harbison took up that position on 1 December 2008. As Older People's Advocate, Dame Joan is helping to identify problems that are faced by all older people. She provides us with independent advice on a range of issues that impact all older people here, including advice on how those may be addressed.

In addition to the work that is being taken forward by OFMDFM, the Executive have also brought forward a number of other measures that are aimed at benefiting vulnerable groups, including older people. Those measures include

actions on fuel poverty, benefit uptake and free fares on public transport.

**Mr Bresland:** I thank the Minister for his answer. Will he detail to the House the work of the Older People's Advocate?

**The First Minister:** The advocate has worked closely with us on a number of issues. She provides us with advice after she speaks to the sector. Indeed, I enjoyed her company at a recent meeting where we launched the Kestrel (knowledge, experience, skills, training, respect, empowerment and lifelong learning) programme. She is very active in speaking and acting on behalf of older people. We are starting to work on a strategy for older people. Again, the voice of the advocate, and, eventually, the commissioner, will be helpful in being able to put together that strategy.

**Mrs M Bradley:** Is the money there for this to be implemented? Will it be protected in the Budget?

**The First Minister:** As I indicated in answer to an earlier question, the Executive will have to look at how much more efficient they can be. It could well be that it is appropriate for several of our commissioners to have some common backroom staff working for them. We will look at how savings can be made, but we are determined to proceed with the appointment of the commissioner and provide her or him with the necessary resources to do the job.

## Maze/Long Kesh: EU Funding

5. **Mr McElduff** asked the First Minister and deputy First Minister to outline the process for drawing down EU funding for the Maze/Long Kesh project. (AQO 123/11)

**The First Minister:** The Department of Finance and Personnel is responsible for the process of drawing down EU funding, in tandem with the Special EU Programmes Body (SEUPB). Officials are working on an application to secure EU funding that they plan to submit to the SEUPB in early 2011 to fund the construction of a peace building and conflict resolution centre at the Maze/Long Kesh site. It is anticipated that we will obtain the SEUPB's decision on the application by the summer of 2011. If successful, the centre should be built and operational by 2015.

**Mr McElduff:** Go raibh maith agat, a LeasCheann Comhairle. Given the commitment to maximise the site's economic, historical and reconciliation potential, what steps are being taken to ensure that all aspects of the site's history are recognised and reflected in its development?

**The First Minister:** We have already brought legislation to the House to set up a corporation that will take forward the overall development of the site. We have also made an interim appointment so that that work can be taken forward until full appointments can be made. That step takes into account the need for the public appointments process. I am absolutely determined, as, I have no doubt, is the deputy First Minister, that we will have an inclusive approach that will look at all aspects of the former use of that site. I know that the Member will be pleased to hear that we intend to include those elements of the British Army that used that site. He will also be pleased to hear that there is already a flight experience facility on the site. Of course, he will want to ensure that the prison officers' story is also told and that the victims of terrorism will be heard.

**Mr Gardiner:** Will the First Minister report the progress that is being made with the proposal to move the Royal Ulster Agricultural Society's Balmoral Show to the Maze in 2012, if matters are in order for that big event?

**The First Minister:** We of course hope that matters will be in order for that. I do not intend to give a running commentary on the matter, because, clearly, commercial issues are involved. However, the RUAS has indicated its interest, and we are very interested in having it on site, as I think it would be a very good anchor tenant. We will do everything we can to encourage the society to move there. The Balmoral Show has a particular importance in what is our very agricultural society in Northern Ireland. I think that having the show at the heart of the Maze/Long Kesh development would signify to the wider commercial world the importance that we attach to it, and it would make the facility regional, rather than have it seen as something that is on the outskirts of Lisburn.

**Mr Craig:** I thank the First Minister for referring to the balanced approach that he is going to take to the storytelling aspect of what is planned for the Maze. However, will that include

the stories of not only the security forces who helped to keep the place under control but those of people who, unfortunately, had to live beside that facility and those of us who lived not too far away and whose lives were regularly affected by what went on inside and outside the prison?

**The First Minister:** We are talking about a conflict resolution facility, and, if we are talking about conflict resolution, we must recognise all the elements and layers of that conflict. If we are to help people from other areas to resolve the problems that they face and if we are to let them see our experiences, the facility must incorporate all such elements and layers. I am pretty sure that, as a member of Lisburn council — Lisburn City Council — the Member will want to ensure that, through the council's representative on the corporation, we keep to that mandate.

## Regional Development

### Northern Ireland Water

1. **Mr Armstrong** asked the Minister for Regional Development what discussions he has had with his ministerial colleagues regarding his proposal to change the status of Northern Ireland Water.  
(AQO 134/11)

3. **Mr S Anderson** asked the Minister for Regional Development to outline the role of the independent Utility Regulator if Northern Ireland Water were to be brought into public ownership.  
(AQO 136/11)

10. **Mr Ross** asked the Minister for Regional Development to outline his plans to bring Northern Ireland Water back into public ownership.  
(AQO 143/11)

### The Minister for Regional Development

**(Mr Murphy):** With your permission, a LeasCheann Comhairle, I will reply to questions 1, 3 and 10 together.

In my statement on procurement issues in NI Water to the Assembly on 13 September, I set out the actions that I have taken in response to the procedural failings and deficiencies that were identified by the independent review team and associated with deep-dive audits. I

explained that that was not an isolated incident and that we needed to improve governance arrangements surrounding NI Water in the short and longer-term. I also said that we need to take account of the report and recommendations that are expected to come from the Public Accounts Committee.

### 3.00 pm

As well as setting out my longer-term views, I said that I would bring proposals to the Executive, where such discussions rightly should take place. The Executive have already had a number of discussions on the future of water and sewerage services, and the Hilliard review, which I commissioned shortly after coming into office, provided the basis for one of our early discussions. Since then, there have been discussions around my proposals to defer the introduction of additional household payments.

I should point out that NIW is already under public ownership; it is a government-owned company. The problem with the current arrangement is that two models are operating at the same time: a regulated utility model based on the anticipated introduction of customer payments, and a public sector NDPB model funded by government. As I said in my statement, I do not believe the hybrid arrangement to be in the long-term public interest. In my view, future governance arrangements should be based on water and sewerage services being delivered by a body that is clearly in the public sector, subject to public service controls and standards and not established to introduce separate household payments or to be privatised. I will test whether there is Executive support for such a proposition, but if household payments continue to be deferred, it is difficult to see how NIW's funding could be based solely on the Utility Regulator's price-control process, given that almost three quarters of its funding comes from the Executive through subsidy. Ultimately, the future role of the Utility Regulator will depend on governance arrangements that the Executive agree, and I am willing to consider a range of options when putting forward proposals.

**Mr Armstrong:** I thank the Minister for his comprehensive answer. In the light of the forthcoming comprehensive spending review, does the Minister accept the need for the Executive to act as a corporate body, and when

does the Minister intend to produce detailed proposals?

**The Minister for Regional Development:** The forthcoming spending review will challenge all Departments. However, one thing is certain: investment in NIW needs to continue in order to bring our water and sewerage services up to standard, because of the lack of investment and, indeed, neglect over the past two decades. The work that NIW has done in recent years to bring the water and sewerage system up to scratch has been very impressive. However, as I said, there are issues with governance arrangements; namely, we have a hybrid situation that was not planned, and the Executive need to decide in which direction NIW is going. I will bring proposals to the Executive shortly.

**Mr S Anderson:** I thank the Minister for his response. How does he intend to ensure that the long-term savings identified in 'Water and Sewerage Service Price Control 2010-2013' (PC10) will be achieved?

**The Minister for Regional Development:** The PC10 process was very lengthy, involving a substantial degree of dialogue among the Utility Regulator, NIW and, indeed, the Department. Discussions on the final determination of PC10 continue. Obviously, the proposals contained in that are challenging for NIW, but I do not doubt that NIW can meet such challenges, because, in the past, it has proven that it can meet its own stringent spending challenges. Therefore, I do not doubt that it can do so again in the future.

**Mr Ross:** Will the Minister give details of the minimum and maximum estimated cost of bringing Northern Ireland Water back into public ownership, and where will he try to find the money to do that?

**The Minister for Regional Development:** There are risks associated with leaving NIW's status unchanged. NIW was set up under direct rule, and the intentions behind its establishment have not been followed through on. On the one hand, it is a regulated company; on the other hand, for public expenditure purposes, it is treated as an NDPB. The situation that has come about because of the Executive's year-on-year deferral of household charges cannot continue. The situation must change, because there are risks associated with leaving NIW as it is. The Executive must examine the risks — they are risks, not certainties — that

a proposed change would bring about, weigh them up and determine what the best way forward might be. Ultimately, the cost of any proposition will depend on the direction in which the Executive wish to go. In my view, the body cannot be left unchanged indefinitely, because it is neither fish nor fowl, and, in recent times, it has become clear that NIW does not serve the public interest.

**Mr Dallat:** I am sure that the Minister must be demented with all the goings-on in NIW.

Will he give us some indication of what the extra costs might be if he were to reintegrate NIW with his Department?

**The Minister for Regional Development:** I assure the Member that I am not demented at all. Much as he might like me to be demented, I am certainly not. I always consider such issues to be challenges rather than things that cause people to be demented. As is the case for any Department, we have to deal in a rational way with challenges that come along, and I think that that is what I have been doing.

I refer back to my previous answer: the cost very much depends on what the Executive want to do. There are risks with sitting where we are currently in respect of VAT and the assets of NIW. The situation whereby NIW is treated as a Go-co on the one hand and as an NDPB on the other is not acceptable going forward. The Executive need to decide the direction for NIW. Are we going to continue with the plans that were hatched under direct rule, which, from my recollection, all parties in this House stood against? Or are we going to take NIW in a direction that gives some certainty to it? There will be risks associated with that. I will present all those options clearly to the Executive, and they can take their decision based on that information.

**Mr Leonard:** Go raibh maith agat, a LeasCheann Comhairle. I appreciate that the Minister has alluded to some aspects of this, but I would be grateful if he would outline to Members the exact current status of NIW and, therefore, the rationale for this correctly required change.

**The Minister for Regional Development:** NIW is a government-owned company that was established under the Water and Sewerage Services Order 2006. However, since 2008, the Treasury has required that NIW be treated as an NDPB for public expenditure purposes. That

impacts on how NIW's finances are recorded for government public expenditure purposes. The legal and governance framework for the Go-co remains in place, and DRD continues to treat NIW in accordance with that, excepting changes required by the technical reclassification. Current governance arrangements for NIW are inconsistent with its status as an NDPB for public expenditure purposes. The problem with the current arrangements is that two models are operating at the same time: a regulated utility model that is funded by customer payments and a public sector NDPB model that is funded by government.

## Public Transport: Carbon Emissions

2. **Mr P Ramsey** asked the Minister for Regional Development to outline the changes in the level of carbon produced as a result of public transport since 2000; and how the carbon footprint produced by public transport currently compares to other sectors of the economy. (AQO 135/11)

**The Minister for Regional Development:** Data on greenhouse gas emissions in the North of Ireland are collected and published annually through the greenhouse gas inventory. The inventory estimates emissions of the six direct greenhouse gases, including CO<sub>2</sub>, and those are set out under nine main sectors, of which transport is one. The most recent estimates available are for the period up to 2008. From 2000 to 2008, CO<sub>2</sub> emissions from public transport increased by 24%. However, it should be noted that CO<sub>2</sub> emissions for public transport continue to constitute less than 2% of the total CO<sub>2</sub> emissions from transport. The total greenhouse gas emissions from public transport remains less than 0.5% of the total greenhouse gas emissions across all sectors in the North of Ireland.

**Mr P Ramsey:** I thank the Minister for his response. Why has the regional transportation strategy failed, given that his own departmental target of ensuring that sustainable transport accounts for 20% of all transport has not been met?

**The Minister for Regional Development:** As I highlighted many times over the past couple of years, there is no doubt that the CO<sub>2</sub> emissions from transport generally are rising, whereas other sectors are falling. That is a challenge for us. I do not accept that the transportation

policy has failed. Indeed, we had an opportunity a number of weeks back to debate the reform of public transport when the Second Stage of the Bill was debated in the House. That was a very good opportunity for Members to give their views on the principles of the Bill and on the way forward for public transport. However, I note that no one from the Member's party attended, spoke in or voted in the debate. Therefore, I am pleased that the SDLP now has an interest in these matters, because the issues of the future of public transport and transport generally, including the over-reliance on the use of the private car, and emissions are all issues of concern, some of which will be addressed as we go forward through various initiatives, including the reform of public transport.

**Mr Campbell:** Does the Minister agree that we could reduce the over-reliance on the private car and increase public transportation if each of the three airports in Northern Ireland — Belfast International, Belfast City and Londonderry — had a direct rail link to the terminal?

**The Minister for Regional Development:** I certainly think that it would enhance the airports. I have no dispute with that. Of course, as the Member will probably know from his time in the Department that I now head up, it is very costly to bring rail halts to airports. Investment in railways generally is a very costly form of public transport.

We need to be sure that, given the competing demands for a range of transport initiatives, including initiatives for some of the very busy lines and for investing, as the Member will be aware, in the Derry line and making sure that we improve that service, we judge the competing projects and challenges in the face of reduced public finances to ensure that we get best value for money. Although I do not doubt that rail links to the airports would enhance them, such links are costly and have to be measured against the destinations from which the vast majority of customers travel to the airports concerned and against other competing public transport demands.

**Mr McKay:** Go raibh maith agat, a LeasCheann Comhairle. Can the Minister outline the work that his Department is doing in general to promote public transport and reduce carbon emissions in line with the targets set in the Executive's Programme for Government?

**The Minister for Regional Development:** As I have said, it is very clear that current levels of carbon emissions and dependency on the private car are not sustainable going forward. Part of the solution is about providing real alternatives, and that is why I am committed to delivering a significant programme of investment to ensure that we have a quality public transport network and supporting infrastructure in place that will encourage motorists to abandon their cars and take the bus or train in significant enough numbers to reduce commuting times. That will, in turn, benefit business, the economy and the environment.

However, if we are to encourage cleaner vehicles in a modal shift to public transport, we will need to reconsider how we prioritise not only public funding but space on our roads. There will be no easy choices, and any lasting solution is likely to have implications for those who choose the car when real and more sustainable alternatives exist.

**Mr Kinahan:** I want to be a bit more specific. What steps is the Minister taking to increase the number of urban bus corridors or motorway or A road park-and-ride facilities in order to boost the benefits of using public transport?

**The Minister for Regional Development:** The number of quality bus corridors is increasing, particularly in the urban area around Belfast, and will continue to increase. A quality bus corridor will be developed as part of the park-and-ride facility at Cairnshill. The Member will know that the motorway hard shoulder between the Sprucefield junction and Belfast is used as a quality bus corridor, and, indeed, there have been proposals to look at other hard shoulders beyond the A1 to take buses further out of Belfast. There is a constant process of examining such proposals, but there is a conflict, in that they will reduce lane availability for private cars, which, in turn, will increase congestion in the short term. I am sure that Members will hear about it if that is the case. However, as I said in my previous answer, if we are to ultimately tackle the over-reliance on the private car, we must not only invest in public transport and infrastructure, including bus corridors, but we have to reduce the space available for the private car. That, in the short term, means pain for car users. Ultimately, however, it is not sustainable to allow the use of the private car to grow year-on-year until such a time as we are completely congested.

**Mr Deputy Speaker:** Question 3 has already been dealt with.

### Northern Ireland Water: Costs

4. **Mr McNarry** asked the Minister for Regional Development for a breakdown of the estimated cost of his proposal to bring Northern Ireland Water under the direct control of his Department.  
(AQO 137/11)

11. **Mr Gallagher** asked the Minister for Regional Development what advice he received from departmental officials on bringing Northern Ireland Water back into public ownership; and to outline the costs involved.  
(AQO 144/11)

**The Minister for Regional Development:** With your permission, Mr Deputy Speaker, I will answer questions 4 and 11 together.

During my statement to the Assembly on 13 September 2010, I acknowledged that there are important financial implications for the Executive in changing the status of NIW. Equally, there will be potentially significant financial implications if we leave things the way they are. I said that it was my intention to develop proposals over the coming period and bring them to the Executive. I received advice from officials on a range of matters relating to governance in the water sector, and, as I have already said, I will bring proposals to the Executive about developing policy in this area in due course.

**Mr McNarry:** I thank the Minister for his answer, and I fully understand it, but my question was about cost, “breakdown” being the operative word. Where does he intend to find that money? Will it come from his departmental budget or will he seek funding centrally from the Executive?

**The Minister for Regional Development:** The Member is making assumptions about a range of matters that have not yet been dealt with. It depends on which direction the Executive want to go. As I say —

**Mr McNarry:** What direction do you want to go?

**The Minister for Regional Development:** I will bring proposals for the Executive to decide on, because the financing of NIW is a cross-cutting issue. The current status, as I explained in previous answers, is that we are operating under two different regimes.

The Go-co, as envisaged by direct rule Ministers, was set up with the intention of separately charging people for water and probably with the intention of privatisation down the line. All the parties in the House, without expectation, were opposed to that. If the Executive do not follow through on that — I have not heard any party advocate that we should follow through on it — they have a responsibility to stabilise the situation at NIW. It is not sustainable to try to operate two systems at the same time, one of which is a regulated company and the other a non-departmental public body for public expenditure purposes. The Executive and I have an obligation to create a more stable governance basis for NIW, and there are risks in doing nothing. There may be a risk in introducing a new type of governance arrangement. However, the Executive need to be clear about those risks. The Executive will take decisions on the basis of having to resource them.

### 3.15 pm

**Mr Gallagher:** Does the Minister accept that, whether under Northern Ireland Water or the Water Service, many jobs were shed, and many people were left out of work as a result of those changes? In taking the decision to bring water back in-house, can he guarantee the security of the jobs of the remaining workforce in Northern Ireland Water?

**The Minister for Regional Development:** I have not suggested bringing NIW back in-house; there is some confusion here. NIW is a publicly owned asset. Some people argue that it has been denationalised, but it is still publicly owned, and the vast majority of its funding is provided by the Executive here through the public. Its assets are owned by the public. Therefore, as with a range of Departments in recent times, there have been job losses, redundancies, a lack of follow-through on recruitment or no replacement of jobs that have disappeared. Every Department, agency and associated body will be challenged by that in the future, including all Departments over which the Assembly has control. Therefore, I cannot give any guarantees on anything, no more than any other Executive Minister can give guarantees on every person who works in the public sector. The Executive should do all in their power to try to protect jobs in the public sector. However, to be honest, it is beyond any Executive Minister to guarantee every single job under his or her remit at this point.



**Miss McIlveen:** Given the Minister's appointment of like-minded individuals as interim non-executive members to the board of NIW, will he give us an assurance today that he will seek to encourage members from the private and business sector to apply when nominations are sought for permanent positions?

**The Minister for Regional Development:** It is quite foolish of the Member to try to make some inference through the way in which she phrased her question. She may want to look at some appointments that have been made by Ministers from her own party. Anyone who was appointed to NIW was appointed on the basis of merit. The appointment process proper will begin quite soon, and anyone will be free to apply. That includes people from every sector, and people will be appointed on the basis of merit.

**Dr Farry:** Will the Minister give the House an assurance that, whatever model of governance is considered in the future, value for money and cost to the public purse will be a key determinant, particularly in the current financial circumstances?

**The Minister for Regional Development:** If we demonstrated anything over the past few months, it is the need to protect public funding and get value for money. The core of the recent NIW troubles was about value for money and the ability to guarantee and ensure that contracts provide value for money. We cannot guarantee value for money when contracts are awarded on a single tender basis. If anything has been demonstrated over the past while, it is an adherence to trying to protect the public interest and get value for money from NIW or any other agency or Department that spends public funds. Given the likely reduction in public spending, that will become more of an issue as we go forward.

## A5 Western Transport Corridor

5. **Mr McHugh** asked the Minister for Regional Development whether he can confirm that progress on the A5 western transport corridor preferred route is on target and that funding has been secured.  
(AQO 138/11)

**The Minister for Regional Development:** The A5 western transport corridor project is on target to achieve the third key milestone, which is the publication of the environmental statement in draft statutory Orders in late 2010.

Both Governments remain committed to the project, and it is expected that funding will be made available through the normal budgetary processes.

**Mr McHugh:** Go raibh maith agat, a LeasCheann Comhairle. I thank the Minister for his answer. Earlier this summer, one of the North's leading dailies, 'The Irish News' commented that Ireland was getting smaller. Given that we have no natural frontier crossings, strategic points, such as ports, to markets outside are vital for our future economy. Our neighbours and most important trading partners in England now provide us with a link to Europe via the Channel Tunnel, and it is worth remembering that —

**Mr Deputy Speaker:** Ask a question, Mr McHugh.

**Mr McHugh:** I will come to the question. It is worth remembering that, 70 years ago, the British forces —

**Mr Deputy Speaker:** I require a question, Mr McHugh.

**Mr McHugh:** The D-Day landings did not have the option of the Channel Tunnel. On the upgrade of our roads, including the A5, does the Minister agree that it is vital for the future of those links that we upgrade to the level of the South of Ireland and of England?

**The Minister for Regional Development:** The Member obviously operates on the basis of some others that if you mention a media outlet you are more likely to get coverage from it in the evening or the next morning. Perhaps he has learnt that lesson from other Members.

The commitment from the Dublin Government to the A5 has remained firm. It has been reiterated on many occasions, most lately by the Taoiseach. I recognise the importance of those key pieces of infrastructure. Over the weekend, I had the opportunity to travel between Dublin and Limerick and from Cork to Dublin and, undoubtedly, the improvement in the strategic road network has made the island much smaller and made all parts of it more accessible. The A5 route will play a vital role in making the north-west more accessible to the rest of the island.

**Mr Elliott:** Since the announcement that the Republic of Ireland Government have slashed their roads budget for internal roadworks, what discussions has the Minister had with the Republic of Ireland authorities to assess

whether the finance for the A5 will still be available from the Republic of Ireland?

**The Minister for Regional Development:** I am sorry to dash the Member's hopes yet again, but, in every assessment that we have had from them, the commitment to the road project has remained clear and absolute. That includes a recent commitment from the Taoiseach, and the Member will be pleased to hear that, last Friday, I also had the opportunity to talk to the Minister for Transport at a conference in Limerick. I am sure that, as is the case with the Member's colleagues in Tyrone and all parts of the west, he will be happy to see some investment in the roads infrastructure.

**Mr Buchanan:** What consideration has been given to the huge financial loss that many farmers on the route will experience to the extent that their businesses will no longer be viable due to the severity of the acreage of land that they stand to lose and to the effect that that will have on the rural economy? Why has his Department not carried out an economic appraisal into the upgrading of the existing A5 so that that can be compared against the new western transport corridor proposals on value for money?

**The Minister for Regional Development:** The Member is fairly unique among elected representatives in the House in that he wants to sell short an infrastructure project in his own constituency. Many assessments have been made about the upgrading of the existing A5, and the clear findings are that the road as proposed and as is being developed is in the best interests not only of the Member's constituency but the entire north-west region. I am very aware of the loss of land and the difficulties that that proves for farmers, and I have dealt with that issue in many roads projects. That is why there is ongoing dialogue and discussion on access issues, on ensuring that farms remain as viable as possible and on compensation for any land lost.

**Mrs McGill:** Go raibh maith agat, a LeasCheann Comhairle. Will the Minister describe what the divide in costs for the A5 will be between the Irish Government and the Executive here?

**The Minister for Regional Development:** The Government in Dublin have committed £400 million towards the A5 and the A8 dualling projects. However, the money is being paid against milestones associated with the A5

project, and, to date, approximately £8.5 million has been paid to the Consolidated Fund by the Irish Government.

### Belfast Rapid Transit System

6. **Mr Adams** asked the Minister for Regional Development to outline progress in relation to the Belfast rapid transit project and other related projects, including the Belfast city centre management project.

(AQO 139/11)

8. **Mr Lunn** asked the Minister for Regional Development for an update on the Belfast rapid transit system.

(AQO 141/11)

**The Minister for Regional Development:** I will answer questions 6 and 8 together, a LeasCheann Comhairle, as both request an update on the Belfast rapid transit project. My Department is in the process of securing external support to complete the outline business case, which will identify the preferred options for the network routes, procurement strategy, commercial business model and fare system for the Belfast rapid transit system. The surveyed data collection work is now complete, and preliminary designs for all route alignment options are being prepared. Identifying the preferred options will allow the Department to undertake the necessary public consultation, impact assessments and appraisals on the scheme. The public awareness exercise, which is anticipated to take place in 2011 as part of the outline business case process, will give everyone an opportunity to comment on all the options.

The necessary legislative powers to allow my Department to implement the Belfast rapid transit system are included in the new Transport Bill, which was introduced in the Assembly on 21 June and is now in Committee.

My Department is liaising with other relevant bodies to develop traffic management proposals through the Belfast city centre traffic management project. The proposals are in accordance with the strategy set out in the Belfast metropolitan transport plan, and I will be making an announcement on the proposals on Thursday 30 September at Belfast City Hall.

**Mr Deputy Speaker:** Will the Minister please confirm that he is answering questions 6 and 8 together?

**The Minister for Regional Development:** I am.

**Mr Adams:** Go raibh maith agat, agus, arís, tá mé iontach buíoch den Aire. A rapid transit system for the west Belfast and greater Shankill area was first proposed in the joint West Belfast Task Force and Greater Shankill Task Force report, and is a commitment in the Programme for Government. Will the Minister outline how he sees the system promoting socio-economic benefits for west Belfast and the Shankill? What impact will it have on projects in west Belfast?

**The Minister for Regional Development:** The Member is correct about the positive impact that the proposal can have in the west Belfast and greater Shankill area. He also rightly referred to the joint West Belfast Task Force and Greater Shankill Task Force report, which recommended the delivery of a rapid transit system in the area. The Executive had made no commitment to extend a route into west Belfast until I proposed its inclusion when I took office as the Minister for Regional Development. I took that decision because the task force rightly identified the inevitable socio-economic benefits that would derive from providing a public transport mode that maximises mobility and access for communities travelling across the city to access jobs, education and training opportunities.

As Members will be aware, tourism in Belfast has grown considerably over the past number of years, and more than nine million visitors come to the city annually. Many of those visitors travel to the west Belfast and greater Shankill area to enjoy political tours and cultural tourism opportunities and to avail themselves of services such as GAA games at the Antrim county ground at Casement Park in Andersonstown. Therefore, rapid transport has the potential to further maximise socio-economic benefits for the resident communities to access services across the city and as a means of transporting visitors into the community, which helps to contribute to the local economy.

I am committed to delivering on that Programme for Government and ISNI commitment and to implementing the parts of the task forces' report that concern my Department's statutory remit. All Departments and agencies should fulfil their commitments so that all boats are lifted across the city equally.

**Mr Lunn:** Given the considerable objections to the use of the Comber Greenway for the project,

will the Minister update the House on the status of any alternative options under consideration for the EWAY part of the system?

**The Minister for Regional Development:** Both the Comber Greenway and the Upper Newtownards Road were examined as possible routes, and the assessment of both continues. I appreciate and have been made aware of the objections to using the Comber Greenway route and have had the opportunity to visit and walk that route. The use of the Upper Newtownards Road will have a considerable impact on the volume of traffic that can use that road for parking and for accessing shops. There is no easy option, but an assessment of both potential routes is being carried out, and I hope to make an announcement on the chosen route when we get to the consultation phase.

## Private Members' Business

### Planning Appeals Commission

*Debate resumed on motion:*

*That this Assembly calls on the Planning Appeals Commission to carry out its work more efficiently and to give priority to major planning applications on which public inquiries are to be held. — [Mr Givan.]*

**The First Minister (Mr P Robinson):** I am grateful for the opportunity to respond to the debate that we commenced before Question Time. I appreciate the contribution of Members, particularly those who tabled the motion.

At the outset, it is important to establish that the Planning Appeals Commission is a tribunal non-departmental public body (NDPB), which, to preserve its independence, is sponsored by the Office of the First Minister and deputy First Minister (OFMDFM) but operates at arm's-length from government. It exercises its functions independently and free from influence from the Department or any other body.

OFMDFM has responsibility, in the relevant legislation, for providing financial and administrative support to the commission; appointing its commissioners; making rules of procedure; and setting fees. The commission, therefore, is completely independent in its decision-making. The chief commissioner, not the Department, is responsible for its financial, operational and administrative management.

#### 3.30 pm

The work of the commission falls into two broad categories: appeals against decisions made by the Planning Service; and referred work, which includes considering objections to draft development plans and holding public inquiries into major planning proposals that are controversial or of significant public interest, such as the proposed construction of a major shopping centre, power station or airport.

It is a matter of public record that, primarily as a result of a sharp and unprecedented rise in the number of appeals submitted between 2004 and 2008, a substantial backlog of planning appeals had accumulated. In recognition of the challenge and pressures facing the commission, the deputy First Minister and I made a commitment, through PSA 21, to deliver increased resources to enable it to address the backlog of appeals. We have delivered on that

commitment. We allocated significant additional budgetary resources to the commission over 2008-2011 to deliver potential increased spending power of around £2 million over the three years.

Since April 2008, that additional funding has delivered an extra 14 fee-paid panel commissioners, along with increased capacity at senior levels within the permanent complement of commissioners to deploy against the backlog. Through that injection of resources, the commission has been successful in making significant inroads into the planning appeals backlog, which has been reduced from more than 3,200 cases in 2007 to 495 at 31 August 2010. That is a substantial achievement, which I am sure will be welcomed by the entire House. However, let me be clear that no one is being complacent about that achievement. The commission needs to do more, not only to reduce the backlog but to speed up the process of organising and conducting hearings and decision-making. Due to the sharp increase in the intake of appeals between 2004 and 2008, the commission has failed to meet its timeliness targets for determining appeals.

As the backlog reduces, the chief commissioner's aim is to clear outstanding cases within the 2008-2011 Budget period. It is important to recognise, however, that the commission's referred workload has also increased significantly over the past two years. A large number of article 31 major planning proposals have been referred to it by the Department of the Environment for public inquiry. Many of those are high profile, complex in nature and attract a considerable volume of submissions. Statistics show that, in the period 2004 to 2008, the commission received a total of three article 31 cases, whereas eight such cases were referred in 2008-09, one year alone, four in 2009-2010 and two so far in 2010-11.

In addition, the commission is engaged in the resource-intensive process of considering objections to the Belfast metropolitan, Magherafelt, Banbridge and Newry and Mourne area plans. Those are significant pieces of work in their own right, with 10 commissioners deployed to consider in excess of 10,000 objections. Such complex and important areas of work require very careful handling. The commission has a procedure in place for prioritising its casework, a copy of which is available on its website.

The motion calls on the commission to give priority to major planning applications on which public inquiries are to be held. The procedure for prioritising casework indicates that the commission does, indeed, consider article 31 cases that are referred to it by the Planning Service as a priority.

The chief commissioner, when prioritising her workload, is also guided by the Minister of the Environment's assessment of priorities for public inquiries, but she must balance her appellate and referred workloads and deploy her resources to address both. The chief commissioner is continuing to consider her options to address her article 31 workload more quickly, and the deputy First Minister and I will continue to do everything that we can to encourage her and assist where we can within our resources.

We are mindful of the important contribution that the Planning Appeals Commission makes to the planning system. The planning system, of which planning appeals and planning inquiries are important parts, is a key mechanism for delivering sustainable development and for enabling the delivery of jobs, homes, better transport and lively communities.

As Ministers, we are keen to ensure that the commission, as part of the planning system, fully contributes to the Programme for Government objectives, particularly in growing the economy. In the current economic climate, growing the economy, particularly the private sector, is imperative. An efficient and effective planning system is vital to economic recovery in Northern Ireland.

I am sure that the entire House will agree with me that there is an urgent need to get planning applications turned around more quickly. The length of time that it takes to process high-profile planning applications, such as the John Lewis store at Sprucefield, sends out a negative message that risks stifling much-needed investment opportunities. I am not proposing that planning applications should not be thoroughly assessed, or that legitimate concerns and objections should not be considered, but there is a clear need for the process to be speedier. Let us also be clear that this is not simply about speedier processing by the commission; sometimes it is about the procedures that it is required to go through. Given its independent appellate role in planning

and environmental matters, the commission is accountable through the courts for its decisions.

I will now turn to some of the specific issues that were raised by Members. I need to be very careful about the Paul Girvans and Paul Givans in the debate. We heard Paul Girvan's maiden speech, and I congratulate him on it. In his maiden speech, he showed his knowledge of planning matters gained through many years — I will not say how many — as an elected representative in Newtownabbey. It was a harbinger of the promise of his career as an elected representative in the Assembly, and I wish him well in the future.

In opening the motion, Paul Givan spoke about the Programme for Government and the priority that needed to be given to it; he also spoke of the independence of the Planning Appeals Commission. I agree with him that a high priority should be given to Programme for Government priorities, particularly as they relate to jobs and to the ability of our economy to sustain through the very tight fiscal measures that we face. He said, as did nearly every Member who spoke, that the problems facing planning in Northern Ireland were not confined to the Planning Appeals Commission, but that they relate to issues that are the responsibility of the Department and the Planning Service. They are matters that also fall to the courts. It is vital to consider the relationship between all three of those bodies.

I agree with my colleague the Minister of the Environment, who, last week during Question Time, said that we were being governed by writ as opposed to wit. Some countries price themselves out of the market place; we are processing ourselves out of it. Frequently, business people tell me that Northern Ireland is off their list because of the difficulty in setting up here, and, in particular, the difficulty with the planning process. I remember visiting Australia when I was dealing with roads issues, and after it had been announced on one of the local television news programmes that I was in the country, a local company asked to see me.

The person who was in charge of placing the company's capital build around the world was from Northern Ireland and wanted to bring business here but could not do so because of the difficulty of getting through the planning process. When one hears stories like that, it is clear that hundreds, even thousands, of jobs

are being lost. They are being lost because the Assembly is not coming up with answers on planning quickly enough. Businessmen cannot leave their money hanging. They need those issues to be resolved quickly.

Paul Givan, Tom Elliott and, indeed, several other Members raised the issue of BMAP. That process began in January 2001. The draft plan was to be published by the end of 2002 so that there would be outworkings of the plan by November 2001. As we know, it is now hoped that the plan will be published in 2011. It will probably be a year after that before it starts to be implemented. BMAP, incidentally, is the Belfast metropolitan area plan 2015. One might have expected a 10-year run of the plan. I must say that I am somewhat worried that certain evidence that was used to arrive at the decisions on which the three-year plan will be promoted may be out of date by the time the plan is produced. Clearly, therefore, the issue of expediting those processes is one of great urgency and must be dealt with.

Cathal Boylan and Patsy McGlone both raised the issue of redeployment of surplus professional planning staff to the Planning Appeals Commission. If that relates to their redeployment as commissioners, it raises problems. Of course, the commission is an independent appellate tribunal. Commissioners must be public appointees following open competition. Redeployment directly from Planning Service would not satisfy those statutory requirements.

Apart from that, there is also the issue that commissioners must be seen to be independent. Legal questions might even be raised about how independent someone from the surplus in Planning Service would be in that set-up. It is clear that if people were deployed as staff rather than as commissioners, we could, perhaps, work around those issues. If the commissioner felt that that was helpful, we could talk to her about that.

Tom Elliott and Willie Clarke, I believe, raised the issue of third-party appeals. A decade ago, when I was Chairperson of the Committee for the Environment, we made that recommendation. I would never make it today. As we take part in the debate, the heart of which is to speed up the planning process, I ask Members to consider carefully the idea of bringing in third-party appeals. To do so would

end up in gridlock. I know that there are issues with that. Perhaps, in better circumstances, when everything is moving smoothly, we might want to look at that again. There are strong feelings on both sides. However, in the present circumstances, it would be a dangerous step to take.

Patsy McGlone also raised the issue of how we might limit judicial reviews. We could actually do so; however, it would require legislative change. We could exclude certain areas. The courts would follow that law. If the law excludes, for instance, commercial interests using judicial reviews to stop their competition from starting up, clearly steps could be looked at.

**Mr Deputy Speaker:** The Minister must draw his remarks to a close.

**The First Minister:** However, that would require legislation.

Trevor Lunn wanted to know how to speed up the Planning Appeals Commission. Obviously, more resources and commissioners would assist that. Another aspect, which would, again, require legislation, is to put some controversial and significant issues out to some kind of independent review or commissioner.

**Mr Deputy Speaker:** The Minister's time is up.

**The First Minister:** Simon Hamilton's comments about Castlebawn showed his frustration with the matter.

As far as prioritising is concerned, a change in legislation would be required to allow the Office of the First Minister and deputy First Minister to be able to sit down with the chief planning commissioner and to agree her annual plan with her. That would have to be approved by the First Minister and deputy First Minister, but new legislation would be required.

I am sorry that I have run out of time. If any issues have arisen, I will try to write to the Members concerned.

**3.45 pm**

**Mr Weir:** I speak at the conclusion of a well-reasoned debate in which, I think, there has been universal support from across the Chamber. I thank those who have contributed from various sources. A number of the points that were made today overlapped. We had a veritable tour de force from Members in the

Chamber on the effects of planning across the Province. Mr Elliott touched on the situation regarding Fermanagh. I add my congratulations, if that is the right word, to him on his ascension to the leadership of the Ulster Unionist Party, and my commiserations, if that is the right word, to Mr McCrea.

Mr McGlone talked about the area plan in Magherafelt; Willie Clarke made reference to the Ards and Down area plan; a number of Members including, in a very erudite maiden speech, Mr Girvan, mentioned the BMAP; and Mr Hamilton concentrated so much of his speech on Strangford that I was briefly confused as to whether Jim Shannon had re-entered the Chamber. Planning impacts on so many development issues and on the local economy that it is not surprising that similar stories were being told, with similar levels of frustration, by Members from across Northern Ireland.

As the proposer of the motion acknowledged, and as was mentioned by the First Minister and other Members, there is an acceptance that the PAC is an independent body. It takes its decisions independently, and no one would try to interfere with that, because it is the appropriate body to do so. However, that is not to say that it should be unaccountable or that it could not do better. The processes and structures that are in place can be improved to deal with the problems relating to planning.

As was indicated by a number of Members, including Mr Boylan and Mr McGlone, this is not simply an issue involving the PAC, but part of the wider reform of the Planning Service. There is a degree of interdependence on a range of issues. As has been acknowledged by a number of Members, the motion is not simply a degree of condemnation of the PAC. There has been acknowledgement that a lot of good work has been done, and most Members who spoke were positive in their acknowledgement of the backlog figures. The problem, which has been identified by a number of Members, seems to lie in a bottleneck at the top end of the process, in article 31 applications and in the major planning applications. That has two consequences. With regard to the impact for local people, Willie Clarke put it well when he said that people want decisions and not continuous delay. As was highlighted, people want to see something positive. As Mr Beggs said, regardless of whether a planning application is given approval,

people do not want to be left under the shadow of uncertainty.

Although there has, naturally, been a degree of focus on developments and developers, a lot of constituents who may well be faced with something that they do not like would prefer the certainty of decision-making, at least. That goes to the heart of the problem, because, as has been indicated by the First Minister and other Members, a considerable level of increased resources has been put into the PAC. There has been improvement at the lower level, but we have not seen improvement at the higher level. That possibly suggests that although we need to see if there are imaginative ways of using resources better, simply throwing money at the problem does not seem to be the solution.

When we get to a situation in which only one major planning application can be dealt with in a year, or when only one can be dealt with at a time, there is something fundamentally wrong with the system, as was highlighted by a number of Members. I was involved in the court system in a previous life. If we had been told that only one major trial could be held in Northern Ireland at a time, people would have regarded that as being preposterous.

During the debate, a number of Members suggested that they might seek my expert advice on improving the judicial system. I reflected that, given the amount of work that could potentially be generated from that, perhaps I made the wrong decision in going into full-time politics rather than the law. Others in the House might agree with that for different reasons.

There are things that can and must be done. The key point is that we must not only provide certainty to local people and developers, but focus on the direct impact on the economy. There is no doubt that, if one were to speak to those involved in industry and commerce, many would say that the planning processes in this country act as a major deterrent to inward investment. In some cases, that can be used as a spurious excuse for people pulling out of Northern Ireland or not investing. In some cases, that might be a smokescreen, but in many cases it is genuine. Whether genuine or perceived, it is important, in times of recession, that we give Northern Ireland plc the best possible opportunity, and that means examining our processes. As several Members said, we

can examine what happens in other jurisdictions and try to draw distinctions.

The other area that was touched upon was a growing sense of frustration about area plans. One of the strongest matters of frustration in my area and beyond is BMAP, which has consistently been put on the long finger with a sort of mañana-like quality. The latest date is March 2011, but I suspect that few of us will go down to our local Pakistani bookies to put money on it.

We must examine the way in which other jurisdictions handle the issue. When the Committee for the Environment visited Scotland, for example, we saw a system for more localised plans that have a much greater degree of community input and are, effectively, rolling area plans over a three-year period. Those seem to work fairly effectively. One of the areas of the remit of the PAC that we must look into is the involvement of area plans in the planning system. We need to consider whether we have got that right or whether we need to take a radical approach to it.

All Members highlighted many of the problems with the PAC but, as public representatives, there is a duty on us as well. We must demonstrate consistency in our approach. If, for example, we say that we want quicker and timelier decisions, there are certain things that we must do, such as considering devices that would speed up the process. When we move towards a single commissioner reaching a decision, let us not decry that or say that there is an insufficient body of people. Let us not over-complicate the situation by involving additional commissioners.

Third-party appeals were mentioned by Mr Willie Clarke and Mr Elliott — although I was not quite sure where he was coming from. If we were to go down that route, there would be much longer delays in the planning system than at present. Similarly, we must accept that not everything that is in any way controversial or difficult can automatically be kicked into a public inquiry or passed on to the Planning Appeals Commission. We must show consistency and have faith in Ministers. We will agree with some things and disagree with others, but Ministers should have greater scope. Whether that happens through changes to the law or simply through changing expectations, Ministers should be allowed to take decisions on the major economic issues

and planning decisions that face Northern Ireland.

There is a role for us in the actions that we take and the expectations that we bring to bear. Certain structural changes and possible legal changes were mentioned. However, above all, in the Commission and the Assembly, the issue is one of attitude. Someone said that there was a “can’t do” attitude in Northern Ireland. We must emphasise the need for a “can do” attitude. As someone once said, it is American, not American’t. To ensure investment in our economy, the general attitude of other jurisdictions is vital in such processes.

Members highlighted the existing problems and the implications of those problems for their constituencies. Let us, therefore, move forward and apply pressure on the PAC and others to make the changes necessary for a much better planning system that is swifter, fairer and helps to support and sustain the economy.

*Question put and agreed to.*

*Resolved:*

*That this Assembly calls on the Planning Appeals Commission to carry out its work more efficiently and to give priority to major planning applications on which public inquiries are to be held.*



## Private Members' Buisness

### **Proposed Rose Energy Incinerator at Glenavy**

**Mr Deputy Speaker:** The Business Committee has agreed to allow up to one hour and 30 minutes for the debate. The proposer of the motion will have 10 minutes to propose and 10 minutes to make a winding-up speech. All other Members who wish to speak will have five minutes.

I inform Members that a valid petition of concern was presented on Friday 24 September in relation to the motion. I, therefore, remind Members that the effect of the petition is that any vote on the motion will be on a cross-community basis.

*The following motion stood in the Order Paper:*

*That this Assembly calls on the Minister of the Environment to set up a full public inquiry into the Rose Energy proposal to build an incinerator at Glenavy on the shores of Lough Neagh; and to ensure that the inquiry will facilitate an open and transparent consideration of the key issues and an independent review of the evidence provided, both for and against the application. — [Mr McLaughlin.]*

*Motion not moved.*

*Adjourned at 3.57 pm.*







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