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Contents

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McClarty, David (East Londonderry)
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McCrea, Ian (Mid Ulster)
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McLaughlin, Mitchel (South Antrim)
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Ramsey, Ms Sue (West Belfast)
Ritchie, Ms Margaret (South Down)
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Robinson, Ken (East Antrim)
Robinson, Peter (East Belfast)
Ross, Alastair (East Antrim)
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Northern Ireland assembly

Monday 24 January 2011

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

Members observed two minutes' silence.

Assembly Business

Committee for Finance and Personnel: Chairperson

Mr Speaker: I inform Members that Ms Jennifer McCann resigned as Chairperson of the Committee for Finance and Personnel with effect from Wednesday 19 January. The nominating officer for Sinn Féin, Mr Pat Doherty, nominated Mr Daithí McKay as Chairperson of the Committee for Finance and Personnel. Mr McKay accepted the appointment. I am satisfied that the requirements of Standing Orders have been met and, therefore, confirm Mr McKay as Chairperson of the Committee for Finance and Personnel with effect from Wednesday 19 January.

Ministerial Statement

EU Fisheries Council: 13-14 December 2010

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

The Minister of Agriculture and Rural Development (Ms Gildernew): Go raibh míle maith agat, a Cheann Comhairle. With your permission, Mr Speaker, I wish to make a statement about the outcome of the autumn negotiations on various fisheries matters and, in particular, the Fisheries Council held in Brussels on 13 and 14 December 2010, which determined fishing opportunities for 2011.

Prior to the December Council, fellow Ministers and I met and consulted our respective industries to determine the main negotiating priorities ahead of Council. I also met Sean Connick TD, Minister for Fisheries in the Southern Government and, at the end of November, Commissioner Damanaki, when I was able to put directly to her my concerns about the initial Commission proposals.

I had agreed three main priorities with our stakeholders: to resist the proposals for separate quotas for the nephrops functional units in area VII; to secure Commission commitment to a fundamental review of the cod recovery plan; and to secure an increase in the herring quota. The top priority, as it now seems to be every year, was to resist the Commission's proposal to introduce spatial management arrangements for area VII nephrops and to minimise any cut to the total allowable catch (TAC) for that species. There was strong opposition from other member states to the Commission's management proposals for nephrops. My Southern counterpart,

Sean Connick TD, and I articulated that to the Commission and presidency during the negotiations.

As a consequence, the Commission withdrew those proposals but then, disappointingly, proposed a 17% decrease in the TAC for area VII. I told the Commission that that was grossly unfair to our fleet operating in the Irish Sea, which fully fishes its quota on stocks that are being fished sustainably. Furthermore, a cut of that magnitude would have a devastating impact on our processors and coastal communities, which have little alternative economic activity and, therefore, depend on that key stock.

The unfairness of the Commission's proposal stems from the way in which average landings figures for other nephrops grounds in area VII are used to arrive at the total allowable catch. That skews the overall assessment and unfairly penalises the member states that fully fish their quota. For example, landings by the French fleet, mainly from grounds in the Celtic Sea, represent less than half the French annual quota. In those circumstances, even a cut of 17% would make no difference to the fishing patterns of the French fleet.

The next compromise document from the presidency proposed a cut of 12%. That was rejected, and I continued to press for a lesser cut in the subsequent negotiations. Initially, 5% was offered. However, the Commission and the presidency were persuaded to move further, and the final proposal voted through was for a 3% cut. The British and North of Ireland quota now stands at 7,137 tons, most of which will be taken from the Irish Sea. After banking surplus stock from 2010, it is expected that fishing opportunities will be similar in 2011.

The Commission will again push for further reductions next year to bring the overall area VII total allowable catch down to maximum sustainable yield level. I again fear that our fishing opportunities will be affected by the prevailing circumstances in nephrops grounds outside the Irish Sea.

The Commission has accepted the need to carry out a fundamental review of cod recovery plans, and we have made it clear to the Commission that a fresh approach needs to be taken that reflects the circumstances of each zone rather than a simple one-size-fits-all approach. However, as we prepare for that review, it will not be sufficient to say that the current approach is unacceptable; we must ensure that we have viable, alternative proposals to building depleted stocks.

I will now move on to Irish Sea herring and other pelagic stocks. In spite of very good scientific indicators of a healthy and expanding stock, the Commission initially offered only a rollover for Irish Sea herring. I argued that the evidence that had been provided from the work undertaken in partnership between the industry and scientists justified an increase, and, eventually, a 10% increase was agreed. It is normal practice for our producer organisations to make in-year quota swaps, and, as a consequence, practically all the available Irish Sea herring quota is fished by local vessels landing into the County Down-based processing sector. Just before Christmas, Agri-Food and Biosciences Institute (AFBI) scientists convened an experts' meeting in Belfast to develop a draft long-term management plan for that stock. That will be brought to the Commission in 2011, and I hope that the plan will be used to determine the total allowable catch in future. Having a plan in place will also mean that the industry-led Irish Pelagic Sustainability Group will be able to make progress in getting a Marine Stewardship Council (MSC) accreditation for the fishery, which is becoming the benchmark for a sustainable fishery and a prerequisite for entry into many markets.

The Clyde herring quota has still to be decided. However, the Commission has introduced new arrangements that allow member states to determine the quota if an entire stock lies within that member state's waters. The western mackerel total allowable catch, which is determined by external negotiations between the EU and other coastal states, was reduced by 12%, with the British and North of Ireland quota dropping to 150,870 tons in 2011. The big issue on mackerel remains the unjustified quota declarations by Iceland and the Faroe Islands. All Ministers with an interest in that stock had lobbied the commissioner strongly, and I welcome the commitment that she gave at Council to taking strong action to defend the interests on mackerel fleets in these islands.

The science indicates that Irish Sea cod, sole, and whiting stocks remain in a poor state and received significant cuts. The original proposed cut of 50% for cod was reduced to 25%. Some cod quota may be obtained from Ireland to offset that which was lost through invocation

of the Hague preference mechanism. Whiting suffered another 25% reduction, and sole was reduced by 3%. However, the quotas for those stocks are small, and neither is overly important to the local fleet.

The scientific advice for haddock was not as good as in previous years. A 15% reduction was proposed, but a reduction of 8% was negotiated. The TACs for anglerfish and plaice were rolled over for 2011. Although the plaice stock is still very healthy, the Commission had concerns about discards in that fishery and therefore decided not to offer an increase.

The cod recovery plan also triggered a further 25% reduction in fishing effort measured in kilowatt days for 2011. That will have most impact on the residual white fish sector, which will also see a further 25% cut in area VIIa cod as well as an 8% cut in VIIa haddock.

For the nephrops fleet, it is likely that many vessels will continue to comply with the rules on less than 5% cod catch for each trip and will be able to catch their nephrops quota. The industry has been working with DARD and AFBI to reduce discards, and we have demonstrated that in figures that were put to the Commission. We will want to ensure that those positive steps are taken account of in the review of the cod recovery plan. That review is to take place next year, and we hope that it will have a fundamental effect on all Irish Sea fisheries.

I appreciate the opportunity to bring Members up to date on the outcome of the autumn fisheries negotiations so far as they affect our fleet. I am grateful to my colleagues Richard Benyon in DEFRA, Richard Lochhead in the Scottish Government and Sean Connick in the South of Ireland for their strong support throughout the negotiations. I am also grateful for the support given by the Committee for Agriculture and Rural Development, Members of the House and our local MEPs.

The Chairperson of the Committee for Agriculture and Rural Development (Mr Moutray): I thank the Minister for providing the House with an update on the outcome of the December Fisheries Council meeting.

I must admit that I am somewhat confused as to the reasons for yet another cut to the prawn quotas. Historically, we have been told that it was because the scientific evidence does not tally, but we are now told that it has to do with the way that the French are fishing in their grounds. Irrespective of with whom or where the blame rests, this is another cut to an industry that is already under severe pressure.

The Agriculture Committee is due to meet representatives of the industry this week. I am sure that they will not look on the Minister's negotiations to reduce a 17% cut to one of 3% in the same positive light. Rather, I am sure that they will look at it in harsh reality, which is that this industry is being forced on to its knees by a combination of cuts, reduced effort and the inability of the Department to provide much-needed aid through the EFF. Does the Minister accept that, if DARD had been consistent in opposing the European Commission's proposals on financial unit quotas from the outset, the result for prawn quotas might have been even better? Furthermore, what consultation will DARD have with the industry to prepare for the debate ahead with the European Commission during 2011 to ensure that the overall area VII quota is not subdivided come 2012?

The Minister will be aware that agreement was reached for a fundamental review of the present EU cod recovery regulation. There is industry concern that budgetary staff cutbacks in DARD and AFBI will significantly reduce the input that Northern Ireland can make to that review to ensure a satisfactory and just outcome for Northern Irish fishermen and the Irish Sea. Will the Minister agree to maintain the current level of fisheries scientific staff in AFBI and commit to the maintenance of the present level of DARD senior management during what is an extremely important year for fisheries negotiations at EU level as well as at national and devolved level?

Finally, although the increase of 10% in the Irish Sea herring quota is welcome, it is less than what was hoped for. We would like to know why. Will the Minister assure us that the existing AFBI fisheries science personnel will be maintained so that, among other issues, the long-term management plan for Irish Sea herring can be agreed?

12.15 pm

The Minister of Agriculture and Rural Development: Go raibh míle maith agat, a Cheann Comhairle. First, one of the things that the Chairperson mentioned was what I think he called "financial management". However, I think that he means functional management quotas.

The industry was opposed to functional management; however, earlier in the year, functional management suggested a 6% cut for our industry. Having spoken with and listened to the industry, we decided not to go down that route because of the opposition to that suggestion. The issue of functional unit management is complicated. The sum of the science for all functional units in area VII in the first Commission proposal totalled 18,684 tons, which represented a 17% decrease on the 2010 TAC. As I said, the allocation key that was suggested by the Commission meant that the nephrops tonnage available to our vessels would be reduced by 6% rather than 17%. Although that appeared to offer the best prospect of maximising the quota available to us, there was widespread opposition among member states and our industry. Therefore, I decided to approach the negotiations with the Commission on the basis of not supporting functional unit quotas. A number of aspects of the Commission's proposals were unacceptable. For example, the reference period used to determine the allocation keys was wrong, and there were problems with the data. A more recent, shorter period would have produced more representative keys that were based on more reliable data, which would have increased our share on the TAC.

Our discussions with the Commission and officials are ongoing. We do not leave all of that work until the end of the year; we do it throughout the year. In fact, I recently refreshed my invitation to Commissioner Damanaki to come and see our industry and what I was talking about. It looks unlikely that she will be here before May, but I have asked her to consider that invitation nonetheless, given the importance of fisheries to our economy and the social and cultural importance of fisheries to the south Down community.

I was disappointed to hear the Chairman rubbish the negotiation this year. I accept that there was a cut of 3%; there is no question about that. Nonetheless, that is a much more acceptable cut to our local fleet than 17%. Indeed, people in the Chairman's party have privately congratulated me on a very good negotiation and on reducing that percentage considerably. We never dress up a cut as an achievement, but reducing it from 17% to 3% was a significant difference for our fleet. It will ensure decent fishing opportunities for the south Down fleet in 2011, so I am disappointed by the Chairman's presentation this morning. I assure him and the House that the scientists in AFBI and DARD will continue to prioritise and work towards the future of fishing opportunities in the Irish Sea and to maximise the opportunities available to our fishermen in all regards. It was a wee bit disappointing to hear what the Chairman said today. I hope that other people will recognise the not insignificant achievement in reducing that cut from 17% to 3%.

Mr W Clarke: Go raibh maith agat, a Cheann Comhairle. I thank the Minister and her officials for their efforts in Brussels. As an MLA from South Down, I know that the industry and the people in the fishing communities greatly appreciate those efforts.

In view of the recent television show about discards, will the Minister outline what she is doing in that regard? Will she make representations to Brussels? People do not want to see healthy fish being dumped at sea.

The Minister of Agriculture and Rural Development: Go raibh míle maith agat. The matter has come up in previous fisheries debates and questions from Members. It has also been raised with my officials by the Agriculture Committee. The recent 'Big Fish Fight' campaign threw some light on what is a very complex issue. There is no doubt that the discarding of fish is an incredible waste of valuable resources and cannot be justified. It is a concern to me, to Fisheries Ministers in other Administrations and to the industry. There are many different reasons for discards, but it happens mainly because of market conditions and the management systems that are in place.

One of the areas on which the TV campaign focused was the North Sea. My Scottish colleague, Richard Lochhead, is acutely aware of the problem and has lobbied the Commission successfully to introduce a new quota system in the North Sea that is based on what boats catch and not on what they land. Locally, we continue to test new fishing gears that minimise the catch of non-target fish. We are seeking an amendment to the technical conservation regulations to include a specification for a net that was trialled successfully by AFBI and the local industry. The adoption of such gear would more than halve the discards of juvenile haddock and whiting in nephrops trawls.

Where there are successful solutions to the problem of discarding, whether through

different management arrangements or new fishing gears, I want to see them introduced with the minimum of fuss and bureaucracy. That is what I and others want to see: a reformed common fisheries policy that results in a more decentralised approach to fisheries management and would better exploit the knowledge of local fisheries managers and the local fishing sector.

Mr Beggs: The Minister indicated that Northern Ireland and the UK faced a 12% reduction in the western mackerel catch. Will she indicate what actions are being taken by her and the EU in relation to the Faroe Islands and Iceland, which have unilaterally increased the amount of mackerel that they intend to catch? It is unfair that local fishermen should have to bear that burden while others increase their quota.

The Minister of Agriculture and Rural Development: I agree with the Member. Those negotiations and discussions are taking place. Indeed, it was something that the Commission was very focused on throughout the autumn, when a number of high-level meetings took place, for example, between the EU and political representatives from the Faroe Islands and Iceland. It is totally unjustifiable that the Faroese and Icelandic communities just decided on a figure for their mackerel catch this year, thereby reducing significantly the amount of effort available in the North Sea. Although many of our local fleet do not travel as far as the North Sea, those actions will impact on the overall amount of mackerel available for the industry on these islands to catch, so it is of great concern to us all. Those discussions are ongoing. However, I accept fully what the Member said: it was absolutely unjustified and unfair to the local sector.

Ms Ritchie: I thank the Minister for her statement. Given the crucial importance of fishing to the economies of Ardglass and Kilkeel in south Down, will the Minister provide details of discussions that have taken place on alternative proposals to the cod recovery plan? Furthermore, given that the Minister recognises the need for a more decentralised approach to the common fisheries policy, will she give us details of any negotiations that have taken place and of when that regionalisation will actually take place, so that we will have control over our own fishing industry?

The Minister of Agriculture and Rural Development: That day is not with us yet. The common fisheries policy is under review, and, at this point, we do not have a more decentralised approach. That is what I am working towards, but it is not here yet, and people need to be realistic about that.

The Commission initially proposed a 50% cut in the cod quota, which would have resulted in a by-catch allowance for prawn vessels of a little over 1% of the prawn catch. Although our nephrops vessels land very little cod, cutting the quota by 50% would not lead to reduced cod mortality; it would simply lead to an increase in discards of marketable cod. Therefore, I believe that the move by the Commission to reduce the quota by 50% is ill conceived. However, I agree that we must take effective action to rebuild cod stocks. Therefore, I pressed the Commission to have a comprehensive review of the cod recovery plan, which will happen next year.

I remind the House that we opposed the cod recovery plan when other member states thought that it would be a good thing to do. We said that we would not go down that route and did not agree with it. Indeed, two years ago, in the autumn 2008 negotiations, we took a very firm stance on the matter. Now that we have achieved a fundamental review of the cod recovery plan, we need to put forward serious alternative proposals. It will not wash for us just to tell the EU Commission that we do not like it and then to sit back and leave it up to them. We have to come up with serious alternative proposals. I have worked consistently with the House, the Agriculture Committee and the industry to find the best way forward for our fleet, and that is how we will take the matter forward. The cod recovery review needs to look at the impact on other fleets and at technical conservation, such as closed areas and recovery targets. Therefore, it needs to be wide-ranging and needs to be a solution that fits the needs of our industry.

Mr McCarthy: I welcome the Minister's statement to the House this morning. I will talk about the fishing industry as a whole, not only that in south Down. Portavogie is in north Down; I want to plug that area. The Minister's statement outlined that she has three main priorities. Is she disappointed or content with what she came back with in relation to those three priorities? Furthermore, later in the statement, she said:

"After banking surplus stock from 2010 it is expected that fishing opportunities will be similar in 2011."

Given that, will any grant aid or assistance be available to fishermen? Although the opportunities will be the same as last year's, fuel prices, inflation and a lot more expenses will be added on, and those people will be expected to make a living. Can the Department do anything to assist along the way?

The Minister of Agriculture and Rural Development: The Member asked whether I am disappointed. We can never be 100% happy when we come back with a cut, albeit a small one of 3% this year. However, had we come back with a figure of 17% or close to that, I would not just have been disappointed — I would have been devastated, knowing the impact that that would have not just on our fishers but on our processors and on the wider economic community of south and north Down. Therefore, I am not anywhere near as disappointed as I might have been. I accept that a 3% cut is a cut, but the industry recognises that, given the difficulty of this year's negotiation, it was a significant achievement.

The other two priorities were to secure commitment to our fundamental review of the cod recovery plan — we achieved that — and to secure an increase in the herring quota. Again, we achieved that. We would have liked a 15% increase, but we got an 8% increase. However, by and large, our three priorities have been achieved. Therefore, we have to recognise, as I have said in the House before, that there is an ongoing negotiation. We do not just go with a wish list and get everything we want. However, this year, I, my officials and the team that went to Brussels worked hard to achieve what we did in November.

The Member asked about further support for the industry. There is a provision in the EFF to enable key priorities to be supported, including a decommissioning scheme, provided that we can develop a satisfactory scheme that clearly represents value for money. There is some concern about that. The Member pointed to the high cost of fuel. He will be aware that fishermen get a subsidised rate on fuel, and, although, some time ago, the Executive agreed a hardship fund for the fishing sector, I imagine that a scheme of that nature will be unlikely in this difficult fiscal climate. However, I am always an optimist, and, if we can find any help for the industry, we will do our best to get it.

I will provide more detail on the European Fisheries Fund. Five measures are currently open to our fishing industry: collective actions; investments in processing and marketing; ports, landing sites and shelters; productive investments in aquaculture and investment on board fishing vessels; and selectivity measures. Therefore, our fleet can access quite a few measures in the EFF already.

Mr Bell: Does the Minister appreciate the difficulty that many of us have in explaining the science argument in layperson's language to fishing communities in Portavogie and throughout Strangford? We told them to check the science, and, if the stock is healthy, it can be fished. People can appreciate that, if it is unhealthy, it can be looked at. In her statement, the Minister said that there is evidence that stocks are being fished sustainably, and yet we face a cut. Moreover, later, she said that, if stocks are not healthy, they face a cut as well. Therefore, it is hard for people to understand the science argument.

Mr Speaker: The Member should come to his question.

Mr Bell: Will the Minister give us a long-term commitment on what she will do over the next year to prevent the same thing happening again?

12.30 pm

The Minister of Agriculture and Rural Development: We continue to work on ensuring that we are not faced with that situation. To put it as simply as I can: area vii means all of area VII. It is fished, not only by us, but by France and Spain, to name two other member states. France, for example, does not catch around half its quota, so, when the Commission proposes a decrease in area VII, the member states that do not fish their quota can absorb that decrease without any kind of difficulty.

However, our fleet fishes area VII sustainably and catches all its quota. A one-size-fits-all approach is taken when we should be drilling down into the nub of the situation. The functional management unit approach was the Commission's answer to that. It divided it up, and its proposals would have resulted in a 6% reduction, rather than a 17% reduction. We

examined the merits of that, because it seemed to be doing some of the things that we wanted to do, bearing in mind that the reference period was not what we wanted and the data that it was using were not what we would have gone for.

We felt that there was some merit to exploring that proposal, but our industry was absolutely, fundamentally and vehemently opposed to functional management units, and that is why we decided to take the other approach. This was my fourth fisheries negotiation, and we have been consistent in working with the industry, not only the fishing sector, but the processing sector, and we have represented what it has said to us. That is how we got to that point. The quota is set for all of area VII, not just the Irish Sea, and the stocks elsewhere are not in as good a shape as in our part of area VII, which is why a cut was proposed.

I accept that it is complicated, and it is difficult to get it across in layman's terms. We faced a cut of 17% and achieved a negotiation that brought that down to 3%. That negotiation took us right through the night. We had a meeting with the industry at around 7.00 am or a bit earlier, and we worked hard to keep pressing the presidency and the Commission to bring that figure back further. I am pleased because 3% is probably better than I could have hoped for, given the circumstances of the negotiations this year. Notwithstanding the recognition that it is a cut, the 14% that was saved will make a difference of thousands of pounds to our fishing industry.

Mr Savage: I thank the Minister for her statement. The Minister partly answered my question, but I think that there is a bit missing. What research and development assistance is being taken to reduce the discard so that young fish are not destroyed inadvertently as fishermen strive to catch the quota that they are allowed? It is not so long ago that all those discards were brought ashore and manufactured into fish-meal. Now, it seems that the discard is dumped into the sea. If an ordinary person were caught dumping, their licence would be taken from them. There is an opportunity, but an end product cannot be achieved from what is happening.

The Minister of Agriculture and Rural Development: As I said earlier, we continue to test new fishing gears that minimise the catch of non-target fish, so, for example, fishermen who are looking for nephrops can avoid catching cod or whiting. We are seeking an amendment to the technical conservation regulation to enable us to adopt a net that will successfully allow juvenile fish to escape and to go on to reproduce, which will ensure a sustainable fishery for generations to come. AFBI scientists are in the lead on that work, which is ongoing in conjunction with the industry. It is those kinds of practical trials that get us to the point where we have gears that do what they are supposed to do, which is to catch the fish that they are looking for and avoid the rest.

Mr P J Bradley: I thank the Minister for her detailed statement. I could probably ask 15 questions about the statement, but two will do for today. I assume that the reference to the science in paragraph 15 refers to the findings of EU scientists. Does the Minister accept those figures? If not, will she take up whatever facilities are available to challenge them? I think that they have to be challenged every time that they are presented as evidence for cuts. My second question relates to discards. Is reference ever made to the tonnage or monetary value of the discards that our trawlermen are forced to dump?

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

The Minister of Agriculture and Rural Development: The Member asked about the figure and where it came from. AFBI scientists work in conjunction with organisations such as the Marine Institute in Galway and with EU scientists in the Scientific, Technical and Economic Committee for Fisheries (STECF) and the International Council for the Exploration of the Sea (ICES). Those organisations should be well known to the Member given his time on the Committee for Agriculture and Rural Development. The figure needs to be challenged, and I understand that the Member accused me of plucking the figure of 17% out of the air to make it look better when I came back to make this statement. That naivety and ignorance beggars belief, given the amount of time that the Member has spent on the Agriculture Committee. His lack of knowledge on this issue is very surprising to say the least. The figures are there. They are in the public domain if he wants to check them. We continue to argue their validity, given that all of area VII is not in as healthy a state. If he wants a reference point, I can point him to the Porcupine bank,

where the state of the stock is not as good as it is in the Irish Sea. Therefore, the reduction is to the whole area and not to the part that we fish. If the Member needs me to have an A, B, C discussion on the issue, I can do that, and I am sure that my officials will be happy to do that.

In response to his second question, our fishermen discard very little fish that are of marketable value. Go raibh míle maith agat, a LeasCheann Comhairle.

Executive Committee Business

Transport Bill: Consideration Stage

Mr Deputy Speaker: I call the Minister for Regional Development to move the Consideration Stage of the Transport Bill.

Moved. — [The Minister for Regional Development (Mr Murphy).]

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

There are two groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1 to 7, which deal with the criteria that the Department must have regard to in securing provision of a public passenger transport service and issuing permits to operators of that service. The second debate will be on amendment Nos 8 to 12, relating to the power granted to the Department by the Bill and a minor technical amendment that ensures that the Bill is within the competence of the Assembly, together with opposition to clause 45.

Once the debate on each group has been completed, any further amendments in the group will be moved formally as we go through the Bill, and the Question on each will be put without further debate. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 (Provision of public passenger transport services)

Mr Deputy Speaker: We now come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 7, which deal with the criteria that the Department must have regard to in securing provision of a public passenger transport service and issuing permits to operators of that service. Members will note that amendment No 2 is a paving amendment for amendment No 3.

The Chairperson of the Committee for Regional Development (Mr Cobain): I beg to move amendment No 1: In page 1, line 6, after “to” insert “accessibility,”.

The following amendments stood on the Marshalled List:

No 2: In page 1, line 6, leave out "and". — *[The Chairperson of the Committee for Regional Development (Mr Cobain).]*

No 3: In page 1, line 6, at end insert "and sustainability". — *[The Chairperson of the Committee for Regional Development (Mr Cobain).]*

No 4: In clause 6, page 4, line 11, leave out "public passenger transport". — *[The Minister for Regional Development (Mr Murphy).]*

No 5: In clause 6, page 4, line 16, at end insert

"(3) In subsection (2)(b)(i) 'services' means—

(a) public passenger transport services; or

(b) any other services to which section 33(1)(a) applies." — [The Minister for Regional Development (Mr Murphy).]

No 6: In clause 10, page 5, line 42, at end insert

"(ga) that the permit-holder has been convicted of an offence under the National Minimum Wage Act 1998 (c. 39);". — [The Chairperson of the Committee for Regional Development (Mr Cobain).]

No 7: In clause 12, page 7, line 27, at beginning insert

*"**12.**—(A1) This subsection applies where—*

(a) an application is made for a new permit in respect of a service for which there is an existing permit;

(b) the applicant is the holder of the existing permit; and

(c) the Department considers that it is in the public interest for that service to be provided under a service agreement.

(B1) Where subsection (A1) applies, the Department shall not refuse the application without first giving the applicant notice that it is considering refusing the application for the reason mentioned in paragraph (c) of that subsection and holding an inquiry if the applicant requests the Department to do so." — [The Chairperson of the Committee for Regional Development (Mr Cobain).]

Mr Deputy Speaker, before I begin speaking to this first group of amendments, with your indulgence, I will take the opportunity to thank the Deputy Chairperson, Miss McIlveen, and the members of the Committee, as well as Mr Trevor Lunn, Mr Danny Kinahan and Mr Willie Clarke, who were members of the Committee during the Committee Stage of the Bill, for all their hard work and contributions to the scrutiny of the Bill. In addition, I recognise the Committee Office team and the Bill Office for the support that they provided to the Committee. Thanks are due also to the many stakeholder organisations from the public transport sector for their written and oral evidence during our pre-legislative scrutiny as well as during Committee Stage.

Stakeholder input played a key role in the Bill's development. It was also a driving force in the development of the amendments that are before the House, which I believe will make the Transport Bill better and will improve public passenger transport services in Northern Ireland.

I thank the Minister, the Bill team and officials from the Department for Regional Development for their co-operative approach during Committee Stage. Members may have noticed that the amendments have been signed by me, on behalf of the Committee, and by the Minister. That is something of a new departure, and it reflects the fact that they are agreed amendments, which are designed to improve the Bill.

Supporting and improving public transport for everyone in Northern Ireland has been a priority for the Committee for Regional Development. I want to highlight to the House and beyond that that was the main focus of the Committee Stage.

Committees have been working hard to scrutinise and to improve legislation that is brought forward by Departments. That work is reflected in the debates on and amendments to the many Bills that are passing through the House during the current mandate. I believe firmly that one of the Assembly's most important functions is to make the best legislation that it can. Although I hesitate to say it, doing so illustrates that we do more than slug it out across the Committee table.

I will move on to address the first group of amendments. I will confine my remarks to the nature of and reasons for those amendments. That is to allow other Committee members the opportunity to draw on the large and detailed body of evidence in the Committee's report, should they wish. I will return to the details of the Committee's scrutiny of the Bill's 50 clauses and two schedules, and its recommendations

that are not related directly to the amendments, during the Final Stage debate.

Amendment Nos 1 to 7 belong to the first group of amendments, which deals with providing and operating a public passenger transport service. Amendment Nos 1, 2 and 3 are to clause 1. They aim to ensure that the Department, in securing the provision of public passenger transport services, has due regard to sustainability and accessibility as well as to economy, efficiency and safety of operation.

The Committee has a keen interest in ensuring that all aspects of the public transport system in Northern Ireland are accessible. It heard evidence from the Inclusive Mobility and Transport Advisory Committee (IMTAC) that accessibility should be included in the list of factors to which the Department must pay due regard when securing public passenger transport services.

The Committee recognised existing disability discrimination legislation, the Department's accessible transport strategy and action plan, and the progress that it has made to ensure that transport is accessible in Northern Ireland. However, the Committee was firmly of the view that to include a requirement on the Department to have due regard to accessibility when securing public passenger transport provision in Northern Ireland would bring consideration of accessibility firmly into the mainstream of public passenger transport planning, as well as all aspects of service delivery in Northern Ireland. For those reasons, the Committee proposed amendment No 1.

To reflect the Committee's long-standing interest in and support for sustainable transport in Northern Ireland, it brought forward amendment Nos 2 and 3, which aim to include reference to sustainability in clause 1(1). In proposing those amendments, the Committee is of the view that sustainability should be defined in terms of environmental, social and economic sustainability.

Members recognised that section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006 provides:

> *"A public authority must, in exercising its functions, act in the way it considers best calculated to contribute to the achievement of sustainable development in Northern Ireland".*

Having considered those provisions, the Committee was not satisfied that reliance on existing legislation was adequate in this case. Members were aware that the current sustainable development strategy had been reviewed and that a new strategy had yet to be put in place.

On many occasions since 2007, Committee members have highlighted concerns that there is no specific target in the public service agreement in the Programme for Government that relates to the development of sustainable transport for Northern Ireland or to address transport-related carbon emissions.

12.45 pm

The Department identifies transport-related carbon emissions as a serious, growing problem for Northern Ireland. The Committee acknowledged that the Department has responded to its concerns on that matter by, for example, publishing a baseline report on transport-related carbon emissions, the emphasis placed on sustainability in the work to revise the regional development strategy and the early development work on the review of the regional transportation strategy. Building on that progress, the Committee is seeking to amend clause 1(1) to bring consideration of sustainability into the heart of all decision-making on public passenger transport by the Department, by requiring that due regard be taken of sustainability when the Department is securing public passenger transport services.

I am pleased to say that amendment Nos 1, 2 and 3 have been agreed by the Department and co-signed by the Minister, as have all the amendments that are before the House today.

I sincerely hope that the progress achieved in the past few years in creating accessible and sustainable transport for Northern Ireland is not reversed as a result of the swingeing cuts that we face in the draft Budget.

Amendment Nos 4 and 5 are proposed to clause 6. They aim to ensure that when making decisions in relation to permits, the Department will have regard to representations from community transport providers, as well as to those listed at clause 6(2).

The Committee heard evidence on clause 6 from a number of organisations. Clause 6 is one of a number of clauses in Part I of the Bill that

deal with the arrangements for service permits. Clause 6(2) deals with the issue of service permits to mainly private operators, not the majority of public passenger transport services, which will be secured by the Department through service agreements.

Clause 1(3) provides that the Department must ensure that most public passenger transport services must be provided by the Northern Ireland Transport Holding Company (NITHCo) and its subsidiaries. The Committee heard from the Department that there are no plans to privatise NITHCo or its subsidiaries Ulsterbus, Citybus and Northern Ireland Railways. Any future proposals to do so would require further legislation in the House, and the Department would be required to consult on that legislation.

Services offered under the permit scheme will be additional to the contracted network of public passenger transport services where operators have identified a gap in the market and are prepared to offer services at their own risk. In applying for a permit, the operator will be asked to provide evidence of demand. Such evidence could include passenger/customer surveys; letters of support from local residents, community groups or businesses; customer requests; or a change to the demographics in the area.

The Committee recognised that the proposed permit scheme was designed to allow for innovation and the development of services to meet local need. Following representation from the Community Transport Association, the Committee and the Department agreed an amendment to the Bill to reflect the role of community transport providers in meeting local transport need by including community transport providers in the list of bodies at clause 6(2), representations from whom the Department shall take into account when making decisions in relation to permits.

The Committee and the Department have agreed amendments Nos 4 and 5, and, as Chairperson, I have co-signed both amendments.

The Committee brought forward amendment No 6 to ensure that convictions for offences under the National Minimum Wage Act 1998 would be grounds for revocation, suspension or curtailment of a permit. That amendment is to clause 10. Concern was expressed by the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU) in evidence to the Committee that the Bill should provide protection for workers in relation to the payment of the minimum wage.

The Department provided clarification to the Committee on the requirements in relation to demonstrating good repute that are placed on the holders of a bus operator's licence. The Committee recognised that a bus operator's licence is required in order to hold a service permit. The Committee is also aware that the enforcement of the national minimum wage is a matter for Revenue and Customs.

However, following consideration of all the information received and having explored a number of options with the Department, the Committee recommended that the Bill be amended to reflect the its strong view that the holding of a service permit should be jeopardised by failure to pay the national minimum wage. Amendment No 6 was agreed with the Department and has been signed by the Minister.

The last amendment in this group is amendment No 7. The Committee is bringing forward the amendment to ensure that a period of notice, as well as an inquiry and appeals mechanism, will be available to permit holders in cases where it is decided that it is in the public interest to bring an existing service into the network. That amendment is to clause 12.

In response to a query raised by the Federation of Passenger Transport (FPT), the Committee noted that the clauses on permits, specifically clause 12, provide a notice period and an appeals and inquiry mechanism in cases where permits are to be revoked or varied by the Department. However, it does not include cases where the Department decides that a route operating under a permit will not be renewed and should be brought into the network in the public interest and potentially given to Translink or tendered.

The Committee was concerned that that could be seen as the Department, through the proposed public transport agency, using its monopolistic power as policymaker, network designer and owner of the Northern Ireland Transport Holding Company subsidiary, Translink, to the potential disadvantage of small local transport operators. Therefore, the Committee decided that an amendment was required to allow for a minimum period of notice and for

the establishment of an inquiry and appeals mechanism. Once again, the Department has agreed and the Minister has co-signed the amendment. That concludes my remarks on the amendments in this group.

Mr G Robinson: I welcome the Bill and the inclusion of the terms "accessibility" and "sustainability". Much money has been invested in the provision of rolling stock and low-floor buses in recent years. Those are essential for anyone who has to use a wheelchair or has impaired mobility. My understanding is that the inclusion of the amendments will ensure that that provision will continue, and I warmly welcome that. I would also like to see how that will apply to private sector transport providers other than Translink in the future. The provision of easily accessible, sustainable vehicles and rolling stock has been a boost to many passengers, and we as an Assembly must ensure that that provision continues.

Mr Leonard: Go raibh maith agat, a LeasCheann Comhairle. I would like to refer to this group of amendments and to echo the comments made about the co-operation between the Committee and the Department, its officials and the Minister. For the group of amendments to be signed by both, as outlined, definitely shows the ability and desire to work together to arrive at well-worked-out conclusions.

By benchmarking accessibility and sustainability in the Bill, we can now measure things against that legal provision. Of course, that measuring exercise will take place as a result of the Bill and will, obviously, be done in the context of the unfolding economic situation. We can always desire the greater accessibility and sustainability of a public transport system, but, in a downturn, those things have to be measured against the harsh reality of the chequebook. Nonetheless, it was worthwhile to push for the inclusion of those terms and for the Committee to debate those issues and go forward with them.

It was vital that the importance of the community transport sector was accepted, recognised and addressed through amendment Nos 4 and 5. There are many areas around the North that will realise, accept and readily refer to the importance of that sector.

The permit scheme will have to cover areas that are somewhat more isolated and not as accessible as others. As the permit scheme is rolled out, we will be looking for a transport facility that will serve more isolated communities better than has been the case. It is taken for granted that important regulations will follow the scheme, but the core provision in the Bill is a step forward.

I reflect the Chairperson's remarks that there was a strong feeling in the Committee about including a provision that recognised the importance of the minimum wage and that would ensure that people in the sector would not be exploited. It was good to see the Committee refer to that unanimously. Work was done to find out how best we could reflect that in legalese in the Bill, and we feel that that has been achieved. Although different organisations have overall responsibility for the minimum wage and there is different legislation, we made recognition of the importance of the minimum wage integral to the Transport Bill so as to make sure that there is no abuse of the workforce.

I want to refer to amendment No 7, which would amend clause 12. To be fair to permit holders and operators, there could have been a situation whereby a route that was made workable, worthwhile to the community and profitable was then cherry-picked. Without the amendment, that would have been unfair to new operators. The balance between the Department and operators will now be recognised. So, we feel that that amendment is a good addition to the Bill.

Mr McDevitt: I join the Chairperson in thanking colleagues for the way in which they worked through the Bill. The Committee took ownership of the Bill and was quick to identify gaps in it. It is only proper, therefore, that I also echo Mr Leonard's remarks that, when those gaps were identified, the Bill team in the Department, working alongside our own professional Committee team, was more than happy to co-operate and work in a spirit of partnership to try to close them. I congratulate the Minister for being willing and able to co-sign the amendments with the Chairperson. That sends a positive sign to the House about intent and about the seriousness of some of the deficiencies in the Bill that need to be addressed.

I want to confine my remarks to two themes. The first is the amendments to include the words "accessibility" and "sustainability" in clause 1. When the Bill arrived at Committee

many of us felt that a Bill that was meant to set the pace and tone for public transport in this region over the next decade should also acknowledge two of the key challenges and contexts within which public transport will have to operate.

One is an acknowledgement that there are, tragically, a growing number among us who find it difficult to access public transport because of a physical or mental impairment or other issues. There is also a much greater challenge that is growing by the day and refusing to go away: the challenge of sustainability. We will all have to factor that into the planning of government services, and in no area more so than transport services.

So, I very much welcome the fact that the Bill will now ensure that the Department has to pay due regard to accessibility and sustainability when it plans public transport. We could have a bigger debate about whether that should be a statutory duty, an even more powerful and stronger duty, but we are where we are.

The second area that I would like to reflect on — ensuring that workers' rights are not affected — was commented on by Mr Leonard, the Chairperson and, I believe, Mr Robinson. We are in a period of great change. The budget that the Minister will have to steer through the Department is one that none of us would want to have to steer through a Department. We will advocate that budget being improved, but we must ensure that, if we are legislating, as we are seeking to do in clause 12, we do not leave any back doors or grey areas that private providers may see as an opportunity to operate in a way that all of us find unacceptable. It is for that reason that we are all happy to see an effective commitment to ensure that providers must pay the minimum wage to their staff. The Department and the new agency that will be established under the Bill will have the ability to pursue providers that fail to do so.

1.00 pm

I will make some further observations in the debate on the second group of amendments, but that is my contribution for now.

Ms Lo: I am the newest member of the Committee. When I joined, the Bill was at the end of its Committee Stage. However, I have been very impressed by the co-operation between my colleagues on the Committee and the Minister in bringing forward some amendments to strengthen the Bill. I will comment only briefly on the Bill.

I support the first group of amendments, particularly amendments Nos 1, 2 and 3, which will ensure that there is inclusion of accessibility and sustainability in the Bill. Accessibility is a key issue for many people in our society. Without it, many people would not be able to get themselves around and might find themselves isolated and excluded.

Equality is also an issue. People with disabilities should not be prevented from going about their daily lives and using public transport to do that. Therefore, regard to equality should be included in legislation to ensure that it is a major consideration for the Department when it is securing public transport services.

Increasing carbon emissions and their effect on the environment are clearly growing problems in Northern Ireland. Therefore, sustainability should be a high priority when decisions are being made about public transport. I welcome the inclusion of environmental, social and economic sustainability, alongside accessibility, as mainstream considerations for the Department in all decisions that affect public passenger transport services and public transport planning.

Mr McCarthy: I thank the Member for giving way. I have listened to what has been said, and I am not a member of the Committee. I received a letter from Down Community Transport, telling me that the vulnerable — those who are isolated and those who have a disability — will receive a reduced service this year, which means that 50% of the people who live in rural areas or have a disability will not have transport. Does she agree that that makes what has been said in the debate a contradiction in terms? Is the Member trying to tell me that the Bill is going through to achieve that?

Ms Lo: I thank my colleague for his intervention. The draft Budget does not bode well for public transport over the next four years.

I am disappointed that the issues of need and affordability, which are key factors, have not been included in any amendments. I understand that that was well discussed during Committee Stage.

Assessment of services on the basis of just cost, efficiency or effectiveness may result in need not being covered or considered. That may be an important issue, particularly in rural areas. Just because it is uneconomic to run, surely a public service cannot just be scrapped with no thought about whether it is a vital service for many people.

Affordability is also a major concern for many public transport users. Prices may mean that many people are unable to continue using public transport.

If prices continue to rise, our PSA targets will not be met. The high cost of public transport would also force many people into private vehicles and thus have a negative effect on our carbon emissions and the environment.

The Minister for Regional Development (Mr Murphy): Go raibh maith agat, a LeasCheann Comhairle. The amendments in group one arose from detailed discussions with the Committee for Regional Development, resulting in a number of recommendations from the Committee following its consideration of oral and written evidence received during Committee Stage. I want to thank the members of the Committee for their very helpful recommendations, detailed scrutiny and timely consideration of the Bill.

Amendment Nos 1, 2 and 3 relate to the inclusion of accessibility and sustainability as additional matters to which the Department must have regard when carrying out its duty to secure the provision of public passenger transport services. The amendments will ensure that accessibility and sustainability will be considered alongside economy, efficiency and safety of operation as factors in the decision-making process for securing the provision of public passenger transport duties. The amendments reflect the aim of the public transport reforms to create an efficient, effective and sustainable public transport system that contributes to the Executive's transportation, environmental, social inclusion and equality objectives while supporting the development of the wider economy. I welcome that recommendation, and the Chairperson of the Committee and I jointly tabled an amendment to clause 1(1) to include accessibility and sustainability as matters to which the Department must have regard.

Amendment Nos 4 and 5 arose as a result of my Department's consideration of the written submission received from the Community Transport Association in response to the Committee's call for evidence on the Bill. The amendments relate to the consideration of applications for service permits. Clause 6(2) as drafted requires the Department to take into account recommendations made by the Consumer Council and representations made by persons already providing public passenger transport services on any road along or near the routes that are the subject of such applications, the Chief Constable, district councils, Departments and the Northern Ireland Tourist Board.

A number of community transport services funded by my Department operate under a permit issued by the Department of the Environment under section 10B of the Transport Act 1967. Although such services are not public passenger transport services for the purposes of the Bill, I accept that those services may be affected by the issuing of service permits for public passenger transport. That being the case, I am of the view that providers of such services should have the opportunity to make representations to the Department on the service permit applications. The Department, therefore, proposes an amendment to clause 6(2) to include representations made by the persons providing services that receive grants from my Department under clause 33 for the provision of services for the benefit of certain sections of the public.

Amendment No 6, which would ensure compliance with the National Minimum Wage Act 1998, has been initiated by the Committee for Regional Development, having taken account of the oral and written evidence received from the Northern Ireland Committee, Irish Congress of Trade Unions (NICICTU) during Committee Stage. The Committee was keen to address the concerns of NICICTU in relation to national minimum wage compliance by those who provide public passenger transport services. Therefore, I support the amendment to clause 10(1) to include conviction of an offence under the National Minimum Wage Act 1998 as a cause for revocation, suspension or curtailment of a service permit.

Amendment No 7 was the result of the Committee's consideration of written evidence from the Federation of Passenger Transport. Again, I thank the Chairperson and the Committee for their helpful suggestion, and I am

happy to support the amendment. It provides for the inclusion of a notice period and an inquiry in circumstances in which a permit is not to be renewed for the reason that the Department considers that it would be in the public interest for the service to become part of the contracted network of public passenger transport services. The inclusion of a notice period and an inquiry mechanism provides assurance for operators that they will be given adequate notice and the opportunity to request an inquiry by the Department before a final decision is taken in the public interest to include a previously permitted route in a contracted network.

Members made points about the Bill's clauses and the proposed amendments, which I welcome and am happy to agree with. Mr McCarthy made a point that strays into the Department's budget considerations, but, nonetheless, I believe that it is important to respond briefly. Of course, the budgets for transport and other responsibilities across the Department are being seriously challenged, but Mr McCarthy will know that we have supported rural community transport well. Many rural transport providers have extended themselves beyond the original scope of their remit and have moved into other areas of service to the community, which is fine when budgets can support that. We ask that it should not impact on the services to the most vulnerable and needy but should return to the core services for which those community transport sectors were set up and focus on the core provision for those most isolated, vulnerable and in need. Perhaps they will look again at some of the extensions of the services in which they have become involved over the years.

Mr McCarthy: Will the Member give way?

The Minister for Regional Development: I was coming to a conclusion, Mr Deputy Speaker, but I am happy to give way.

The Deputy Chairperson of the Committee for Regional Development (Miss McIlveen): I thank Members for their comments during the debate. I add my thanks to the many stakeholder organisations that generously gave their time and expertise to the Committee during Committee Stage; to the Department and the Minister for facilitating and supporting the Committee's amendments; and to the Committee team for its work in producing the Bill report. The tone of the debate was very agreeable on the whole, and that echoes the manner in which the Bill was discussed in Committee. It was approached in a businesslike manner.

Amendment Nos 1, 2 and 3 to clause 1 were proposed by the Committee to ensure that the Department had due regard to sustainability and accessibility, as well as to

"economy, efficiency and safety of operation"

when securing the provision of public passenger transport services. I welcome support from Members and the Minister for those amendments. Mr George Robinson highlighted the importance of provisions on accessibility. We had welcome support for the amendments. I note the comments that financial constraints have been identified as an issue, but we remain convinced that there is a need to include sustainability, as well as accessibility, and give it due regard, with economy and efficiency, in passenger transport services.

Amendment Nos 4 and 5 are to clause 6, and the Department and the Committee support those amendments so that the important role played by community transport providers is recognised and their views taken into account when the Department is making decisions to award service permits. It is good to hear such strong support from colleagues on those amendments, and they reflect the importance of the role of community transport providers, particularly in rural and very isolated and marginalised communities.

Amendment No 6 is to clause 10, and the Committee recommended it to ensure that conviction for offences under the National Minimum Wage Act 1998 would be made grounds for revocation, suspension or curtailment of a permit. Again, I am glad to see that we have unanimous support for those provisions in relation to that aspect of our work.

Amendment No 7 is to clause 12, and it was proposed by the Committee so that a period of notice and an inquiry mechanism would be available to permit holders in cases where it is decided that it is in the public interest to bring an existing service, operating under permit, into the network. If we are to prioritise growing the economy and moving forward, it is important that the context in which private operators work provides them with a framework that supports

innovation. I am pleased to hear support for that amendment.

In relation to Ms Lo's comments on need, I can say that the Committee considered the matter at length. Clauses 33 and 34 provide that the Department can pay grants for services in certain areas and support services for the benefit of certain sections of the public. Clause 36 allows the Department to pay grants where there is no explicit power to do so in other parts of the Bill. That should include groups in rural areas, older people and people with disabilities. Although it does not perfectly cover everyone in need, it includes the major groups.

I thank Members again for their interesting and valuable contributions to today's debate, and I thank them for their support. I urge the House to support the amendments before us, which the Committee believes will make the Transport Bill better.

Question, That amendment No 1 be made, put and agreed to.

Amendment No 2 made: In page 1, line 6, leave out "and". *— [The Chairperson of the Committee for Regional Development (Mr Cobain).]*

Amendment No 3 made: In page 1, line 6, at end insert "and sustainability". *— [The Chairperson of the Committee for Regional Development (Mr Cobain).]*

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

Clauses 2 to 5 ordered to stand part of the Bill.

Clause 6 (Matters to which Department must have regard)

Amendment No 4 made: In page 4, line 11, leave out "public passenger transport". *— [The Minister for Regional Development (Mr Murphy).]*

Amendment No 5 made: In page 4, line 16, at end insert

"(3) In subsection (2)(b)(i) 'services' means—

(a) public passenger transport services; or

(b) any other services to which section 33(1)(a) applies." — [The Minister for Regional Development (Mr Murphy).]

Clause 6, as amended, ordered to stand part of the Bill.

Clauses 7 to 9 ordered to stand part of the Bill.

Clause 10 (Revocation, suspension and curtailment of permits)

Amendment No 6 made: In page 5, line 42, at end insert

"(ga) that the permit-holder has been convicted of an offence under the National Minimum Wage Act 1998 (c. 39);". — [The Chairperson of the Committee for Regional Development (Mr Cobain).]

Clause 10, as amended, ordered to stand part of the Bill.

Clause 11 ordered to stand part of the Bill.

Clause 12 (Revocation, disqualification, etc.: supplementary provisions)

Amendment No 7 made: In page 7, line 27, at beginning insert

*"**12.**—(A1) This subsection applies where—*

(a) an application is made for a new permit in respect of a service for which there is an existing permit;

(b) the applicant is the holder of the existing permit; and

(c) the Department considers that it is in the public interest for that service to be provided under a service agreement.

(B1) Where subsection (A1) applies, the Department shall not refuse the application without first giving the applicant notice that it is considering refusing the application for the reason mentioned in paragraph (c) of that subsection and holding an inquiry if the applicant requests the Department to do so." — [The Chairperson of the Committee for Regional Development (Mr Cobain).]

Mr Deputy Speaker: We come to the second group of amendments for debate. With amendment No 8, it will be convenient to debate amendment Nos 9, 10, 11 and 12, together with the Committee's opposition to clause 45. The amendments relate to the power granted to the Department by the Bill and include a minor technical amendment that ensures that the Bill is within the competence of the Assembly. Members will note that amendment No 10 is a paving amendment for amendment No 11.

The Minister for Regional Development: I beg to move amendment No 8: In page 8, line 4, leave out subsection (4).

The following amendments stood on the Marshalled List:

No 9: In clause 46, page 20, line 24, leave out "Regulations" and insert

"No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.

(3A) Subsection (3) applies to regulations under this Act if they include—

(a) regulations under section 42(3) or 43(2); or

(b) regulations under this section which make the declaration mentioned in subsection (4).

(3B) Any other regulations". — [The Minister for Regional Development (Mr Murphy).]

No 10: In clause 47, page 20, line 37, after "means" insert "—

(a)". — *[The Minister for Regional Development (Mr Murphy).]*

No 11: In clause 47, page 20, line 38, at end insert

"or

(b) an examiner appointed by the Department of the Environment under Article 74 of the 1995 Order;". — [The Minister for Regional Development (Mr Murphy).]

No 12: In clause 49, page 22, line 9, leave out ", 45". — [The Chairperson of the Committee for Regional Development (Mr Cobain).]

The Minister for Regional Development: Amendment No 8 was tabled as a result of the Attorney General's consideration of the Bill. It would remove subsection (12)(4), which imposes a time limit on decisions made by the Upper Tribunal. The Attorney General was concerned that including such a time limit could impose an obligation on other jurisdictions of the Upper Tribunal. That would fall outside the Assembly's legislative competence. In light of the Attorney General's comments, I tabled an amendment to remove subsection (12)(4).

The opposition to clause 45 stand part was debated during Committee Stage. The Committee indicated that it was not in favour of the clause's inclusion, expressing the view that its preference was for the Assembly to have greater opportunity for scrutiny if changes were to be made to the Bill when enacted or to other Acts. In its view, that would best be achieved through primary legislation. Whereas clause 45 would have provided a mechanism to amend existing statutory provisions by Order — such a mechanism is widely used in other legislation that is subject to Committee scrutiny — it is accepted that primary legislation would offer further opportunity for Members to influence change during the legislation's passage through the Assembly. Having carefully considered the Committee's concerns, I am content that clause 45 should not stand part of the Bill and that primary legislation be used as the vehicle to make any necessary amendment to this important legislation.

Amendment No 9 relates to the Assembly control procedure for two categories of regulations to be made under the Bill. The first category comprises regulations that create criminal offences. Following its scrutiny of the Bill, the Committee made a recommendation based on advice that it received from the Examiner of Statutory Rules that regulations that create offences should be laid in draft and approved by affirmative resolution. I am content to accept the recommendation, and I thank the Committee for that and for its detailed consideration.

The second category of regulation to which the amendment applies is regulations in respect of shared transport facilities. Translink, the Northern Ireland Committee of the Irish Congress of Trade Unions and the Federation of Passenger Transport raised issues in their evidence to the Committee about the broad definition of "place" in respect of shared facilities. As a result, the Department and the Committee agreed that the regulations in respect of shared transport facilities should be laid in draft and made subject to affirmative resolution of the Assembly. That will allow the Assembly to scrutinise future regulations that further define places that are to be designed as shared facilities.

Amendment Nos 10 and 11 relate to the inclusion of vehicle examiners appointed by the Department of the Environment in the definition of "authorised person". Under the reform proposals, the Department of the Environment will continue to be responsible for bus operator licensing and vehicle safety. It has power under article 74 of the Road Traffic Order 1995 to appoint vehicle examiners for the purposes of those functions. The Department considers that

those vehicle examiners should be included in the definition of "authorised person" in the Bill, given the high level of synergy between the functions. That would allow vehicle examiners to act on the provisions of the Bill in the course of their duties and to take action on the instruction of the Department for Regional Development.

Amendment No 12 is a consequential amendment to clause 49, which relates to the commencement, to remove what would be a redundant reference to clause 45 following the opposition to that clause.

The Chairperson of the Committee for Regional Development: The Committee supports amendment Nos 8, 9, 10, 11 and 12, which I have co-signed on its behalf.

The Committee has given notice of its intention to oppose the Question that clause 45 stand part of the Bill, because it was concerned by the latitude provided to the Department under that clause to legislate by Order in Council. The clause also allows the Department to make, by secondary legislation, any provisions that it considers

"necessary or expedient for the purposes of, in consequence of or for giving full effect to this Act".

Orders made under the provision may

"amend, repeal or modify any statutory provision (including this Act)".

That means that the Department for Regional Development could, through subordinate legislation in the form of an Order in Council, amend or repeal primary legislation. However, an Order made in this way would have to be subject to the affirmative procedure in the Assembly.

The Committee considered the clause carefully. Members were aware that this type of clause, known as a Henry VIII clause, would allow a Minister to make an Order that changes the law in a specific Act or in several Acts. Members were concerned that such an Order would not have the same scrutiny as a Bill and would deny the Assembly an opportunity to amend the provision. It could in theory reverse parts of the Bill that had been agreed by the Committee. Although the power is subject to the affirmative resolution procedure, the Assembly would be able to vote only yes or no to an Order. Such an Order could bring through relatively controversial plans without the scrutiny that a Bill would receive.

During evidence from the Department, the Committee asked whether the power was really necessary. Members also queried the wide-ranging nature of the power as drafted, and consideration was given to whether the clause might be more tightly drawn. Officials also provided clarification on the instances in which the power might be needed arising from the Bill. After deliberations and having considered all the evidence that was received on clause 45, the Committee was of the view that, in such a permissive Bill, in which the majority of the detail on service agreements and permits is laid down in regulation, and given that the public transport reform policy and processes have yet to be clarified and implemented, it was not content with the clause. Therefore, the Committee for Regional Development recommended that the Assembly, at Consideration Stage, votes against the Question that the clause stand part of the Bill. The Minister has indicated that he does not oppose the Committee's objections to the clause, and the Committee appreciates his support on the issue.

Amendment No 9 has been tabled to address two issues that arose during the Committee's scrutiny of the Bill. The first is the need to ensure consultation with a wide range of stakeholders and an opportunity for Assembly debate on any subordinate legislation that is developed on access to shared transport facilities.

The Committee considered the arguments made in the significant amount of written and oral evidence received on the arrangements for access to shared transport facilities set out in clause 43. Members were sympathetic to the understandable desire on the part of both Translink and the Federation of Passenger Transport for greater clarity on what the term "any place", which is contained in the clause, might mean. The Committee was also keenly aware of the health and safety concerns raised by the Northern Ireland Committee of the Irish Congress of Trade Unions and Translink. However, the Committee was clear that this Bill was not the appropriate vehicle through which to deliver the detail required to address the complex issues raised in evidence. In recognition of the sensitivities and complexities of this matter and mindful of the need for flexibility as the process of public transport reform progresses, the Committee made the following recommendations.

The Committee recommended that the development of regulations on shared facilities should be characterised by consultation with all interested parties, including the trade unions, Translink, the private operators and the Consumer Council, as well as community transport providers. In addition, the Committee recommended that the regulation-making powers in this clause, which will provide for access to and identify the nature of shared transport facilities, should be subject to the affirmative procedure of the Assembly. That will ensure that there will be full opportunity for Committee consideration as well as scrutiny and debate by the Assembly in the making of regulations on shared transport facilities.

The second issue that amendment No 9 addresses is the need to ensure that regulations creating and amending offences arising from this Bill will be subject to the affirmative procedure rather than negative resolution of the Assembly. The Committee considered clause 46 in conjunction with the delegated powers memorandum submitted by the Department for Regional Development and the advice received from the Examiner of Statutory Rules on the delegated powers in the Bill. The Committee was content, in general, that the powers to make subordinate legislation seem to be appropriate as regards the level of Assembly scrutiny to which they are subject. However, as in the case of the Roads (Miscellaneous Provisions) Bill, the Committee was of the view that there is an important principle to consider, which is that, generally, provision to create offences in regulations should be subject to the affirmative procedure. The Committee proposed those recommendations, and the Department accepted them during Committee Stage. The Committee appreciates the Minister's support and thanks him for tabling this amendment.

The Committee supports amendment Nos 10 and 11. During the scrutiny of clause 7 and clauses 25 to 31, the Department indicated to the Committee that it wished to amend the Bill to include enforcement officers in the Department of the Environment within the definition of "authorised persons". The Committee supported that change, which it considered to be sensible and a good example of how Departments can work together. In its report, the Committee further recommended that, as the public transport reform process is implemented, the operational efficiency and effectiveness of the enforcement arrangements within DRD and between DRD and DOE should be monitored on an ongoing basis.

The final amendment in this group, amendment No 12, is a consequential amendment that arises from the Committee's opposition to clause 45.

That concludes my comments on the clauses and amendments in this group.

Mr Leonard: Go raibh maith agat, a LeasCheann Comhairle. I will restrict my comments on this group to two points and will keep them brief.

In respect of amendment No 9 on shared transport facilities, the Chairperson has more than adequately explained the Committee's thinking. Let us hope that common sense will prevail and that the shared facilities issue will be worked out in a way that benefits the community and makes sense for it.

My second point relates to clause 45. Little did I think that good old Henry VIII would still be posing problems in 2011. The Committee questioned, as did I, how much power was needed to make amendments. I thought that it was sensible that we made the Committee's position clear and that the Department and the Minister took on board the position that, for serious issues to be amended down the line, the Assembly should be given its rightful place and primary legislation should be required.

That was a bit of safeguarding. OK, there could have been a lot of theorising about future scenarios for which it would be applicable. However, common sense has prevailed. We will let Henry have the day off by doing away with clause 45. I am glad that the Department and the Minister have agreed to that.

1.30 pm

I, too, thank the officials from the Assembly and the Department and the Committee staff for all their help on the Bill as it went through Committee.

Mr McDevitt: I will confine my remarks to the intention to delete clause 45. Clause 45, as drafted, is very serious. It states:

> *"The Department may by order make such incidental, supplementary, consequential, transitory, transitional or saving provisions as it considers necessary or expedient for the purposes of, in consequence of or for giving full effect to this Act or any provision of it, or in connection with the coming into operation of any provision of this Act."*

It continues:

> *"An order under this section may amend, repeal or modify any statutory provision (including this Act)."*

In other words, it gives the Minister or the Department the power to do anything that they want with the Act. Such clauses get their name from Henry VIII for good reason. He was a monarch who had the power to do anything and kept changing the rules when they did not suit him. I am glad that we have saved the Minister's blushes and prevented him from going down in history as the Henry VIII of the Northern Ireland Assembly. I am happy that clause 45 will no longer be part of the Bill.

From the research that was provided to us when we scrutinised the clause, it was obvious to me that this is not just something that the Department for Regional Development might be inclined to do but a type of clause that is commonly used in Northern Ireland legislation. All of us, as legislators, may want to be mindful of that. There seems little point in coming here and making laws only to give Departments or future Ministers the opportunity to unmake them at the stroke of a pen at any point in the years to come.

I thank colleagues for their co-operation on the Bill.

The Minister for Regional Development: I thank Members for their contribution to the debate on the second group of amendments. In particular, I thank the Chairperson and members of the Committee for Regional Development for their contributions and detailed scrutiny of the Bill.

Question, That amendment No 8 be made, put and agreed to.

Clause 12, as amended, ordered to stand part of the Bill.

Clauses 13 to 44 ordered to stand part of the Bill.

Clause 45 (Supplementary provision)

Mr Deputy Speaker: No amendments have been tabled to clause 45, and the Committee's opposition has already been debated.

Question, That the clause stand part of the Bill, put and negatived.

Clause 45 disagreed to.

Clause 46 (Regulations — general)

Amendment No 9 made: In page 20, line 24, leave out "Regulations" and insert

> *"No regulations to which this subsection applies shall be made unless a draft of the regulations has been laid before, and approved by resolution of, the Assembly.*
>
> *(3A) Subsection (3) applies to regulations under this Act if they include¾*
>
> *(a) regulations under section 42(3) or 43(2); or*
>
> *(b) regulations under this section which make the declaration mentioned in subsection (4).*
>
> *(3B) Any other regulations". — [The Minister for Regional Development (Mr Murphy).]*

Clause 46, as amended, ordered to stand part of the Bill.

Clause 47 (Interpretation)

Amendment No 10 made: In page 20, line 37, after "means" insert "—

(a)". — *[The Minister for Regional Development (Mr Murphy).]*

Amendment No 11 made: In page 20, line 38, at end insert

> *"or*
>
> *(b) an examiner appointed by the Department of the Environment under Article 74 of the 1995 Order;". — [The Minister for Regional Development (Mr Murphy).]*

Clause 47, as amended, ordered to stand part of the Bill.

Clause 48 ordered to stand part of the Bill.

Clause 49 (Commencement)

Amendment No 12 made: In page 22, line 9, leave out ", 45". — *[The Chairperson of the Committee for Regional Development (Mr Cobain).]*

Clause 49, as amended, ordered to stand part of the Bill.

Clause 50 ordered to stand part of the Bill.

Schedules 1 and 2 agreed to.

Long title agreed to.

Mr Deputy Speaker: That concludes the Consideration Stage of the Transport Bill. The Bill stands referred to the Speaker.

Allowances to Members of the Assembly (Repeal) Bill: Consideration Stage

Mr Deputy Speaker: I call Rev Dr Robert Coulter, a representative of the Assembly Commission, to move the Consideration Stage of the Allowances to Members of the Assembly (Repeal) Bill.

Moved. — [Rev Dr Robert Coulter.]

Mr Deputy Speaker: Members will have a copy of the Marshalled List of amendments detailing the one amendment that has been tabled. The debate will be on that amendment, which deals with the commencement of the Act. I remind Members who wish to speak that they should address their comments to the amendment only. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Commencement)

Rev Dr Robert Coulter: I beg to move the following amendment: In page 1, line 8, leave out line 8 and insert —

"This Act comes into operation on Royal Assent."

This amendment changes the date for the commencement of the Bill from September 2010 to the date on which it gains Royal Assent. The reason for the amendment is that the Bill was originally printed for consideration prior to last summer's recess. However, it was not moved as a number of parties sought further information on the implications of the changes to the existing allowances regime. The replacement allowances provisions, as agreed by the Assembly on 13 December 2010, will also come into operation on that date.

Mr Deputy Speaker: As no other Members wish to speak, we will move to the Question on the amendment.

Question, That the amendment be made, *put and agreed to.*

Clause 2, as amended, ordered to stand part of the Bill.

Clause 3 ordered to stand part of the Bill.

Long title agreed to.

Mr Deputy Speaker: That concludes the Consideration Stage of the Allowances to Members of the Assembly (Repeal) Bill. The Bill stands referred to the Speaker.

Autism Bill: Extension of Committee Stage

The Chairperson of the Committee for Health, Social Services and Public Safety (Mr Wells): I beg to move

> *That, in accordance with Standing Order 33(4), the period referred to in Standing Order 33(2) be extended to 11 February 2011, in relation to the Committee Stage of the Autism Bill [NIA Bill 2/10].*

The Autism Bill passed its Second Stage on 7 December 2010, and, under the 30-working-day rule, it should complete its Committee Stage on 8 February 2011. However, as Members know, the Bill is complex, and, ideally, the Committee would be seeking a much longer extension.

We are committed to scrutinising the Bill in a timely fashion to allow enough time for it to progress through the necessary legislative stages before the House is dissolved on 24 March. The Committee, therefore, seeks a short extension of just two days to bring the deadline from 8 February 2011 to 11 February 2011. That would allow the Committee to have one extra meeting to complete its consideration of the Bill. I ask Members for their support.

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 11 February 2011, in relation to the Committee Stage of the Autism Bill [NIA Bill 2/10].*

Private Members' Business

Single Use Plastic Bags Bill: Second Stage

The following motion stood in the Order Paper:

> *That the Second Stage of the Single Use Plastic Bags Bill [8/10] be agreed. — [Mr McKay.]*

Motion not moved.

Mr Deputy Speaker: We will come back to that at a future stage, so we will now move on to the next item of business.

Post-primary Transfer Advice

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

Mr Craig: I beg to move

> *That this Assembly notes with concern the restrictions placed by the Department of Education on primary-school principals and teachers who wish to advise parents and pupils on post-primary transfer matters following the issue of post-primary test results; and calls on the Minister of Education to review her decision.*

The motion raises an issue of serious concern about guidance that the Department of Education issued on 9 November 2010 in a departmental circular about post-primary transfer. In the foreword, the Minister states that the policy outlined in the document reflects the Department's policy on post-primary transfer, namely transfer 2011. Indeed, I have a copy of the document here.

We know only too well that the Minister opposes any form of post-primary transfer examination and that her party scrapped the state-sponsored academic selection process but failed to get rid of it in its entirety. In the Minister's foreword to the circular, she highlights that the policy will operate in the same way as the previous policy, that is, transfer 2010. The only change that the Minister makes is laid out in a crystal clear way in her foreword, which is central to the purpose behind the motion. The Minister states:

> *"In many respects, Transfer 2011 will operate in a similar way to Transfer 2010, however, I have decided to make one change to the process. It is clearly very important that primary-school principals continue to offer their help and advice to all P7 parents. It is also very important that the primary school principal's role in transfer is clear and receives the support of the Department. I am aware that many principals are unhappy about being placed in a difficult position by the actions of grammar schools operating breakaway entrance tests. Primary-school principals have no involvement in these tests and it is inappropriate, and indeed unfair, to expect them to provide advice on any aspect of these tests or associated procedures."*

1.45 pm

It is clear that the Minister, despite failing to end academic selection, is attempting to, once again, exert her opinion and controversial policy by means of coercion, as is reflected in her strong language. It resorts to bullying parents into accepting her opinion on the transfer test. The Minister refers to "breakaway transfer entrance tests", which is, quite frankly, insulting to those experienced and reputable individuals and groups who have played a vital role in ensuring that parents and schools have a choice. That choice was secured by this party at St Andrews. Many of those who are involved in the breakaway groups that are responsible for setting the entrance exams have worked in education for all their lives. If anyone knows what is best, it is them, not necessarily — dare I say it — us politicians.

The policy is enforced by the setting of a deadline for interviews with school principals, which is 4 February 2011. I am sure that Members will note with interest the significance of that date. On Saturday 5 February, children who sat the breakaway exams — as they were described — will receive their results. The fact is made plain in the document. Parents whose children have sat one of the breakaway tests will be hindered in receiving advice and making an informed decision about their child's future because school principals have effectively been told by the Minister that they must not hold any interviews with parents past 4 February. That could be compared with a diktat that completely ignores the reality of the situation. It casts aside children who have sat any breakaway post-primary entrance exam.

If anyone thought that a principal can ignore the advice of the Minister and work for the benefit of the children, which they are trained to do, they are wrong. It is highlighted in bold in the circular that any principal who holds transfer interviews after the date specified will not be eligible for substitute teacher cover. That is enforced by a letter from the Department dated 9 December 2010, in which principals are warned that if they include any teacher cover after 4 February, the cost will not be met by the Department.

The circular also warns principals about the cuts to their budgets, which were announced by the Minister of Education last week. Therefore, principals are restricted further in being able

to fulfil their obligations to their children and parents in providing advice on post-primary transfer beyond Friday 4 February. That date is less than two weeks away, and the circular has created further anxiety for the parents of children who are expecting results on Saturday 5 February. Parents will be put in a difficult position in making informed decisions about their children's future. The circular is yet another example of the Minister's failure to reach a consensus on this issue, which has caused significant anxiety among parents, children and teachers.

I found it fascinating that the Minister's guidance notes say that one thing that parents should be doing to prepare for this role is:

> *"How schools will select children for admission if they have too many applicants. In this situation schools have to use admissions criteria".*

Like it or not, we all know that grammar schools will use the criterion of the entrance test for that purpose. The Minister's own guidance contradicts her in that respect. If she does not give the principals the right to advise parents on the results, they cannot fulfil the criteria that she has set.

Mr O'Dowd: Go raibh maith agat, a LeasCheann Comhairle. I apologise for not being in the Chamber at the start of the debate.

The question that has to be asked is whether the debate is about education or about an agenda, dating back to 2006, of protecting one section of the education system, namely the grammar schools. Even within that group, there is a subsection that refers to itself as the elite among grammar schools and education. Those schools set themselves apart as different and not on a par with the rest of the education system, and I emphasise that point. It is worth noting that the same curriculum is taught to all pupils, whether the sign on their school gate says grammar school, college or post-primary school. They all teach the same curriculum. In any given school, whether a child receives a good education is down to the enthusiasm and dedication of the staff. It is not down to the nameplate on the school gate.

The motion mentions meetings between parents whose children are involved in the transfer process and principals. However, as I listened to the Member who proposed the motion, I realised that it is not about the parents of children transferring to all schools. The Member is interested only in the parents of children who sat a transfer test to move to other schools. That is the flaw in the system thus far. The Minister proposed moving those meetings to a different time. She proposed a system that values all children and parents and in which they can meet teachers and the headmaster of the prospective school to discuss options, how the child performed in their last year of primary school and the terms of the transfer. That is what the Minister proposes. It is not just about one section of pupils in society.

It is also worth noting that there is a responsibility in the motion for all post-primary schools, because it is about the relationship between primary schools and post-primary schools. To date, in the eyes of many grammar schools, primary schools have been subservient to them, existing almost as a corralling system for children. The children whom grammar schools decided to select moved on to grammar school, and those whom they decided to reject moved on to another school. Surely, if we are to improve educational outcomes, primary schools must be centres of educational excellence. They should be focused on providing an education to each child, rather than on how to move children on in a way that meets the needs of the next school.

Yes, there has to be a relationship, but it must be based on equality. Primary-school principals, teachers and classroom assistants are all educationalists, as are the staff in whatever schools their children move on to afterwards. The debate should signal to the education system that all schools are equal and that the post-primary schools that offer selection and rejection tests have a responsibility to keep children and parents informed about how that process works. In repeated guidance issued by the Minister over several years, the message to parents was that there is a legal onus on post-primary schools, regardless of whether they select and reject 11-year-old children or are inclusive, to give information to parents. The system envisaged under the Minister's proposals will treat all children equally.

I return to the point that I made at the start. Is the debate about education or elitism? As this may be the last education debate of this session, perhaps somebody from the DUP will tell me why it chose to bring a debate on education to the St Andrews talks on

constitutional issues. On whose behalf was it acting, and on whose behalf was that item put on the agenda? Why did the DUP decide to bring academic selection — an education issue — to political talks at St Andrews?

Mr D Bradley: Go raibh míle maith agat, a LeasCheann Comhairle. There are a number of things about circular 2010/12 with which I am not happy, the first of which is its legal basis. Page 5 of the circular says that it does not constitute an authoritative legal interpretation of the various pieces of legislation that are relevant to the North of Ireland. One has to ask the Minister what exactly that means. If we cannot be sure about the legal basis of the circular, should we ask school principals to abide by it? It can hardly be inspiring to school principals to have to wonder whether the advice that they are being told to follow is legal. I look forward to the Minister's comments on that point.

Quite apart from the legality or otherwise of the circular, there is no doubt that it is, in essence, an assault on the professionalism of head teachers. I believe that head teachers are well equipped to make their own professional judgements on their role in giving advice to parents and pupils. The circular is a dangerous departure in so far as it seeks to micromanage the work of experienced professionals who feel that they have a responsibility to pupils and parents and who find themselves in an unresolved situation that is not of their own making. Is it right that parents should be denied access to professional advice from the people who are best placed to give that advice?

In some senses, the formal detail of the issue is less significant than the fact that the debate has ended up with the Minister issuing threats to a group of people who should have been allies in a progressive movement towards change. It looks like the Minister's final attempt to interfere with the unofficial system that is being operated by the grammar schools, and, since there appears to be little or nothing that she can do to the grammar schools, she has chosen instead to focus her attention and efforts on the primary schools, which, once again, find themselves caught in an invidious position in the fight between the Minister and the grammars. The primary-school principals have once again been used as cannon fodder in the war between the Minister and the grammar schools. Her failure to negotiate a compromise or to come up with creative options for a solution have placed the primary schools in an impossible position as they try to meet the directives issued by the Department while maintaining a positive relationship with parents by providing them with the best possible support for their children.

There is plenty of evidence that, like my party, most primary-school principals want to see the end of academic selection and would much prefer to focus their energies on constructive educational priorities. However, it is also understandable that they will try to do their best by all their pupils in the difficult circumstances that have been created by unofficial testing. I strongly suspect that most primary-school principals will, in practice, ignore the Minister's directive and do their best to provide dispassionate advice to the parents of children in P7, including advice on post-primary options.

It is a lamentable end to the Minister's handling of this admittedly difficult issue that her final throw of the dice is effectively an attack on one of the key groups that she always claimed she was trying to help: primary-school principals. As she comes towards the end of her term in office, it is difficult to think of any group that she has not alienated during this whole sorry saga. Her energies would have been better spent on building a positive coalition for change. However, that appears to be beyond either her temperament or her political style. As we move towards the end of this mandate, the Minister of Education —

Mr Deputy Speaker: Bring your remarks to a close.

Mr D Bradley: — will have little to survey by way of success.

Her claims that she has brought an end to academic selection are clearly ill founded. She has not ended academic selection but has merely managed to privatise it.

2.00 pm

Mr Lunn: I support the motion. It refers to advice interviews following the issuing of post-primary test results, and that is exactly the point. The advice that is given in the circular to which Jonathan Craig referred makes it clear that the interviews have to take place before the test results are issued. I have not seen that circular, to be honest, but I have a letter

from the South Eastern Board to a school that confirms the same thing. It states:

> *"Funding for the substitute cover that facilitates a primary school's principal's involvement in transfer interviews will be confined to interviews that take place on or before 4 February 2011."*

I also took note of paragraph 5.23 of the Department's draft budget, which states:

> *"DE policy is for a non-selective system."*

It continues:

> *"DE is consulting on a proposal to remove the facility for primary schools to claim for substitute cover in relation to the transfer procedure."*

It is fairly clear what is happening.

People probably know by now where I stand on the long-term future of academic selection. I want to see an end to it, through being legislated away, withering on the vine or being made to disappear by agreement. I do not really care, but its time has passed, and the sooner we can get rid of it, the better. In the meantime, I do not see much point in ignoring the reality of the situation, which is that, whether or not there is a transfer system, children of age 10 and their parents need advice from the headmaster of their primary school and their P7 teacher at what is a stressful time in their life.

(Mr Speaker in the Chair)

I understand that getting advice from the P7 teacher is the current practice. All that will happen is that the primary schools will have to fall in line with the policy to some extent by conducting their interviews in the next couple of weeks. The parents of children who have done the transfer test will, undoubtedly, have to have a further interview. All that that does is put extra work, in particular, on to primary school heads who are already hard-pressed and probably scratching their head about what to do when faced with the onslaught of advice that comes from the Department. That is particularly the case for primary schools that are close to grammar schools, but primary schools are not allowed to conduct the selection test in the school. However, having the test there would be a better option for the children's well-being. The schools cannot do anything about that. Strictly speaking, they are not allowed to prepare pupils for the tests. They have to teach the curriculum, and the reality is probably slightly —

Mr O'Dowd: Will the Member give way?

Mr Lunn: Yes.

Mr O'Dowd: Will the Member agree that his last statement sums it up? He said that the school has to teach the curriculum. What is wrong with a school being instructed to teach the curriculum and not to break away from it and teach for an unregulated test? That is a fair statement.

Mr Speaker: The Member will have a minute added to his time.

Mr Lunn: Thank you very much, Mr Speaker. Believe it or not, I do not disagree with Mr O'Dowd. Ideally, I would like no selection tests and for primary school teachers to be allowed to teach the curriculum with no necessity to coach their pupils for tests. However, there is also the reality of what is happening at the moment. Primary school heads —

Mr Craig: Will the Member give way?

Mr Lunn: Just a minute. Primary school heads and teachers have no option, because they are faced with a different pressure — pressure from parents to bring forward their children for the tests, which I wish we could get rid of. I know that that might sound a bit contradictory, but, in the meantime, I want to talk only about the interviews, because that is what the motion is about.

I find it hard to escape the view that, frankly, this is another vindictive action by the Department. As Dominic Bradley said, it is another means of putting pressure on primary school heads and teachers to drive another nail into the coffin of academic selection. It is not going to work. What is best for the children? Surely, they must get that advice. It is not reasonable to ask headmasters and P7 teachers to do that without substitute cover being paid for, particularly now that there is a deadline. That means that they will have to do it twice.

Mr Craig: I will not enter into the debate about whether it is right, wrong or indifferent to have academic selection: the Member will know that we differ on that issue. However, does he agree that this approach is similar to a lot of the approaches that the Minister has taken? It is the emu approach, where she buries her head in the sand and refuses to accept what is happening. In some primary schools, more than 80% of the children will participate in the tests,

and, ultimately, the head teacher will have to give advice to the parents.

Mr Lunn: That is pretty much what I said, without comparing the Minister to an emu. Mr Speaker, I will conclude because I can see that my time is nearly up. We support the motion, but I want to make it clear once again that we are absolutely against academic selection.

Mr Storey: Mr Speaker, as you will expect, I support the motion and congratulate my colleagues on tabling it. It is clear for everyone to see that old habits die hard, especially when it comes to the current Education Minister. It seems as though the conflict, confusion and challenge that dominated the history of Sinn Féin was not dispensed with when the party appointed Caitríona Ruane as Education Minister. Instead, what the Minister decided to do was in total variance to her colleague and former Education Minister, Martin McGuinness. In an article in the 'Belfast Telegraph', the former Education Minister said:

"We need co-operation not continued conflict."

He went on to say:

"Education does not have to be conflictual."

What has been the hallmark of the tenure of the Education Minister who is in the House today? It is to be malevolent and be involved in meddling and mischief making, in the hope that, somehow, by some other means, she will be able to wear down the system in such a way that people will ultimately roll over and allow her ideological position to take precedence.

What we are hearing in today's debate is yet another attack in a long line of attacks that the Education Minister has made on those whom she wants to change ideologically. However, therein lies her problem: ideological positions will remain so only if they are not reflected in legislation. Whether the Education Minister wants to accept it or not, the legal position is clear. If the Minister has the decency and good manners to listen — that has never been a trademark of her time as Minister — I will quote what she said about the guidance that the Department issued from the Minister. She said that it does not in itself have statutory force.

We all remember the issue about parents taking their children out of school and taking them to a foreign country. There is guidance on that issue, but the Education Minister interpreted that guidance as a parent, as she had a right to do.

The Minister sent letters to schools operating what she calls "private tests". She asked for information relating to the funding arrangements for the payment of those tests, but she has been informed that she has no legal right to ask that of the schools. She was meddling.

What has the Minister done in relation to the appointment of members to the education and library boards? She has delayed and dilly-dallied in the hope that somehow they will not be reconstituted under the legislation and that somehow the dream world of the ESA will come into operation by stealth and other means. The motion deals with yet another example in the long history of how the Minister operates.

I want to answer a question that was asked by John O'Dowd. He asked why the DUP brought the issue of academic selection to St Andrews. I will tell you why, Mr Speaker. It did so because a previous Education Minister abolished one system but failed miserably to put in place an alternative. Until an alternative system is agreed and put in place, the legal framework and legal right of schools to use academic criteria in admissions policy will continue.

Mr Givan: Does the Member agree that at every attempt by Sinn Féin to pursue its agenda it has been the DUP, through the Assembly, that has stopped that agenda and that Sinn Féin can lay claim to no success?

Mr Speaker: The Member will have a minute added to his time.

Mr Storey: That is true. It is why, out of the blue, Mr O'Dowd recently had to put an article in a newspaper to defend the current Minister as though, somehow — if there were to be no Sinn Féin Education Minister in the next mandate and new Assembly — the party's policy to abolish the 11-plus had been successful. It has not been successful. The fact is that tests are now operated within the law. Therefore, the Minister and Sinn Féin have to realise that there must be consensus. Why did the party opposite stay outside talks on finding a way forward?

Mr O'Dowd: I am glad that Mr Storey brought up the subject of the 'Belfast Telegraph' talks. A presentation to the Committee for Education the other day — six months after the report was delivered to it — showed clearly that no

agreement had been reached in those talks. In fact, the issue had not even been discussed.

Mr Storey: That just shows how incapable some Members are of reading an entire document. It indicated that there is willingness among major stakeholders to deal with the issue. However, what has the Minister done?

Mr Speaker: The Member must bring his remarks to a close.

Mr Storey: As with any other issue, such as her failure to deal with end-year flexibility when she had to get the Minister of Finance to find a solution to her problem, it will be for other people, not the failed Minister of Education, to find a solution for the future of education.

Mrs O'Neill: Go raibh maith agat, a Cheann Comhairle. Comments by the previous Member show that Members opposite are present only to debate the topic in the interests of the select number of children whom they wish to represent. The motion refers —

Mr Storey: Will the Member give way?

Mrs O'Neill: Let me get going.

Mr Storey: Will the Member allow me respond to her point?

Mrs O'Neill: I will not give way. Maybe I will do so later in my contribution.

The motion refers to restrictions being placed on schools and principals who wish to advise parents on post-primary transfer matters following the issue of unregulated test results. Perhaps the supporters of the motion need to reread the circular that was issued by the Department. It clearly sets out and recognises the importance of primary-school principals offering help and advice to all parents of children in P7. It goes on to state that it is important that the primary school principal's role in transfer is clear and that it receives the Department's support.

It is right and proper that principals make themselves available to parents who have concerns about their children's educational experience, which is what they do at present. We are all aware that they are amenable and open to speaking to parents when necessary. We are also aware that they will continue to do that. However, the Assembly cannot continue to support a two-tier system of educational support.

Holding an interview before the issue of unregulated transfer results makes it clear to parents and everyone involved that primary schools have absolutely no involvement in the academic selection process being run by grammar schools. Principals will meet parents on or before 4 February 2011 to advise them. That is set out in the circular, which also states that principals will invite parents of children in P7 to an interview to advise them on completing transfer forms. It could be no clearer. I do not see how the supporters of the motion see that as a restrictive comment, as it shows that principals are open to speaking to parents as needed.

Furthermore, the process that has been outlined by the Department is in line with that for other milestones in a child's educational journey. For example, when parents apply for their children to be admitted to nursery or preschool, who assists them with the completion of the form? They do it themselves. Who assists parents with the form when they apply for their child to go to primary school? Parents do that themselves. That proves that the measures should be sufficient for the majority of parents to ensure that a transfer form is completed in a correct and timely manner. However, we recognise that there are instances in which parents may need advice. There could be various reasons for that, such as literacy problems or language difficulties. Those will be considered as exceptional circumstances, and an interview can be conducted in those situations.

2.15 pm

Dominic Bradley talked about the professionalism of principals, who can use their discretion on when an interview is necessary. That is common sense; that is what principals do. It was the principals who asked for clarification and to be divorced from the situation, because they do not want to be involved in something that is unregulated and nothing to do with them. I, therefore, think that it is right and proper that the situation has been clarified. In the long run, it will benefit principals. Teachers want to teach children. They do not want to be teaching to exams; they want to be totally divorced from an unregulated system that is being run by the academically selective schools.

For those reasons, Sinn Féin will continue to protect the rights of all children in the education system. We do not stand up for a select number of children; we stand up for all children.

Mr Bell: Let me be clear from the outset that the reason why this motion was brought before the House was to enable us to look at what is in the educational best interests of all children, based on their ability to learn. That is the purpose of the motion. It has not been mentioned, but the elephant in the living room is that the Northern Ireland education system sends more young working-class people to university than that in any other part of the United Kingdom. That is a statistic that we should be proud of and an education system that we should look to defend and enhance. Over the past number of years, the history has not been a successful one for the House. We have not had educational success based on consensus; we have had systematic confrontation. The higher the barriers that have been built, the stronger the people have become to defend a system of education that places more working-class children in university than in any other part of the United Kingdom.

I declare an interest as a governor of a grammar school, and I have a family member who is the school principal. I say to the Education Minister that we are looking for the politics of educational success, not the politics of educational spite. To place a restriction on principals who are giving genuine information to parents the day before the results come out cannot be anything other than the politics of educational spite, for the purpose of driving a dogma and a philosophy. It is not there for the purpose of allowing the child with the results to have a proper debate or analysis with an education professional on where their future best lies.

It was difficult for many of us who have watched politics for years. We saw Mr Adams, with an obstructionist approach to Northern Ireland education.

Mr O'Dowd: Who?

Mr Bell: We saw the politics of confrontation, and the approach of obstruction and confrontation was carried on. I am referring to the man who has gone away, you know. I am referring to the man who has gone away to be a paid Crown Minister. I understand that the only way that he can resign from the House of Commons is to be in the service and employment of the Crown. I do not know whether he will be baron of Northampton. Anyway, I am referring to the man who has gone away.

That politics of obstruction and confrontation was met not with an equal and opposite reaction from those who had a genuine belief in education but by a better reaction. As a result of that, the academic qualifications and tests that are needed were set. Some argue that three tests offer young people a fairer chance than two tests. The schools that wish to use that as their selection criterion can use it and have used it, but nobody is forcing them to do so. As a governor of Regent House, I can see that the number of parents applying to the school is vastly greater than the number of places that we can offer. It is good for the children, and it is good for the parents.

Mr O'Dowd: I am not aware of the school, so I may be putting the Member in a difficult position. Does the grammar school of which Mr Bell is a governor adhere to an A to B category? Or does it do what the majority of grammar schools do and take all comers from the surrounding schools and leave their numbers falling?

Mr Speaker: The Member will have a minute added to his time.

Mr Bell: Thank you very much. It is a grammar school that firmly complies with the law and offers a choice. *[Interruption.]*

Mr Speaker: Order.

Mr Bell: There are other good schools in the area that do not take that approach, and I do not take anything away from them, but that one does, and the parents and children want it. They apply for it in greater numbers than there are places for the school to give.

We need to move from the politics of confrontation to the politics of consensus. Does the Minister think for a second that, because of that circular, parents are not going to turn up on 6, 7 and 8 February and ask the teacher at the school gate or the principal for their advice? It is just nonsense. We need to lift the restrictions to allow parents to have a genuine choice and to allow the children to get the information. If the argument is so successful — we are told that they should not want to go to those schools —