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Northern Ireland Assembly

Wednesday 23 February 2011

The sitting begun and suspended on Tuesday 22 February 2011 was resumed at 10.30 am (Mr Speaker in the Chair).

Members observed two minutes' silence.

Assembly Business

Mr O'Dowd: On a point of order, Mr Speaker. I ask you to examine the Hansard report of yesterday's sitting and establish whether comments made during matters of the day by Mr Cobain in relation to my colleague Mr Kelly were appropriate and within the standards that you, as the Speaker, and Standing Orders expect of Members in the House.

Mr Speaker: I thank the Member for his point of order. I will look at Hansard and come back either to the Member directly or to the House.

Executive Committee Business

Justice Bill: Consideration Stage

Clause 36 (Regulated matches)

Debate resumed on amendment Nos 10 to 26 and amendment Nos 61 and 62, which amendments were:

No 10: In page 25, line 26, leave out paragraph (c). — *[The Minister of Justice (Mr Ford).]*

No 11: In page 25, line 29, at end insert

"(e) in Chapter 6, to a match to which any of the paragraphs of that Schedule applies." — [The Minister of Justice (Mr Ford).]

No 12: In page 25, line 32, leave out from "two hours before" to end of line and insert

"one hour before the start of the match or (if earlier) one hour". — [The Minister of Justice (Mr Ford).]

No 13: In page 25, line 34, leave out "one hour" and insert "30 minutes". — *[The Minister of Justice (Mr Ford).]*

No 14: In page 25, line 38, leave out "two hours" and insert "one hour". — *[The Minister of Justice (Mr Ford).]*

No 15: In page 25, line 39, leave out "one hour" and insert "30 minutes". — *[The Minister of Justice (Mr Ford).]*

No 16: In clause 37, page 26, line 8, leave out "anything" and insert

"any article to which this subsection applies". — [The Minister of Justice (Mr Ford).]

No 17: In clause 37, page 26, line 13, at end insert

"(1A) Subsection (1) applies to any article capable of causing injury to a person struck by it." — [The Minister of Justice (Mr Ford).]

No 18: In clause 38, page 26, line 22, leave out "an" and insert "a sectarian or". — *[The Minister of Justice (Mr Ford).]*

No 19: In clause 38, page 26, line 25, leave out "religious belief,". — *[The Minister of Justice (Mr Ford).]*

No 20: In clause 38, page 26, line 26, at end insert

"(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion or to an individual as a member of such a group." — [The Minister of Justice (Mr Ford).]

No 21: In clause 44, page 28, line 32, leave out "or from". — *[The Minister of Justice (Mr Ford).]*

No 22: In clause 44, page 29, line 6, leave out subsection (5). — *[The Minister of Justice (Mr Ford).]*

No 23: In clause 44, page 29, line 15, leave out paragraph (c). — *[The Minister of Justice (Mr Ford).]*

No 24: In clause 49, page 33, line 6, after "up" insert "sectarian hatred or". — *[The Minister of Justice (Mr Ford).]*

No 25: In clause 49, page 33, line 8, leave out "religious belief,". — *[The Minister of Justice (Mr Ford).]*

No 26: In clause 49, page 33, line 14, leave out subsection (3) and insert

"(3) For the purposes of this section sectarian hatred is hatred against a group of persons defined by reference to religious belief or political opinion or against an individual as a member of such a group." — [The Minister of Justice (Mr Ford).]

No 61: In schedule 3, page 81, line 7, leave out from "or" to end of line 9. — *[The Minister of Justice (Mr Ford).]*

No 62: In schedule 3, page 81, line 19, leave out from "or" to end of line 21. — *[The Minister of Justice (Mr Ford).]*

Mr Speaker: We return to the Consideration Stage of the Justice Bill. Members will recall that we were debating the third group of amendments, which deal with the regulation of sports.

Mr Lyttle: I support the third group of amendments, excluding the opposition to clauses 41, 42 and 43. As this is my first opportunity to speak on the Bill, I wish to recognise the hard work of the Justice Minister and his officials in delivering the first Justice Bill in 40 years for the consideration of the House. In particular, I welcome the strong sport and spectator law that the Bill will introduce to complement and support the excellent work of local sporting bodies, such as a the IFA, the GAA and Ulster Rugby, to deliver safe and high-quality sport in Northern Ireland. I recognise the outstanding work of those governing bodies.

Like many Members, I have particular experience of the award-winning work of the IFA. Under the leadership of Patrick Nelson and Michael Boyd, the IFA works in partnership with supporters to eradicate antisocial and sectarian behaviour from international and local soccer. In so doing, it has promoted Northern Ireland on the international scene. As the Member for North Belfast Mr Humphrey recorded last night, the IFA and Northern Ireland supporters have been recognised by UEFA and the European Union for their work towards making Northern Ireland football a sport for all. I welcome the fact that the Assembly has taken the opportunity to recognise that excellent work.

As a member of the IFA Football for All advisory panel and an Alliance Party MLA, I particularly welcome clause 38, which — I hope — is the conclusion of persistent effort and leadership from the Alliance Party to make sectarian chanting an illegal offence at all sporting events in this community. Michael Long, my colleague and Alliance councillor for Castlereagh Borough Council, has campaigned on that issue for many years, and I know that he will join me in welcoming the delivery of that provision by an Alliance Party Justice Minister, demonstrating that devolution can deliver safe and shared sport in Northern Ireland. I therefore welcome amendment Nos 18 and 19, which emphasise the intention of that clause, and amendment No 20, which represents, I believe, one of the first occasions when a Minister in the Assembly has moved to define and legislate against sectarianism in sport.

I do not think that I am the only Member of the House who has found the Ulster Unionist Party's

discomfort with making sectarian chanting at sporting events an illegal offence quite a bizarre intervention at this stage of the Bill's passage. Indeed, it is my understanding —

Mr B McCrea: Will the Member give way?

Mr Lyttle: Certainly.

Mr B McCrea: I will clarify: the Ulster Unionist position is that it is not against sectarian chanting at sporting events. The Ulster Unionist Party is not against — *[Interruption.]*

Mr Speaker: Order. Allow the Member to continue.

Mr B McCrea: I find it somewhat disappointing that a man with whom I have shared sponsorship of Unite against Hate events would make that allegation. The issue that we are putting down here is a fundamental one about what defines sectarianism, and we want to argue on that legitimate point. We have no problem with the definition in the original clause. However, this is an attempt to silence free speech and to make it an offence to express an opinion. That will see read-across that is really dangerous. I am really surprised that the Member tried to misquote what we are actually saying.

Mr McDevitt: Does Mr Lyttle agree with me that the problem with the clause as originally drafted was that it did not actually define sectarianism? In fact, it talked about everything but sectarianism. I think that what we are trying to achieve here, on as cross-party a basis as possible, is to bite the bullet for the first time ever and, in the context of sectarian chanting, to define it and call it what it is. I ask Mr McCrea and his Ulster Unionist Party colleagues to reflect on the fact that their colleagues on the Justice Committee, including Mr McNarry, supported and voted for that clause. *[Interruption.]*

Mr Speaker: Order. All remarks must be made through the Chair.

Mr Lyttle: I thank the Members for their interventions. I agree with the Member for South Belfast about the need to clearly stamp out sectarianism in sport by way of clear legislation. The very reason why I am particularly confused by Mr McCrea's position is that I have shared sponsorship of Unite against Hate events with him. This morning, I heard that some further confusing statements were made about perhaps needing an upper House in the Assembly to properly consider legislation. Perhaps what we actually need is a Mr McCrea stage to allow him to catch up with the hard work that everyone else has done on the Bill.

I will move on. That power has been called for not only by my party but by the governing bodies and responsible fans because they understand that it will complement and strengthen their dedication to kicking sectarianism out of sport. I therefore regret that some of our politicians seem to find it difficult to catch up with our sports on that issue. It is important that the House supports the hard-earned gains of our local sports by legislating for strong powers to deter a small minority of fans from the type of sectarian behaviour that we have seen in the past and, unfortunately, more recently from a very small minority at the home international matches in Dublin.

I welcome the Minister's responsiveness to the football community's concerns about ticket sales and welcome his removal of clause 36(1)(c) with a view to working with the IFA to progress appropriate ticket sales regulation for local football. Amendment Nos 12 to 17 are also all sensible.

I have listened to the concerns of the House about clauses 41 to 43 with regard to alcohol at sporting events. Although my party will not oppose those provisions, I welcome the Minister's responsiveness, particularly in respect of spectators who consume alcohol at sporting events in a responsible manner. I also welcome his introduction of amendment No 46, which ensures that the provisions in clause 43 will be activated only by vote of the Assembly.

In conclusion, I recognise the leadership shown by the Minister of Justice, the efforts of his officials and the contribution of the Justice Committee in delivering a substantive Justice Bill that will strengthen the safe enjoyment of sport and promote a high standard of sport in Northern Ireland.

Lord Browne: I am sure that all Members wish to encourage and promote a safer, more pleasant and family-friendly environment at all our major sporting grounds. Therefore, I support many of the clauses in the Bill, because they go a long way to assist clubs that are already playing a positive and active role in achieving those aims. However, I oppose clauses 41, 42 and 43, which are unnecessary.

As has been stated, clause 41 seeks to fine any member of the public who is drunk inside a ground or while attempting to enter a regulated match. Aside from the very serious concerns that the Committee has expressed over the lack of definition in the legislation of what precise state will qualify as drunk and aside from the fact that the more general offence of being drunk in a public place already exists in law, I argue against clause 41 on the grounds that it is practically unenforceable and could prove counterproductive to the efforts that clubs are already engaged in to prevent drunken supporters entering their grounds.

In practical terms, it would be exceptionally difficult to identify what could be described as a peaceable drunk person at a sporting event, because they would be part of a large crowd that would be liable to behave in an excited manner when entering the ground. The only point at which, in practice, it would be possible to identify an intoxicated person would be if that person were to cause trouble of some kind, be that through violent or abusive behaviour. In that case, the primary question for the stewards and marshals at the scene and for the law afterwards would be about the behaviour that that person was engaged in at that point, not whether they happened to be drunk.

Far better offences and regulations can be employed, such as disorderly behaviour, breach of the peace and simply fining a supporter for possibly being drunk when they committed an offence. Similarly, it needs to be asked who would be able to monitor a crowd closely enough to spot a drunk person causing no trouble. Local sports clubs simply do not have the resources to enforce that in any meaningful way, if, indeed, enforcement were even possible. For those reasons, I find the parts of clause 41 that are not already law relatively unenforceable.

I object to clause 42 for almost exactly the opposite reason. Clause 42 clearly makes the most arbitrary provision that it is possible to make. Although the intention behind the clause may be good — preventing the availability of missiles that could be thrown and cause injury to persons — it again appears to me to be largely unnecessary and highly overprescriptive. It is an odd situation when the Assembly is spending its time developing a clause, the only effect of which will be to criminalise entirely non-criminal behaviour. There is no mention in the clause of any intention to use the container as a missile or weapon and no mention of offenders having previously been involved in missile throwing. Even the criminalised article, the drinks container, poses problems in the clause. I suggest that there are very few containers that are capable of holding any volume of liquid that are not also capable of:

"causing injury to a person struck by it,".

As it stands, clause 42 is clumsy, lumbering and far-reaching and cannot be allowed to stand. No harm is caused at a football match by a person possessing a drinks container. When I go to football matches, I have to remove the top from Coca-Cola bottles and so on. The intention may be to take away all items that a person could use as missiles to injure others, but the result would be that practically nothing could be brought into a sporting venue. It is clear that the clause criminalises non-criminal behaviour. It is arbitrary in the extreme, and, if it were enacted, carrying a can of Coke into a stadium would leave someone open to receiving a larger fine than if they entered the ground in a drunk or intoxicated state. Clause 42 is simply not suitable.

10.45 am

I oppose clause 43 for three reasons: it could damage the good work that many sports clubs do in promoting what I would describe as responsible drinking at matches; it would encourage irresponsible drinking; and, at sporting events where drink is available to spectators while they watch matches, there have been no recorded incidents of any major drink-related trouble. Indeed, we can take the example of Ulster Rugby at Ravenhill, where alcohol is served to supporters who can drink on the promenade. That has been going on for many years, and that ground has a remarkable record of no drink-related trouble. That is probably down to good marshalling by the stewards and to the atmosphere of responsible drinking among those who wish to drink.

There is no point denying that many people wish to drink while they watch sporting events. If we were to impose a blanket ban, it would not only undo the good work that, for example, Ravenhill has done, but would deny other sports clubs the chance to follow its example. Although we may accept that the drunken state of some supporters contributes to some of the trouble at sporting events, the correct response is not simply to remove all drink from sporting events.

After all, some of the events that are worst for disorder do not sell drink at all. We should go into that issue in more depth. We should understand what the real cause of drunkenness at those matches is. The supporters involved in disorder drink excessively before they even arrive at the match. The reason that many of them do so is that they want to have a drink while watching the match, but there is none available at the ground. I do not believe that this clause will in any way solve that situation. Again, I think that Ulster Rugby has such a good record because it encourages responsible drinking. This clause would simply stop that good work and prevent other sporting organisations following that fine example.

For those reasons, I oppose clauses 41, 42 and 43.

Mr B McCrea: Already this morning, we have had an interesting exchange about the definition of sectarianism. I reiterate that, when I speak on the matter, it is because I am a Member of this legislative Assembly and I consider it my duty to put various questions during debates. Whether the matter has been discussed in Committee or not, we do not have to accept automatically what was said. There is a real issue to be discussed and a real point to be made. What disappoints me most is that, when somebody expresses a contrary point of view, the response is to denigrate and put down that individual as though, somehow, his or her contribution is not to be valued. To my mind, that is the essence of sectarianism. It deals not with the matter at hand but with who is speaking. I have to say to colleagues who spoke earlier that I find it deeply offensive when people suggest that I am sectarian.

Mr McDevitt: We should set the record straight on the basic point that the Bill does not seek to define sectarianism, as Mr McCrea suggests; it seeks to define sectarian chanting. It defines chanting very specifically. We came to the House to debate the definition of sectarian chanting. It is important that we have a debate around our ability to define that.

For the record, it is absolutely the right of every Member, at any stage or point of legislation, to express a view that they hold true. It is important to note and it is respectful to any Committee that has spent considerable time scrutinising the legislation that the issues that are being raised today in the House and were raised last night by the Ulster Unionist Party were not raised at Committee Stage. That should be acknowledged and noted.

Mr B McCrea: I am grateful for the intervention from Mr McDevitt. However, I refer him to his closing remarks in yesterday's Hansard. He said that this is the

> *"first step on this issue, and we should do that during the passage of this Bill." — [Official Report, Vol 62, No 2, p 176, col 1].*

The problem is that, once this issue is enshrined in legislation, it forms a template for other legislation.

Lord Empey: I am grateful to the Member for giving way. That is one of the issues about which I have concerns. Yesterday, Mr O'Dowd said:

> *"There may be some read-across to legislation in relation to parades that never made it to the Chamber, but the fact that we have managed to define sectarianism in legislation is welcome." — [Official Report, Vol 62, No 2, p169, col 1].*

Anybody who thinks that this is simply about chanting at matches — deplorable as that is — misunderstands. This will be seen as a model that will be transferred to other legislation. That is why it is important that we get it right.

I find it unfortunate that people have such arrogance as to think that they have some kind of monopoly on trying to prevent sectarianism. There is not a single Member who supports or encourages sectarianism or does not deplore it in all its forms. The question is how we define it in legal terms to prevent it in a way that does not collide with people's rights to have a view and political expression. If anybody listened to the argument about cuts, like me, they might recall some things being said about evil Tory cuts and how those people should be jailed and all that sort of thing.

Mr Givan: Sue us. Take us to court, then.

Lord Empey: The danger is that a definition that is not good will appear in other legislation. That is inevitable.

Mr B McCrea: I thank Lord Empey for his intervention. While that exchange was going on, a Member, in response to the comment about evil Tory cuts, said, "Take us to court, then". That is precisely the point that we are making.

Mr Givan: I am grateful to the Member for giving way. If I am at a football match, the last thing that I will be chanting from the stands will be, "Tory cuts, Tory cuts". We need to instil a little bit of context for what we are talking about, which is regulated matches.

I appreciate what has been said about the read-across to other legislation. However, in this Bill, we are talking about sporting fixtures. I have rarely experienced sectarianism or political opinion in the chanting at a football match. However, on the rare occasions on which I have, it put me off bringing any other member of my family to those sporting fixtures. If this is about making sporting fixtures family-friendly, we need to make it crystal clear that that should not be tolerated. On the very rare occasion on which it happens, we should be very clear about it. However, let us be clear: we are talking about sporting fixtures, not across the piece.

Mr B McCrea: I am grateful for the Member's intervention. It gives me the opportunity to make clear that the point that Lord Empey raised — a point that Mr Givan appears to have missed — is that this is the first time that such a definition will be ensconced in legislation. I am surprised that the Member does not understand the implications —

Lord Morrow: Will the Member give way?

Mr B McCrea: If the Member lets me finish my point, I will then let him in.

I am surprised that Mr Givan does not understand the implications of setting in statute a definition that may then be used in other legislation, such as that applying to parading. I appear to have lost the Member's attention, despite the fact that I am trying to address the issue that he raised. Obviously, what I have to say is not sufficiently important for him to listen. Mr Speaker, it is difficult to make a contribution when Members are talking among themselves, so I look to you for support.

Mr Speaker: Order. Allow the Member to be heard in silence.

Mr B McCrea: Mr Speaker, I am, of course, grateful for your support. *[Interruption.]*

Mr Speaker: Order.

Mr B McCrea: When issues are raised, it is incumbent on Members to debate them properly and meaningfully. This is a matter of fundamental importance. Members sometimes try to twist words that have been said and misquote them to their own advantage. Therefore, I take issue with the Alliance Party Members who said that I had suggested that we should have an upper House. Let me be clear about what I said — Members are laughing, but I am happy to take an intervention — when people have a second chance to look at legislation, sometimes they review and revise it. When race hatred legislation came before the House of Lords, it was rejected overwhelmingly — by 266 votes to 111 — in a cross-party vote that included Liberal Democrat, Labour and Conservative Members.

The Minister of Justice (Mr Ford): I thank the Member for giving way. I wonder, Mr Speaker, whether you might remind him that some of us have been operating here under the principle of devolution for 12 years. What may or may not happen in an English context in the House of Lords is utterly irrelevant. We have an entirely different system, which puts much greater emphasis on revising Bills at Committee Stage. Consequently, in ensuring that all views are taken into account, this institution is much more democratic than the House of Lords. Of course, the Ulster Unionist Party is not having much success in getting its members into the House of Commons. Rather than refer to what happened in England, perhaps the Member should look at the opportunities for devolution here.

Mr B McCrea: I am interested to hear that. When Members have to resort to personal abuse or to attacks on the character of individuals or a party, I always think that they lack the capability and, indeed, the integrity to ask for a proper debate on the issue. I am happy to debate the issue, but I do not need a lecture. [Interruption.]

Mr Speaker: Order.

Mr Poots: Will the Member give way?

Mr Speaker: Order.

Mr B McCrea: I indicated that I would give way to Lord Morrow. If the moment has passed, I apologise; I did not mean to go on.

Lord Morrow: I thank the Member for giving way, even though he does so belatedly. Anyway, it is better late than never. There is some confusion about what he said, so perhaps he will shed

some light on the matter. Is Mr McCrea telling us that he has no problem with the wording on sectarianism if it is applied strictly to sporting events? Am I right to assume that he will go on to say that he is concerned about creeping paralysis and that the Bill will be the monitor for future legislation? I want him to address that matter specifically. Is he saying that, if the wording refers to sporting events alone, which it does, he will be quite happy with it?

11.00 am

Mr B McCrea: I am grateful, in part, to Lord Morrow for his intervention. I will deal with the point with which I agree and then with the point on which he challenged me. My concern is that, if we place a definition in legislation, it will be used as a template for other legislation. Quite rightly, people will question how sectarianism on a football pitch can be different from sectarianism in a social club, in an Assembly, at a parade or at a trade union gathering. As Lord Empey pointed out, that is one of the conclusions that Mr O'Dowd drew. Also, when I put my concern to Mr McDevitt yesterday evening, he responded on the record in a way that did not address the issue, which is that of read-across.

If Lord Morrow were to ask me whether this is down to a specific narrow definition and only applies at, for example, football pitches, one could also ask whether it should also apply to cricket pitches. When we talk about sectarianism —

The Chairperson of the Committee for Justice (Lord Morrow): Will the Member give way?

Mr B McCrea: I will finish the point, and then I will give way. When we talk about sectarianism, I wonder whether it is wrong to chant but OK to whisper. Is it OK for an individual to express sectarian views? I do not think that it is. Sectarianism should be stamped out by individual action. We need to think clearly about the fact that legislation is not always effective in areas such as this. So my answer, having considered the matter — I am happy to consider it further and quite happy to take the intervention — is that there are real dangers in setting this precedent because, whether we like it or not, there will be read-across.

The Chairperson of the Committee for Justice: I am grateful to the Member for giving way. He said that I referred to a football match; I did not. He went on to ask why the offence should not apply at a cricket ground, but that is precisely what I said. I said "sporting events". We can check Hansard to see whether that is what I said.

Mr B McCrea: I am happy to take Lord Morrow's definition. I was merely using it —

Mr McDevitt: Will the Member give way?

Mr B McCrea: I do, at least, have to finish a sentence before I give way. I am just dealing with Lord Morrow's point first. For the record, I am quite happy to accept Lord Morrow's definition. I used that example simply to ask whether this will take us forward. I am concerned about read-across should this legislation form a template. That would be really dangerous, because it could get to the stage where it included trade union gatherings or parades or protests at which people shout out. We see people on the television at, for example, anti-war marches in London. They chant, they make their positions known, and some of what they say is emotive. When making legislation, we have to be careful of the danger of unintended consequences. I warn Members that it is no trivial matter that the political institutions in the United Kingdom revoked that law for that reason. I will come back to that point, but I will give way to Conall McDevitt first.

Mr McDevitt: I thank Mr McCrea for giving way. At this stage in the debate, it is important to demark what we are talking about, which is chanting, as defined in clause 38:

> *"the repeated uttering of any words or sounds (whether alone or in concert with one or more others)."*

We need to consider the context of that chanting taking place at what the Bill describes as a "regulated match". Colleagues can read the definition of a regulated match in paragraphs 3 to 9 of schedule 3. It might be helpful to put that definition on the record in Hansard.

They are: an IFA Premiership match, an IFA Championship game, an FAI Premier League game or an FAI First Division game. The clause also applies to a series of games that fall under some other association football rules; Gaelic games that fall under a certain category, which we debated at Committee; and rugby union games that take place at a ground that is designated under Part 2 of the Safety of Sports

Grounds (Northern Ireland) Order 2006. That is what the Bill deals with. It does not deal with a trade union rally, a political conference or the affairs of this House or any other elected Assembly.

Mr B McCrea: I understand the point that the Member is trying to make, but I disagree with it. There is an issue: once a definition of sectarianism that includes political opinion is considered and set in legislation, it is an assault on free speech and democracy. I am very surprised to hear the leader of the Alliance Party say that what the House of Lords has to say has no relevance, because there are issues on which that institution does indeed have an impact on us. I am surprised —

Mr O'Dowd: Will the Member give way?

Mr B McCrea: I will give way in a moment. I am surprised that, when the leader of the Alliance Party looks at the Supreme Court ruling, which is germane to other things that we are looking at in the Bill, he does not recognise the connection between the two. There are issues on which those things should be taken into consideration. We should learn from the lessons of others.

It was the Liberal Democrats, a party with which his party is sometimes associated, that led the overturning of that Bill. It was the Liberal Democrats that said that the Bill was unsafe and took out the clauses. We are talking about the removal of the words "abusive" and "insulting". The definition that that party was arguing about is almost word for word exactly the definition that we are presented with here, and there was good reason for the House of Lords to reject that provision. I am particularly supportive that it inserted words about freedom of speech, because that is at the very core of democracy.

There is a famous saying: I may not agree with what you say but I defend to the end your right to say it. I concur with that, and I am also fundamentally opposed to sectarianism. There are ways of dealing with that, and I want to deal with it, but this is not the way.

Mr O'Dowd: I am reluctant to intervene, because it is sometimes unfair to the Member and to other Members. I stand by my comments of last night: I welcome the intention to define sectarianism on the statute books in these circumstances. I and my party will look at each piece of legislation as it comes through the Chamber, and we will do so in the context of what that legislation is to be used for. I am not au fait or expert on the legislation to which the Member refers continually and which was going through the English House of Lords, but I am aware that it was legislation for wider societal use and was set in the context of everyday life and community infrastructure, rather than being set around the specific issue of regulated football matches.

The Member contradicted himself. Earlier, he said that sectarianism should not even be whispered, never mind chanted, and it should never be spoken. The Member said that the legislation that was going through the House of Lords is about conversational contributions, not chanting, political demonstrations, football matches or anything else. It was about day-to-day conversational use. If the Member agrees that sectarianism should never be whispered or spoken, he should agree with the legislation that was going through the House of Lords rather than opposing it. Finally, wearing a badge on your lapel proves only one thing: that you have a badge on your lapel.

Mr B McCrea: The last bit of logic is remarkable in its simplicity, because that is not the case.

When you wear a badge or an emblem of any sort, it is a declaration of intent. It —

Mr Speaker: Order. I am slightly worried that we are moving away from the amendments that we should be discussing. A Member said in an earlier intervention that he wanted to try to bring clarity to the debate. Let us do that, and let us get back to the amendments.

Mr B McCrea: I am referring specifically to amendment Nos 18, 19, and, particularly, amendment No 20. My argument to the Assembly is about free speech; it is about the dangers of read-across of this legislation to other legislation. My argument is that one must be careful that one does not legislate for a very narrow set of circumstances, which are then taken to other circumstances because, after all, a definition has been made. Mr Speaker, I am in danger of trying your temper, but Mr Poots has indicated that he wishes to intervene, and it would be remiss of me not to let him do so.

Mr Poots: I thank the Member for giving way. He is very good and shows due courtesy to the House in that respect. There are a couple

of points to be made. First, with regard to the issue about the House of Lords and a second opportunity to go through legislation, we had an opportunity to go through the legislation at Committee Stage. Perhaps the Member would like to check what line, if any, his party members took on the issue, or if they even attended the Committee when it was discussed. He might not be particularly impressed if he looks at their attendance record at the Committee.

Secondly, I think that he is going down a very dangerous line. As chairperson of the Policing Board's human rights and professional standards committee, he should recognise that this is not setting a precedent. It is already in legislation. For example, if someone assaults a person and uses sectarian abuse while they do so, that is a greater crime. Therefore, he should recognise that this is not setting a precedent.

Thirdly, the Ulster Unionist Party should be careful about the route that it is taking and that it is not perceived today to be a party that is the mouthpiece of bigots and of people who will engage in sectarian or racial abuse. That would be a very foolish line to take, and that party would find itself with a very small voter base if it were to follow that line.

Mr B McCrea: I am glad that I found the time to take the intervention from Mr Poots. Helpful advice is always welcome. The Member knows me well. He has cited my record as chairperson of the human rights and professional standards committee. He knows that I argue on these points, and I trust that I can rely on him to put the record straight for anybody who thinks that we somehow support bigots. That is not the case. We want to make it absolutely clear that we are against sectarianism, as Lord Empey said, in all shapes and forms, and I do not think that any Member would say otherwise. I wonder whether the Member for Lagan Valley will agree with me that when Mr O'Dowd refers to the English House of Lords, he might actually be incorrect because it is the British House of Lords. However, that could be considered a political opinion. When we deal with these issues, we have to be very careful —

Lord Empey: I must say that I found Mr Poots's intervention slightly less agreeable than perhaps my colleague. There is unanimity in the House that sectarianism is a cancer, particularly in sport and throughout a whole range of other activities. However, it is not unique. Sadly, it happens but is given different labels in England. Whether there are racial or other motivations, the same principles lie behind it.

Mr Givan referred to the fact that he and others want to see families attending sporting events, but they are often put off by the behaviour of particular individuals who attend those events. However, the phrase "political opinion" has been used.

That is an extremely broad definition. Political opinion covers a host of issues that varies from time to time. Are we wise to have such a broad definition, which includes political opinion, when we know that the risk, over time, is of the definition becoming so wide that people could see it as political correctness gone mad? There is a lot of reaction to that in the community.

11.15 am

Everyone agrees that there is a problem, particularly as it applies to sport, and everyone agrees that it has to be dealt with, which is progress. There is no argument against that in the Chamber. We are arguing about the narrow issue of the precise definition. The amendment goes one step further than I am comfortable with. The issue is that straying into the area of political opinion takes us into extremely dangerous territory. People can be offended by an opinion, but the issue is whether somebody feels threatened by the behaviour of another person. That is where the line is crossed.

The expression of a political opinion, even on a placard, might be offensive to any number of us in the House, but are we saying that that should be against the law? Where is the line to be drawn? I fear that if we go to that extent without being absolutely clear about what we are doing, we will take it one step too far. We are close to making real progress. Let us not take the one step too far that would lead us into all sorts of areas of contention. I thank the honourable Member for giving way.

Mr B McCrea: I thank Lord Empey for his considered intervention. I want to make it clear and reassure him that although I welcomed Mr Poots's intervention, I do not agree with the points that he made. However, it is worth making the point that when someone raises an issue in a reasonable and polite manner, it is right to respond in a like manner. That is all that I was saying. Mr Poots raised some issues that I want to deal with. I am in complete agreement

with Lord Empey that the issues raised are really serious.

One issue that concerns me about the way in which the debate is developing is that people are getting into their trenches and saying, "He said that you said", and all of that. We do not really have a proper debate in this place; we do not really consider the long-term implications.

Mr McCartney: Will the Member give way?

Mr B McCrea: I want to make my point, if the Member does not mind.

We do not listen clearly to what people say. It is unfortunate that when people who have a record of positive debate urge caution, they are ridiculed or put down, but Members should listen to what has to be said. There are genuine reasons for opposition to the amendment. It is not a party political issue, nor have I sought to make it one. I sought to point out that in our haste to do good, we may, sometimes, do wrong by virtue of omission. The point was raised about the amount of work that some people —

Mr McCartney: Will the Member give way?

Mr B McCrea: I will give way. I just want to finish my point.

It goes back to the issue of our consideration of the Bill and all legislation. It cannot escape the notice of the Chamber that legislation has been considered at 1.00 am and 2.30 am, and that, now, for the first time, the Assembly sits on a Wednesday. When we look at the amount of work that has gone through Committees, it appears that we have got to the stage where there is reluctance to consider the details. I was surprised —

Mr McCartney: Will the Member give way?

Mr B McCrea: I will give way when I am ready. I have acknowledged that the Member wants to speak. I will let him speak.

In no way do I castigate anybody for the work that has been put forward. I simply recognise that when things are rushed, there is always the danger that mistakes will have been made, which could result in the law of unintended consequences. Of course, matters can be considered in Committee. However, other information will always come along. That is the very purpose of Consideration Stage.

Mr McCartney: Will the Member give way?

Mr B McCrea: Before I give way, I have to say to those Members that we have to be really careful, because other issues that you hold particularly dear will be affected by this. Think carefully before you have a knee-jerk reaction and say that this is the right way forward. Any definition of sectarianism that includes "political opinion" is, in my opinion, extremely dangerous. We do not want to be setting any form of precedent whatsoever. I will give way now.

Mr McCartney: You say that there has not been a proper debate or that there should be a proper debate. I agree with you. However, I was interested to hear you speak on behalf of the Committee this morning on Radio Ulster. You certainly did not ask for my opinion. You said that the Committee was overwhelmed with papers. The papers are there to inform us and to assist us in having an informed debate. I heard you objecting on behalf of the Committee, because it had to sit one night until 7.30 pm, but you certainly did not ask for my opinion. I think that the public expect us to sit for as long as it takes, so that we can have informed debate when we come to the House. The public expect that to happen, rather than us being like you and coming in at a late stage and accusing the rest of us of not taking part in a proper debate.

Yesterday, I pointed out that there were 16 Committee meetings at which the Bill was discussed. Lord Empey and David McNarry were there; you should ask them whether they feel that we did this in a detailed and proper way before you go on Radio Ulster and speak on behalf of the rest of the Committee.

Mr Speaker: Order. I am conscious that Members should, as far as possible, direct their remarks through the Chair. There is another issue about interventions: Members will know that the Member who is on their feet has the control of the House. They decide whether they want to take an intervention. The good practice of interventions in other places is that they are short, focused and to the point. The interventions that we are hearing from Members are almost like statements. We need to stop that. I refer Members to what goes on in other places. The good practice of interventions is that they are sharp and focused.

Mr B McCrea: I thank the Speaker for his clarification on that point. I will return to the central point. It is absolutely the right of any

citizen or any Member to express an opinion that they think is helpful. That is what I was doing. When I look at the challenges facing the legislative programme here, I have a conclusion to make. It may not be shared with others, but I have a conclusion about the detail that has gone through.

I noted that, in his intervention, Mr O'Dowd said that he was unaware of the issues relating to the House of Lords ruling. At least, I think that that was the point that he was making. Perhaps he should have been aware of that. If he had had a chance to look at that, he would, perhaps, have taken a different view. Certainly, other Members might have looked at that.

We have this issue. I fear that we are trying to push through legislation, which, when we have a chance to reflect on it, we may regret. Surely it is right to bring that to your attention. I have not sought to take cheap shots about what has gone on with these issues. I have said that there are dangers. You, as responsible elected representatives, can listen to what we are saying and say that you do not agree with us. That is your democratic and legitimate prerogative. However, I am telling you here and now that there is a problem with a definition of sectarianism that includes "political opinion". It will come to haunt us; we will rue the day that we put that in. It will come up in other legislation. It will be a problem, because it will be a hook that we cannot get off. I think that it will destroy our attempts to defeat sectarianism.

Lord Empey made the point that we are making huge progress and said that there are things that we want to do. I commend the sporting organisations that have led the way in doing all of that. I support their activity.

Mr McCallister: I am grateful to my colleague for giving way. I pay tribute to him for the work that he has done on the Policing Board. No one in the House could challenge Mr McCrea on the work that he has done and on where he has been to meet people and to challenge sectarianism. Our view is very much —

Mr Speaker: Order. I insist that even interventions must be on the subject matter that is being debated on the Floor. We need to get Members back to the amendments.

Mr McCallister: Mr Speaker, that is what I was coming to by saying that Mr McCrea and his support for political opinion is absolutely key to our opposition, and it is key that we continue to win the debate on this issue, because it sets a very dangerous precedent.

Mr B McCrea: I thank the Member. It is always useful to explain to people that there are others who share a view. I do not want people to misunderstand the fact that we have some interaction — I have interaction with many Members in the Chamber, from all sides; I think that would be generally accepted.

I am actually making an appeal to Members. This is not about making a statement and then running away from it. I am making a genuine appeal to Members to listen to what has been said and reach a considered opinion — to do what you are here to do in the Chamber at this time. Consider whether this is unsafe in the wider circumstances. The argument supporting my position is that other legislative bodies have considered similar legislation and, for the reasons that I have outlined, have rejected that particular point.

It is imperative that Members understand the potential for difficulties that including political opinion as a form of sectarianism would present to them, their constituencies and communities. It is not something that they want to do. It is genuinely dangerous. It is not advancing the argument about anti-sectarianism; it is actually taking the argument about sectarianism into a cul-de-sac or along a road down which we do not want to go. We should respect people's opinions and say that the original clause in the Bill — which is section 75, which is approved, and which is the legislative standard — is acceptable. That is right and proper.

If, at some other stage, Members want to bring another Bill forward that deals with sectarianism in its wider sense, and not just in sport, we should have that debate in the open and in front of the cameras. Let people say what they want to say: that is the right way to do it. It is not right to do it with three or four words in a Bill with a significant number of clauses and amendments. There was not proper scrutiny or debate. I do not feel that I had a proper debate, and that is why I am on my feet now.

Mr I McCrea: I thank the Member for giving way and apologise for not being in the Chamber for his full speech. He has gone through the issues and, as he said, he has a right to his opinion, and no doubt all of us have the same right. As he is not a member of the Justice

Committee, will he advise the House how his party colleagues on the Committee voted on the clause in respect of the critical issue that he has been explaining?

Mr McCartney: I just want to ask a question, through the Chair —

Mr Speaker: Order. I would prefer if the Member would answer the first question, and then he can give way to Mr McCartney.

Mr B McCrea: I will take direction from you, Mr Speaker. I understand the point that Mr McCrea is making, but surely it is right and proper, when a Committee has gone through its deliberations, and legislation then comes to Consideration Stage here, that we can review it, change it or have a debate among colleagues. If a Committee makes a particular decision, is the Member saying that that decision is automatic and that the rest of us cannot change it or have a different view? Surely that is the basis for this Chamber.

11.30 am

It is true that I did not get a chance to have a look at this issue when it came through the Committee. This is my opportunity, and I do it, through you, Mr Speaker, in the proper manner and with the experience that I have gained on the Policing Board and in other institutions, and I am putting forward a point of view as reasonably as I can.

I understand and accept the Member's point, but I am now putting a counter-argument. I have looked at the issue and had time to reflect and consider the position, and I suspect that, were the Member in a position to have a look at that as well, he and others would have concern if this legislation were read across — not that it will be — to other issues such as trade union protest, parades or gatherings of any sort. There would be some danger if that were to happen because people would say, "Hold on a tick, surely I am allowed to express an opinion". You do not have to agree with someone's opinion, but they are allowed to express it.

Mr Elliott: As recently as the past couple of weeks, during Consideration Stage of the animal welfare legislation, the Agriculture Committee had agreed a number of amendments, but a particular party, a member of which is Chairperson of that Committee, then tabled separate amendments that were opposite to the Committee's stance.

Mr B McCrea: That is germane to my point. Parties in Committee expressed no opinion on any clauses. They reserved their position on all issues. They did not vote or give any indication of their position, yet they tabled amendments to the Bill. That is entirely their right. They do not have to express an opinion or vote. That is part of the process and exactly how it is. So, we have already debated the amendments that came from the party opposite. In fact, Mr McCartney tabled those amendments.

Mr McCartney: First, it is incorrect to say that we did not express an opinion on our rationale for tabling amendments. Any person who read the Hansard report, the Committee reports or attended the meetings would confirm that. Perhaps the Member could consult his party colleagues on that. We outlined clearly to the Committee why we would be tabling amendments.

Secondly, the Member said that there was poor scrutiny of the Bill. That is unfair to Committee members. Any person can come to a Consideration Stage and say that there was no proper scrutiny. There was proper scrutiny of the Bill. You are right to say that the scrutiny needs to be reviewed, but saying that there was not proper scrutiny undermines even your own Committee members.

Mr B McCrea: I will make it clear, Mr Speaker: I am not in being in any way pejorative about the Committee members.

Mr Poots: On a point of order, Mr Speaker. Are we discussing the amendments to the Bill or technical issues about the procedures of the House? We have fallen away into discussing the procedures of the House as opposed to the Bill.

Mr Speaker: The Member will know that I have been trying to guide Members back to the amendments, and I am afraid that we may now be straying into the process that the Committee used to gather whatever evidence it needed. Once again, I encourage Members to please get back to the amendments that we should be discussing.

Mr B McCrea: Mr Speaker, I understand the direction that you have given, and I am trying my level best to deal with the issues. However, when Members such as Mr McCrea bring up

an issue, it seems churlish not to respond. However, I take your direction, and I am trying to deal with this issue.

Let me just finish. I will be very brief —

Some Members: Hear, hear.

Mr McCallister: That is chanting.

Mr B McCrea: Yes, it is interesting to ask whether that is chanting.

Let me just finish on the issue about the amendments that were brought forward and the deliberations. I am not aware whether Sinn Féin voted for any of the amendments. Was any Division called, and did they vote for any of them? Secondly, did they bring any of the amendments that they have proposed on the Floor of the House to the House —

Mr Speaker: Order. Once again, we need to be careful that we do not start to stray into other amendments. We are dealing only with the amendments that are before us at this minute in time.

So, let us be very careful. I am slightly worried that a Member is almost trying to extract information from other Members about what they did in Committee. We need to be very careful about what we are saying. A Member who makes an intervention might want to stray from the subject, but the Member who has the Floor should not be tempted to do so.

Mr B McCrea: I assure you, Mr Speaker, that I will no longer be tempted. We have had a pretty fair exposition of the point, so I will take no further interventions, sad as that may be for some Members.

When people make an argument about the process that I am going through and why I am considering this point now, I say that it is part of the democratic process. It is right to express political opinion in here, and it is right to take on information. We have looked at the amendments and are unhappy with their implications. We think that they are unsafe and unwise. When people have had a chance to reflect on that, they will agree with us.

I do not want to make my argument into a party political position; I want people to think carefully about it. This is our job, and the amendment before us is unsafe and unwise. It will not advance the causes that people want it to. It does not support the stamping out of sectarianism, which we all want to see.

Although I am happy to take the slings and arrows of political debate here, I want people, the Whips in particular, to think really carefully about what I am saying. I ask them most respectfully to reject amendment Nos 18, 19 and 20. We ask the House to reject those amendments in favour of the clause as it stands. I also ask them to reject amendment Nos 24, 25 and 26 for the same reasons.

This is a serious proposal; it is not the normal knockabout in politics. This is about legislation that will affect this place for generations, and we should not sleepwalk into it. We should debate issues properly and on their own, instead of slipping them into a small part of a Bill. On that note, I rest my case.

Mr Speaker: Before I call Dr Stephen Farry, I want to correct the Member. I am not saying that Members should not take interventions; I am trying to say that, if an intervention goes slightly outside the business that we are discussing, the Member who has the Floor should not be tempted to stray from the business of the House.

Dr Farry: I am conscious that we are into Wednesday so, in trying to avoid going into Thursday, I will try to make my remarks once rather than repeating them endlessly.

It is important to bear in mind the context of the amendments that we are discussing. They relate to spectator sports and control at certain regulated events and no more than that. There is a clear rationale behind the amendments: safety at sports grounds for spectators, trying to prevent problems with crowd control and trying to preserve a neutral and welcoming venue where people can go, as individuals or with their friends and families, and not feel intimidated or be put off enjoying the sporting success that we can have in Northern Ireland.

I am bewildered by the molehill that is being made over the amendments on sectarian chanting and by the blind alley that some people seem intent on going down. Having listened to Basil McCrea for past 40 minutes going round and round in a small circle, it is important to make a couple of points clear. Basil McCrea may well feel denigrated by people attacking him over what he has said, but he has denigrated the Justice Committee and the House in his

comments on the way that the amendments have been handled.

In addition to the points that have been made already, Mr McCrea was on the radio this morning and made the point that the amendments had been sprung on people at the last minute. He said that that was somehow unfair because the Committee knew what was happening but average Members only received the amendments at the last minute and said that that was somehow inappropriate and unusual. However, that is what happens with every piece of legislation: the Marshalled List of amendments is published on the Friday before the debate, and that is when every other Member receives it. Therefore, going on the radio to say that there is some sort of conspiracy does a great injustice to the processes of the Assembly.

Mr McDevitt: I am grateful to Mr Farry for giving way. Importantly, this question was raised in Committee, in the pre-legislation stage and, to my memory, on the Floor of the House at practically every Question Time since the Minister of Justice took office. I refer Members to paragraph 402 on page 48 of the Committee's report on the Bill, which indicates that the Committee for Culture, Arts and Leisure also considered the question. Therefore, it has been subjected to more than the usual level of scrutiny, not just by one Committee but by two.

Dr Farry: I concur. We heard comments about the Bill being a dog's breakfast, a tick-box exercise and a rushed job. However, the Bill was tabled properly through the Executive in a timely manner, it has had the proper level of scrutiny and there has been public consultation on virtually every aspect of it. This has been done through all the proper procedures. The issues have been around in Northern Ireland for some time. Indeed, spectator sports control stuff was subject to a debate in the Assembly in 2007, and legislation equivalent to what we are talking about introducing in Northern Ireland was enacted in the rest of the UK in 1991 and 1999. Therefore, we are playing catch-up.

Mr Poots: I thank Dr Farry for giving way. Does he agree with me that what is in the Bill is in agreement with the IFA's code of conduct, the good relations that that body has established and the Amalgamation of Official Northern Ireland Supporters Clubs? There is nothing there that conflicts. You can stand up at a football match and chant "Stand up for the Ulstermen", but, if you were to chant something about orange or republican scum, that would be covered by the Bill. The reality is that only the bigots would go against the Bill.

Dr Farry: Absolutely; that is the case. We have an almost surreal situation in the Chamber today, with what has become the moderate mainstream unionist party in Northern Ireland pointing out what is required to tackle sectarianism to what has become the extreme unionist party in Northern Ireland.

Mr B McCrea: On a point of order, Mr Speaker. Is it in order for the Member to describe us as an extreme party?

Mr Speaker: That is not a point of order. Let us move on.

Dr Farry: Mr McCrea may be entitled to reach his own conclusions on the way forward on the Bill and to vote in any way that he wishes. However, equally, the rest of us are entitled to draw our conclusions about what Mr McCrea and the Ulster Unionist Party are seeking to do. Mr O'Dowd hit the nail on the head. It is one thing to jump on every bandwagon, put a badge on, go along to events and say nice words about sectarianism. However, where it counts is coming in here and walking through the Lobbies to change the law and to back policy changes that will tackle sectarianism in Northern Ireland. It is one thing to talk the talk, but you have to walk the walk as well.

Mr B McCrea: I am not sure about the line that the Member has taken about it being one thing for someone to go to meetings, to speak kind words and do the right things or whatever it is. For the record, is the Member suggesting that I am, in any way, sectarian in my outlook? Is that a personal thing? Are you talking to me?

Dr Farry: I made a general comment about the comments that were made today on the Bill by spokespersons from the Ulster Unionist Party. I am perfectly happy to take declarations that people are not sectarian in their outlook at face value. However, I am also entitled to make a judgement of a party that says one thing and then does something entirely different when asked to put its rhetoric into reality.

11.45 am

I turn to the substance of what is in hand. We are in danger of confusing the issue

significantly. We have had a lot of talk about what has happened in the House of Lords over legislation on how far people can go in expressing an opinion that may be deemed to be racist or sectarian. It is a bizarre situation when someone such as Mr O'Dowd, given Sinn Féin's perspective, knows more about the substance of what was discussed in the House of Lords than the party with members in the House of Lords but none in the House of Commons.

The equivalent legislation that we are talking about enacting in Northern Ireland does not comprise aspects of the Equality Act 2010 or aspects of it that did not make the final cut. It is about translating the Football (Offences) Act 1991 and the Football (Offences and Disorders) Act 1999 into Northern Ireland law. We must be careful about understanding what we mean by sectarianism and racism on the one hand and having that reflected in law and, on the other hand, confusing the issue with regard to the application of those definitions of where it is permissible for people to say or not say things and to express or not express certain opinions. We are talking about a situation where comments of a sectarian nature, whether that covers religion or political opinion — I will come to that in a moment — are uttered in the context of a sporting event through chanting that is deemed to be threatening or intimidating and to pose the risk of violence. It is not about everyday use on the streets or people's opinions. We are trying to do this in a narrow, discrete area. It is not about interfering with people's right to freedom of speech. It is about controlling a situation where large numbers of people are out to enjoy a sporting event and consequences may arise from the inappropriate use of language at a neutral event that may risk spectator safety.

With regard to the precedent that may be set, we already have plenty of precedents in Northern Ireland. We have the hate crime legislation that includes sectarianism, and we have section 75, which was cited by the Ulster Unionist Party. However, that party decided not to go down that route in the amendment because it said that section 75 does not talk about political opinion. Section 75 does talk about political opinion; it is written in stone if anyone wants to check the matter.

We are extending something here that is already the norm in many other societies. For instance, it is deemed to be inappropriate to engage in racial chanting at a football match in Great Britain for very good reasons. At the same time — this is where the House of Lords intervened — if people want to hold or express an opinion, no matter how distasteful others might find it, it is their right to do so. That distinction has been made in Great Britain. The line is crossed when someone's opinion, even one that is very distasteful, incites hatred or violence. That is when the state has to intervene. Those selfsame principles would apply in Northern Ireland if we extended the amendment to the initial area of spectator sports.

The reason why sectarianism has to cover religion and political opinion is this: in other societies, the dividing line where tensions arise is around the racial issue and, to an extent, that is a problem in Northern Ireland as well, and it is right that that is covered in legislation. However, we must also reflect the fact that we have our own circumstances here where religious and political divisions are an issue. The notion that we would not want to go down that route, bearing in mind those issues, is bizarre.

We must also bear it in mind that, for many people, the conflict in Northern Ireland is not primarily about religion. It is not a matter of theology. Religion becomes a convenient badge for a difference of political opinion. Even in this place, we are divided between unionist and nationalist, although the Alliance Party, of course, is cross-community in its outlook. It is wise to reflect the particular circumstances of Northern Ireland.

The notion that this is somehow going to be extended to cover legitimate expressions of political opinion is a total red herring. It will not interfere with anyone's right to express an opinion in here, with voters' right to express an opinion or with anyone's right to organise a rally to express an opinion. This legislation is purely about spectator sports control. There are existing measures to allow intervention when expressions of opinion cross the line into threatening violence, intimidation or disorder. Let us be clear and focused. This is a discrete piece of legislation, focused on what happens with spectator sports control at certain regulated matches.

Mr Givan: I am grateful to the Member for giving way. He, like me, will have listened intently to

contributions from the Ulster Unionist Party on this issue. Perhaps the Minister has also listened to those. This is the report in which all the evidence is gathered. In the interests of facilitating the Ulster Unionist Party — it claims not to have had sufficient time to scrutinise the report — the Minister could decide not to move that amendment. That would be a matter for the Minister. It is an option, if they wished him to do that. It may help them out.

Dr Farry: This has been discussed at length in Committee. Members were acutely aware of it in Committee and were poised to discuss and scrutinise it in great detail. It is supported by all the interest groups across society, including the clubs. There were no objections made in Committee. I understand that the amendments have the backing of the Executive which, last time I checked, still included two members of the Ulster Unionist Party. Although that party is entitled to come along here today and raise objections — we will draw our own conclusions from that — we as a society do not need to hold up progressive and necessary legislation just to meet the speed of the slow learners. It is not just slow learners who have been unable to keep up, but slow learners who misrepresent the process that we have been down.

I want to move on and discuss the other amendments that are causing —

Mr K Robinson: On a point of order, Mr Speaker. Is it correct for a Member to refer to a whole group of people as "slow learners" in what I take to be a very offensive manner? I speak as a former schoolteacher.

Mr Speaker: I take on board what the Member has said. Let us all moderate our language and be mature on these issues.

Mr Poots: Will the Member give way?

Dr Farry: I will.

Mr Poots: The Ulster Unionists may not be slow learners, but perhaps they are slow readers. Some 1,400 pages of material were gathered in Committee. For a Member to say that the matter has not been adequately discussed, when 1,400 pages of material identify the discussion and it is fairly clear that —

Mr Speaker: Order. Again, I remind all Members to be of good temper. Let us moderate our language.

Dr Farry: Thank you, Mr Speaker. Points have been well made, and clearly everyone in the Chamber understands what is happening.

It is important that we pursue clauses 41, 42 and 43, because the misuse and abuse of alcohol at sporting events can contribute to safety problems and crowd issues and potentially undermine the family atmosphere at games. I do not suggest that everyone who comes along and wants to have a drink at a sporting event is intent on causing trouble or even prone to doing so. However, we must recognise that we have situations where we have a lot of people in a confined space for a discrete period of time and there are dangers in that. No one is seeking to interfere with the enjoyment of those in wider society. What is meant by someone being drunk is easy to find elsewhere in legal practice, based on existing legislation.

With respect to missiles, I was slightly bewildered by the comments made by Lord Browne. He said that a sealed container is not necessarily a problem and that there is little difference between an empty container and one that is sealed. There is a significant weight difference between a full can of Coke or lager and an empty can. The fact that drinks at events are already served in plastic cups as opposed to glasses shows that there are already moves in that direction. It is logical to ensure that what could be used as missiles are not readily available at sports events. It is important to bear that in mind. It is not an inconvenience for people to be asked to bring their drinks in open containers. That is common practice in many situations and is already a regular crowd control approach, even outside the context of the legislation. The drinking of alcohol while watching a match is addressed by the exemption granted to private viewing areas. Amendment No 46 addresses particular concerns around rugby, because valid points have been made about the different context of that sport.

I stress that the clauses have not been inserted in the Bill against the tide of public opinion. There have been significant moves in that direction in the House in recent years. I appreciate that John O'Dowd has had a certain change of heart since his commitment in a debate in 2007, but many other Members declared their full support at that stage for the extension of football offences and alcohol

control measures. When the motion was tabled by my party in 2007, Mr McNarry of the Ulster Unionist Party sought to amend it by calling for the measures to be extended beyond football to all sports:

> *"We cannot be proud to admit that laws are now required to deal with the yobs and louts who give sport a bad name".*

He added:

> *"To call for legislation is correct". — [Official Report, Bound Volume 23, p257, col 1].*

Lord Browne said:

> *"a principal difficulty for clubs here is that legislation making it an offence to carry drink on supporters' buses or bring alcohol onto the terraces applies in other areas of the United Kingdom,"*

but:

> *"The police here are powerless to act in such circumstances." — [Official Report, Bound Volume 23, p260, col 1]*

At that stage, Michelle McIlveen's call for the full extension of the law was supported by the then Minister of Culture, Arts and Leisure, Edwin Poots.

The situation, even today, is that the Health Minister, Michael McGimpsey, and the Minister with responsibility for sport, Nelson McCausland, fully support the current clauses. From their departmental perspectives, they deem them necessary.

Mr Poots: The Member mentioned me by name, and my position on the matter has not changed. I see a clear and fundamental difference between what goes on, for example, at Ulster rugby matches, where some drink is sold to people who drink moderately in the stands. I am concerned about the implications of clauses 42 and 43. I see a fundamental difference in clause 41, which deals with drunkenness. I do not think that any of us wants to see people in a state of drunkenness at sporting events. That is not conducive to the sport involved or to people who are around such people. I am very clear on that. My position remains unchanged since I was Culture, Arts and Leisure Minister.

Dr Farry: I thank the Member for his intervention. I acknowledge the consistency of his views, and I appreciate that the three sports we seek to regulate have different contexts. I hope that Members acknowledge that amendment No 46 is a genuine attempt to recognise that.

I will wind up by stressing that the amendments are wise. The existing three clauses that will potentially be opposed are necessary and are only about trying to regulate conduct at certain sporting events to ensure that they take place in a proper atmosphere that allows everyone to enjoy sporting success.

12.00 noon

The Chairperson of the Committee for Justice: I want to link the Member's remarks back to my colleague Mr Givan's suggestion. The Member talked about our holding up the legislation having listened to what Mr Givan had to say. Of course, we would not be holding up the legislation; Mr Givan made it clear that he was asking for the amendment to be reintroduced at Further Consideration Stage rather than being moved today. The reservations that have been expressed by some Members are to do with the word "political". That course of action would give the Committee an opportunity to look again at the issue at its meeting on Thursday. I ask the Minister to take that suggestion on board when he is making his final decision.

Dr Farry: I understand the spirit in which those remarks were made. No doubt the Minister has listened to them and will reflect on what has been said. From my own perspective —

Mr B McCrea: Will the Member give way?

Dr Farry: In a moment.

A week is a week, and it will be interesting to see whether Members are prepared to change their opinions. However, I am concerned that some Members seem intent on deliberately and consciously going down a blind alley, for whatever reason.

Mr B McCrea: Lord Morrow hit the nail on the head. The issue is about the word "political". We would appreciate some time in order to engage properly on the issue. If it makes any difference, I can assure the Member that we would like to engage and see whether we can find a satisfactory resolution to that matter.

Dr Farry: First, it would be interesting to hear the views of the Ulster Unionist members of the Committee for Justice. I want to emphasise that, when we talk about political opinion in

the context of sectarianism, it is clear in my mind that sectarianism covers religion and political opinion. In some senses, the division in Northern Ireland is more about politics than it is necessarily about religion, and the two are often interchangeable. If we go for a narrow definition based purely on religion, we could end up with a law of unintended consequences, a law that may not be sufficiently robust and which may just cover what are seen as purely religious comments, or comments that make a religious distinction between different types of individuals, whereas the politics, maybe, reflects the wider sense of division and the wider sensitivities that exist in this society. It is no accident that section 75 of the Northern Ireland Act 1998, which has already been misquoted by the Ulster Unionist Party, refers to both religious and political opinion. Even 12 years ago, people were clear about what the needs of society were in relation to this issue.

Lord Empey: I wish to thank the staff of the Committee for Justice for the help that they offered. I often felt that they were probably being paid on piece work, and not normal wages, because of the sheer volume of material that they produced. I asked the Clerk one day whether she could provide us with a forklift truck to carry the stuff about. They have worked very hard in a very short space of time. I also wish to thank the Minister's officials for the frequent grillings and other things that they endured over many weeks.

We would all concede that, in a Bill containing 108 clauses which covers such a broad range of issues that have been left alone for many years, and which is trying to catch up, there is a question in the back of our minds about whether we have got everything right and whether we have missed anything. I am quite sure that, in retrospect, issues will arise that will come into that category. There are other things that we know we have still to do. I think that the Minister acknowledged that by indicating in several answers that he gave during the Committee Stage that further legislation will be needed.

That said, and returning to the group 3 amendments, I support Lord Browne's general comments on clauses 41, 42 and 43. I believe that that is the right approach, and I endorse the sentiments that he expressed. Another Member made a point about soft drinks and commented on the risks that they could pose. The idea was brought forward that if a soft drink is frozen in its bottle, it becomes a lethal weapon. Members had perhaps not thought of that. So, all sorts of things have to be taken into account, and people are ingenious in finding ways around things.

The issue that we have been discussing this morning and, indeed, last night, is one of the most sensitive that we have to deal with. It is also one of the most obvious fault lines in our society. Sadly, there has been a tendency at times for those fault lines to become open and bare where sport is concerned. That is regrettable, and I think that we all have to commend the sporting authorities for the efforts that they are making to deal with that. Indeed, their Scottish counterparts made similar efforts, and they have had considerable success, so we have to learn from others' experiences. We must also commend and, where possible, financially support those organisations that are employing people to engage with the young when they are growing up and before they go to matches. Through that work, those young people are being encouraged to engage with the clubs. Sadly, however, we have seen examples where the behaviour of relatively senior people in clubs has been well below that which we would expect.

We could touch on a whole range of areas, some of which are highly sensitive. I do not mean to give offence, but let me give one example. If a sporting club is named after a terrorist, does that give offence when the loved ones of the people whom that person murdered drive past the door of the club every day? We have to realise that very sensitive issues are involved with this matter.

I must say that I was concerned by Minister Poots's comments. The implication in what he said was that if people were not in favour of this, they were bigots. That is not right, Mr Speaker, and you know that that is not right. Although a case could be argued, we must consider how we get a collective and unanimous view out to the community about how we will address this issue. It would be good if we could reach such a view.

Although Mr Givan is not in his place at the moment, I thank both him and Lord Morrow for their comments. We have expressed some concerns about the matter, and I do not think

that we are alone in the House in having some of those thoughts at the back of our minds.

Dr Farry said that, when we are dealing with religion and politics, the politics can sometimes be more aggressive than the religion. I understand that. However, we have to remember what we are trying to prevent, which is threatening behaviour at sporting events. Apart from being wrong in and of itself, in practice, such behaviour would drive people away from sports. Many sports urgently need the maximum number of people they can get through the gate to keep them going. Quite frankly, without state support, a lot of those organisations would be out the window, which would be most unfortunate.

We are all trying to make sports family friendly, and we are trying to encourage people to bring their families to events in freedom.

People will recall going to matches years ago and mixing with supporters from different clubs. A downside of the policing of some such events, which also happens across the water, is the tendency to segregate everybody; we have the red and blue sides of the field or whatever. People are corralled according to the team that they support, which, by definition, creates a problem. Inevitably getting all the supporters of one side together tends to build things up and they become vulnerable to incitement from people in their ranks. The atmosphere is different when supporters of opposing teams mix together to enjoy the occasion, which, to some extent, we still have in rugby. Sadly, today, that seems difficult to achieve.

Mr K Robinson: Is the Member aware that at Seaview, the home of Crusaders Football Club, despite being a Glentoran supporter, I am happy to sit among the Crusaders supporters in their stand? I wish that were the norm throughout the land. However, I have more than a passing feeling that, in the past, the powers that be decided that football supporters should be segregated. Therefore, instead of being able to go to Windsor Park with a Linfield supporting friend of mine, I was told that I had to go to a different section of the ground, from which, as it happens, I did not get as good a view of the match. Officialdom sometimes has unintended consequences.

Lord Empey: For a moment, I thought that the Member was really going to divide the House. Nevertheless, I take his point and I know that he has been a lifelong follower of sporting events. I do not know whether we will all get an open invitation from certain people to come to Seaview, but we will all have our bodyguards with us on the day we go.

The point that I am trying to make is that the unanimous view in the Chamber appears to be that we want to deal with this. I do not think that we are that far off. I find Lord Morrow and Mr Givan's suggestion helpful. Minister Poots has left, but to argue that if you are not for this you are a bigot is not worthy. I am sorry that the Minister is not in his place, but I took offence at that. I did not think that it was fair; it is the sort of simplistic argument that has undermined us for many years. I remember —

The Chairperson of the Committee for Justice: Will the Member give way?

Lord Empey: Yes.

The Chairperson of the Committee for Justice: I do not think that Minister Poots said what the Member cited. I think what he said was that, by opposing, you are standing up for the bigots. I do not think that he was calling Lord Empey and his colleagues bigots. I ask him to reflect on that.

Lord Empey: Fair enough, Lord Morrow, I will read the Official Report tomorrow.

Irrespective of that, it is still an unfortunate argument, because we are not standing up for any bigots. We want legislation. Not only that, we want to be able to support those in sport who are fighting the bigots. We commend them for the work that they have done, and they have had a degree of success given that the number of people engaged in this form of activity is relatively small. Sadly, like so many other things, they spoil events for everybody else. They are also an unwelcome bunch.

I do not know whether segregation has made matters worse, although during the Troubles, that happened in the same way as our community became segregated: 90% of us now live in areas of one tradition or another. When I grew up in this city, there used to be what were termed mixed areas. They have shrunk. From experience of your own city, Mr Speaker, you know better than anybody what has happened. That change has been reflected, so we are all to blame in a sense. It is not possible to simply pick on sport. Nevertheless, sport and what

happens on the terraces reflect the society in which people live.

The challenge that we face is to do something to effect a change in that without colliding with people's freedoms and their right to hold a view. Although some views are detestable in many respects, nevertheless, society has to tolerate them.

12.15 pm

My anxiety about these clauses is that, first, we want to ensure that there is a positive development and change, and, secondly, we want to ensure that a precedent is not set. There is no point in saying that this issue will be confined to sport. Mr Speaker, as you well know, when precedents get on to the statute book, they migrate. That is inevitable. Therefore, the issue is not one-dimensional; it is whether we can have something such as this in legislation. The provision was not in the Bill as drafted; it is to be injected into it as an amendment. Therefore, when the Bill was drafted, people felt that the model outlined in clause 38 was fine and, indeed, was a major step forward; which, of course, it is. However, people then felt that they had to take it one step further, albeit for a perfectly legitimate reason.

Mr O'Dowd: I have listened to the Member's contribution with interest. If the discussion is now about whether political belief will be covered by the clause, perhaps the Chamber is the ideal place to look to for an example. Assembly Members have to be respectful towards one another, and we cannot lambaste one another over political beliefs. If we did so, the Speaker would intervene, and, in the most extreme circumstances, he would — with, I am sure, great reluctance — eject an elected representative from the Chamber and the Building for an entire day. Indeed, there is talk that, if that does not work, a Member may not be heard from in the Chamber for a considerable time. That is an example of an extreme measure that can be taken against an elected representative. Therefore, if we cannot offend one another in the Chamber, surely it is only right and proper that measures be taken against someone who is involved in offensive behaviour that insults someone else's political beliefs in a sporting ground.

Lord Empey: I suppose that, to some extent, that is the argument that we need to have. What is the envelope within which we can deal with the issue? It is perfectly clear that we could say that any reference to politics or religion of any description should be banned or that it is politically incorrect not to do this or that. Of course, if nobody referred to those matters, that would solve all the problems. However, that is not a realistic possibility in the world in which we live. Therefore, the question is this: where is the line drawn?

Clause 38 was drafted, and people reconsidered it and came up with an amendment, which is part of the normal process. I take the Member for Upper Bann's point about what goes on in the Chamber, although I suspect that he, like the rest of us, has a fairly thick skin. The issue is whether someone's behaviour proves threatening when they chant or shout at somebody else. That is clearly a breach, because it involves a form of intimidation that poses a threat to others. However, words such as "abusive" have been used. Some of us could say that abuse has been thrown around the Chamber this morning. At the end of the day, it is in the eye of the beholder.

The debate on where the lines are drawn is a good, mature debate to have. However, it is not easy to see where those lines are. In the flux of a sporting event, a lot comes down to the evidence and to whether a police officer heard an individual say something. Indeed, the inflection and tone of the comments can sometimes be more important than what was actually said. All those issues pose different problems.

We are, of course, in a political Chamber, and people are always going to play politics. However, let me be absolutely clear that this party is committed, and has been for many years, to trying to eradicate sectarianism.

We despise the people who participate in that type of behaviour, particularly when they bring it into the field of sport, which has been somewhat of an oasis for us over the years, as people, by and large, even in the worst days, could still enjoy sport. To invade that space and to bring sectarianism into it is to be deplored. I will not allow us to be labelled by anybody in that way.

That said, we made our points and expressed a legitimate concern. I hope that the Minister is listening. The points made by Lord Morrow and Mr Givan were positive, and I support them. I hope that we can move. I do not think that there is any lack of willingness to get agreement on this issue. There is no moving back from the

point that we are at, which is that we have to confront the issue and, if necessary, give the powers to the police so that they can enforce them in a meaningful way. However, this has to be translated into the actions of a police officer on the spot on the day who will, perhaps, have the benefit of video evidence. However, if an individual is involved, and there is a mass of people, video evidence will not be much use unless a police officer actually hears a chant or a sufficient number of witnesses who heard what was said come forward. Otherwise, it will be hard to prosecute somebody, because, with the segregation of the crowds, people at the other end of the ground will not be able to witness an individual chanting, whereas a police officer, who is closer to the scene, will have the opportunity —

Mr McCartney: Will the Member give way?

Lord Empey: Yes, I will.

Mr McCartney: If something is not put in place, people might think that it is acceptable to shout sectarian slogans from a football terrace. That has happened and continues to happen. That has to be considered.

Lord Empey: I thank the Member for his intervention. I am merely trying to say that the law that we provide here has to be translated to the officer who is on the terrace. That officer has to be able to identify, with reasonable confidence, what an individual said and to stand up in court and say specifically what that individual —

Mr Humphrey: Will the Member give way?

Lord Empey: Yes, I will.

Mr Humphrey: I am grateful to the Member for giving way. It is much more complicated than that, in the sense that the police are not in the stands for international football matches; private security companies such as Eventsec are present. Indeed, it is even more complicated with GAA matches because the police will not be admitted to the ground.

Lord Empey: I think that the Member, in a beneficial way, illustrates to an even greater extent the point that I was trying to make. He is correct. Last month, I spent three and a half hours with the police during an Ulster rugby game at Ravenhill. I was there because of constituency issues in the surrounding area. It had nothing to do with sectarian chanting; it was about parking and other mundane issues. I saw the operation from the control room, and, as the Member rightly said, there were some 100 Eventsec staff deployed that day. As Lord Browne said, that is one of the reasons why it is possible to hold such events. Alcohol was available and was being consumed at the side of the pitch as well as in the stands. Nevertheless, the Member for North Belfast made a valid point.

Mr McCartney: For clarification: I think that it is unfair of a Member to suggest that the PSNI is not permitted in GAA grounds. To my knowledge —

Mr Humphrey: The word that I used was "admitted". *[Interruption.]*

Mr McCartney: Whatever the —

Mr Speaker: Order. We must be careful now. Lord Empey has the Floor.

Mr McCartney: To my knowledge, the PSNI plays a full part in ground control for all GAA grounds. I want to put that on record.

Lord Empey: First of all, if I am to follow your edict, Mr Speaker, I did not make the comment, and I will leave it for the record to show and to the two Members concerned to sort it out. I will continue, if I may.

I take the point about the practical outworkings. The differences are not great, and our sincere belief does not constitute an attempt to shield people and is, indeed, quite the opposite because some people have systematically destroyed, and continue to destroy, the image of sport. Many members of the Ulster Unionist Party have had a lifetime's involvement in different sports at different levels. We are not approaching the issue from a narrow point of view but are trying to make good, enforceable law that delivers the shared aims and objectives of everyone in the Chamber.

We are concerned about the definition of "chanting … of a sectarian nature" in amendment No 20 in that it could overstep the mark and create clashes about what are considered normal rights and freedoms of speech, however offensive some comments might be. The key word in the amendment is "threatening". There is a difference between somebody being abusive and somebody being threatening. Mr Speaker, if you had to make that distinction whenever you are in the Chair, you would have a huge challenge. Mr O'Dowd stated that the Speaker had a role when Members are

challenged about their political beliefs. However, there is a difference between the religious and the political. To some extent, political opinions transcend religious boundaries, perhaps not as much as some people would like. Our society is evolving, and the legislation will be around for a considerable time. Therefore, it is only right that we ensure that the Bill will deliver what we all want. I hope, therefore, that Lord Morrow's suggestion can be followed because it is wise to proceed in that way.

We are not on our own in having concerns on this issue. It may be a narrow issue, but the dividing line in legislation and in politics can be narrow. If we can bridge that gap, have everybody onside and allay their fears and be satisfied that the legislation is right, then happy days. We can emerge from the Chamber and the House with legislation that we can be proud of and go to the people with. That is the way in which I would prefer to proceed on an issue that has riven us from stem to stern for years. In other countries, we can see the effects of racial and religious differences. There are sectarian, as well as racial and tribal, dimensions to what is currently happening in the Middle East. This issue is not unique, but we must get it right.

The Minister of Justice: A lengthy and detailed debate was inevitable on the largest group of amendments, which contains 19 amendments and opposition to three clauses standing part of the Bill. I refer not only to the three to four hours of debate last night and today but to the lengthy, detailed debate during Committee Stage and, indeed, the pre-consultative stage. The issues have been considered in great detail. It gives me considerable pleasure that, although the Committee intends to oppose three clauses, the 19 amendments were largely agreed. That is an example of the robust work that was done at Committee Stage by my officials and Committee members and staff. There are three gentlemen in the Officials' Box today whose hairstyles, which are rapidly imitating mine, indicate the level of work. Actually, that is not true: although the engagement was robust and serious, it was good-natured and constructive throughout.

It should be recognised that that is the way in which matters have been dealt with up to now, even when there has been disagreement.

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

12.30 pm

First, I want to look at some of the general issues around alcohol in sport, which occupied most of the time last night, but relatively little time today, and the Committee's proposed amendments, which would remove the three clauses. The concerns that Members expressed appeared to be overarching as much as in respect of any specific content. The general view seems to be that alcohol should be controlled at sports events, but not in law, and that clubs could control alcohol themselves. It has been suggested that this is legislation for legislation's sake. I have listened to what has been said. We have had robust and serious engagement, and I have read the report that the Committee prepared. It remains my view that the abuse of alcohol can and does exacerbate crowd-control problems in grounds, in respect of crowd trouble and emergency evacuations.

In the context of the safety of sports grounds legislation, which the sports package is designed to complement at the specific request of DCAL and the Minister of Culture, Arts and Leisure, we must do all that we can to take suitable preventative measures. We have had incidents in the past — admittedly infrequent, but extremely problematic — of alcohol playing a part in the occurrence of trouble. Sadly, we have only to look at recent events in Dublin to find an example. The IFA and the official Northern Ireland supporters' clubs support what we are seeking to do to control alcohol, and I commend them for what they are doing. The scenes that we witnessed in Dublin were just as offensive to the vast majority of genuine soccer supporters as to everyone else in the community.

The GAA also made it abundantly clear to me that alcohol has the potential to cause problems, and it wants to see these issues tackled. The GAA was particularly concerned about what were termed "booze buses" earlier in the debate. I was particularly pleased, even as we considered amendments at a late stage, to have the support of Michael McGimpsey, as Minister of Health, Social Services and Public Safety, and Nelson McCausland, as Minister of Culture, Arts and Leisure, for the retention of these clauses. Mr McCausland, in particular, advised me that he remains unconvinced of some clubs' capacity to self-regulate and of the state of readiness in that area.

As my colleague Stephen Farry reminded the House, the Assembly has also called for legislation in this area to address sectarianism, racism and violence at sporting events. Given that alcohol is quite often at the core, I believe that this is a response to that request. I will not quote all the Members whom Stephen Farry quoted. However, let us remember that, when the Alliance Party introduced this issue in September 2007 with a call for an equivalent to the Football (Offences) Act 1991 that applies in England and Wales, there was unanimous agreement not only that that should be the provision but that it should extend to all sports and, certainly, to the three major codes of football. Stephen Farry quoted various people, including David McNarry, Lord Browne and Michelle McIlveen. The agreement resulted in consultation by the NIO, which, despite significant public support for the provisions, got nowhere.

Nothing happened until the devolution of justice last year. I took the opportunity that this Bill provides to introduce the provisions that would deliver what the Assembly sought. We have produced a package that delivers what was identified, and, as I read in Hansard, it was called for by Members from all five parties. It seems slightly incongruous, therefore, that I must now stand here to defend a package that was produced in response to what the Assembly requested and, in particular, that individual Members have complained to the media about the introduction of provisions for which they were personally and directly responsible for introducing into that Assembly debate. It will be frowned on by the public if, when given the opportunity to address the issues of alcohol and crowd control, we, as an Assembly, step back from our responsibilities. The public would think it odd that we did not take the opportunity to regulate as we said that we wanted to.

John O'Dowd raised a couple of specific points about pitch invasions and banning orders. When questioning whether it was proportionate to consider legislation on pitch invasions, he referred to good-humoured, regular events that should not be caught by the criminal law. That is absolutely right, and that is what the Bill provides for. The clause refers to going on to the playing area:

"without lawful authority or lawful excuse".

A few years ago, when my children were younger, it seemed to be the thing to do. At the end of a match at Ravenhill, everyone's kids would head onto the pitch with their programmes to collect as many autographs as possible. However, on 16 April 2010, four days after I was elected Minister, I arrived at Ravenhill to hear a ground announcement that it was illegal to go on to the pitch.

At that point, I turned to my wife and said: "We were discussing that only yesterday. We seem to have some significant effect". I believe that that is the reality of what is expected. The issue of lawful authority or reason will still exist, but I think that the increasing concerns about safety, which have led to, for example, the banning of what were usually good-natured pitch invasions by kids seeking autographs at Ravenhill indicate that the provisions are necessary and that we should proceed with them. I welcome the support that that provision had at Committee Stage.

John O'Dowd also talked about whether football banning orders will be proportionate. I believe that we are looking at 10 or 20 orders a year, at the most, and that such an order would only follow a criminal conviction for a serious football-related offence. I refer the Member to the reference to "violence or disorder" in clause 46(4). I think that that is an entirely proportionate response to a significant issue that will target those responsible but that will not create difficulties for other people.

I now want to turn specifically to the Committee's concerns about three key clauses, which are clauses 41 to 43. Clause 41 has to be retained if we are to provide proper control at regulated matches. It creates an offence of being drunk at a regulated match and is there to help organisers ensure the safety of all spectators. We have to remember that someone who is drunk, regardless of whether they are causing any trouble or disturbance, can present a danger to themselves and to other people in the event of an emergency.

The two specific aspects of opposition seem to be that existing law already provides for such situations; that it is an offence to be drunk in a public place so we do not need that power; and that there is a question mark over its enforceability because there is no definition of drunkenness in law. If Members look at the existing law, they will see that there are two reasons why we need to retain the offence.

First, we need to ensure that there is proper coverage in statue. There might be a doubt about whether the existing offence of being drunk in a public place actually applies to a sports ground that is, in fact, private property, and it could be argued that that is not a public place. I, therefore, want to avoid any opportunity for people to develop that argument. Indeed, that is the position in licensing law more generally. There is an offence of being drunk in a public place generally and a specific, separate offence of being drunk on licensed premises, which tackles the issue of the public places definition when referring to licensed premises. I think that we need to be firm and clear in our law that it is a crime to be drunk at a regulated match. There are occasions when large crowds are present at sports ground, and we need to be absolutely firm in preventing and tackling drunkenness at those grounds.

The second reason why I think that it is important to state categorically in statue that that will be an offence is to publicly support the organisers of matches. Stewards will be able to tell people trying to get into a ground that it is against the criminal law for them to attend in a drunken state, and clubs will be able to put up signs to that effect. That will be a significant reinforcement of the good work being done by the vast majority of sporting clubs. Drunkenness can lead to crowd trouble, and that specific offence has important declaratory and preventative purposes.

As regards the need for a definition of drunkenness, offences for being drunk on licensed premises or in a public place have been successfully prosecuted against in Northern Ireland for 25 years — indeed, there are similar offences in England and Wales — without any definition of drunkenness having ever been given. So, I do not think that that is a reason why we should worry about the lack of a definition at this point.

I also want to comment on Lord Morrow's contention that the offence is unenforceable. I certainly do not expect that that will be prosecuted often, but it is still useful. From the evidence given to the Committee and the conversations that I have had with the PSNI, it is clear that, if there were a risk of trouble, those provisions, which may be rigorously enforced, would be of major benefit because they would help the police to promote and communicate proper standards, would ensure that only certain behaviour is recognised as being acceptable and would reinforce the role of stewards who are seeking to enforce that behaviour. That is why the declaratory purpose of that clause is beneficial, even if we do not expect to see many prosecutions. It will up to the courts to decide whether a person was drunk based on the evidence that they have. Clubs and match organisers may be expected to report flagrant breaches to the police, and it will be up to stewards to get involved in that. However, having the offence in place will enable those difficult individual cases to be dealt with. Therefore, I urge Members to support clause 41.

Clause 42 creates the offence of being in possession of a drinks container during a regulated match. Its main purpose is to address the use of drinks containers as missiles or weapons. The offence will cover alcohol and non-alcohol containers. It will apply only to items that could cause injury to someone and which, when empty, are usually discarded, returned or recovered by the supplier. We are largely talking about glass and plastic bottles and aluminium cans.

I know that Members have concerns that the offence is unworkable and overcomplicated to deliver; some feel that it is unnecessary and say that, in some cases, soft drinks are sold in containers. It has been pointed out that there is perhaps an inconsistency between a disposable container, which would be banned, and other, perhaps more dangerous, containers such as flasks which would not. However, this is an important preventative power that would be of use to match organisers. It is about strengthening criminal law.

Frequently, at sporting and other events, clubs require tops to be taken off bottles and cans to be opened before they can be brought in. Removing bottle caps is still part of the solution, but it is simply a matter of adding weight to that solution by seeking to reduce the weight of potential missiles. Drinks could still be sold, but they would have to be pre-opened or dispensed into cups, as happens in many other places.

We need to control what could be damaging items. There are concerns about what happens if somebody throws a full can or a soft drinks bottle weighing half a kilo, as those are sufficient to cause significant injury if they hit somebody. Clause 42 will complement the clause on missile throwing, and the two will

work together. Although I understand the point about non-disposable containers, my view is that anyone who brings a flask in would be unlikely to use it as a missile, and if they did they could be prosecuted under clause 37. The real problem is disposable items such as bottles and beer cans. That is what we are trying to catch.

I recognise that there are concerns and issues. If clause 42 is introduced, guidance will be published on the sort of items that would be covered by the offence and how clubs can help to enforce the policy. Clubs already use discretion in their duties of care towards spectators to exclude many of those items from grounds. I agree that clubs should do that, and I want to give them the backing of the law to continue the good work that they are already doing. It is a necessary provision, and therefore I urge Members to retain clause 42.

Clause 43 creates the offence of being in possession of intoxicating liquor inside certain parts of a ground during a regulated period. It will prohibit spectators from having alcohol within sight of the pitch, other than in a room to which the general public are not admitted. In practical terms, that means that alcohol will not be allowed on terraces but will be permitted in executive boxes, social clubs and so on. The reasoning behind the offence is that the irresponsible consumption of alcohol in grounds and on terraces can cause or exacerbate misbehaviour and disorder, which can make crowd management extremely difficult and enforcing personal safety much more dangerous.

The main arguments have been rehearsed on numerous occasions and seem to focus on three aspects. First, that clubs already self-regulate in this area and, therefore, the provisions are not needed. However, I am advised that alcohol is not generally available on football or GAA terraces. Therefore, the creation of the proposed offence would have no immediate impact on the local game. Secondly, that we do not need to apply the offence so broadly, particularly in regard to the inclusion of rugby. It is suggested that neither rugby nor GAA has any history of alcohol-related trouble so no new offence is needed. The commercial concerns of Ulster Rugby have also been raised. Thirdly, it was said that none of the sporting bodies wanted the controls, although I know that the GAA and football have recognised the problems that alcohol can and does create at sports events.

I remain of the view that controlling access to alcohol at major events is necessary. One wonders what the public at large would think if the Assembly does not seek to control alcohol possession at sports events.

The majority of supporters are responsible and well intentioned, and I will acknowledge that on every occasion that I need to. However, others try to get away with things, and that creates problems. People get carried away and difficulties arise.

If we are seen to reject the opportunities before us now, and an incident fuelled by alcohol were to take place in the future, I do not think that a preference for club self-regulation would be much consolation to the victims of such an event. As I said, the sports Minister expressed his concerns to me about the readiness of some clubs for such an approach.

12.45 pm

I will refer to some other issues that have been generally agreed between the Department and the Committee. Although I have concentrated on the three clauses on which we disagree at this stage, I want to refer again to the good work between my officials and the Committee. We have removed the offence of ticket-touting, sharpened up a number of in-ground offences on missiles and sectarian chanting, relaxed the application of powers in smaller venues and relaxed the control of alcohol on buses leaving grounds.

I have recognised the concerns expressed about clause 43, particularly around rugby. I also recognise the need for those powers in appropriate circumstances and have proposed a flexible format for agreement. My preference is to put clause 43 control provisions in place for all three sports, and to consider separately over time the need to bring the offence into operation in respect of each sport. That will require detailed consultation with each sport, the Department of Culture, Arts and Leisure, and Sport NI, and will also require a separate affirmative vote in the Assembly. It is, in effect, what one might call a “triple lock” for use in the future. At this stage, I strongly urge Members to reject the removal of clauses 41 to 43 in order to allow these important provisions to remain in the Bill and to support their passage as drafted.

I now turn to the issue that first came to my notice when it was raised in the Chamber yesterday evening; that of the definition of sectarian chanting. It was first raised by Mr McCrea and supported by Mr McFarland and a number of Mr McCrea's party colleagues. I apologise; I should say for the benefit of Mr Ian McCrea that the matter was raised by Mr Basil McCrea. As Conall McDevitt pointed out at quite an early stage last night, the clause is engaged only where the chanting is threatening, abusive or insulting. Although Lord Empey may be unable to tell whether something is threatening or abusive, the clause covers chanting that is either threatening or abusive; therefore there is no difficulty in defining between the two intents. It is fairly clear when something is threatening, abusive or insulting. The clause does not define sectarianism on the basis of expressing a political opinion. It does not affect freedom of speech. It simply addresses threatening, abusive or insulting behaviour, which, as was noted by Dr Farry, presents a risk in the atmosphere of a sports match.

Let me assure Mr Elliott that he is free to make his points about his friends in the SDLP at any stage. The only circumstances under which Tom Elliott would be restricted in making comments about Conall McDevitt would be if Conall McDevitt were playing for that well-known south Belfast team, Linfield, in a regulated ground at Windsor Park, and Tom Elliott and the other supporter of Ballinamallard jointly chanted something offensive about the SDLP in the context of a regulated football match in a regulated ground. I think the chances of seeing a scenario that would put Conall McDevitt at any risk in those circumstances are fairly remote.

However, dealing with sectarian chanting in the context of football is a serious matter. I was distinctly surprised that the matter is of such concern to Ulster Unionist Members as it was only raised in the Chamber yesterday evening during the formal Consideration Stage of the Bill. I had a conversation early yesterday with a senior Ulster Unionist member in the Corridors of this Building who expressed concern about another aspect of the Bill. That is the kind of thing that people do: if there is an issue, they go to see the Minister, raise the problems and see what can be done and what the possibilities are. Indeed, there are a number of conversations going on around the Chamber at the moment that may be related to such matters. However, what one does not do, if one is absolutely genuine about something and has a real concern, is wait until the last possible moment and engage in grandstanding. The reality is quite clear; the issue has been around for ages.

Mr McNarry: Will the Member give way?

The Minister of Justice: The matter was raised back in the autumn during detailed consideration. The Committee carried out its detailed clause-by-clause consideration, and its report at page 142 states:

> *"The Committee considered a proposed amendment to Clause 38 from the Department of Justice to include sectarianism as had been requested by Committee Members."*

When the Committee conducted its clause-by-clause consideration, that clause was approved without any Division. No member registered their vote against it; no member registered even that they wanted to abstain on the matter —

Mr McNarry: Will the Minister give way?

The Minister of Justice: — and yet, suddenly, it became a major issue in the House yesterday evening.

Mr McNarry: Will the Minister give way?

Mr Deputy Speaker: It is obvious that the Minister does not want to give way.

The Minister of Justice: I think that Mr McCrea wanted in first.

Mr McNarry: Thank you —

The Minister of Justice: Sorry. Mr McCrea was first, I think.

Mr B McCrea: I defer to Mr McNarry.

The Minister of Justice: OK.

Mr McNarry: Thank you. Will the Minister tell the House how many Divisions there were during the Committee's consideration of these amendments, rather than just referring to the one that seems to suit him? I am sure that information came back to him from the officials that, on most occasions, the Committee decided not to go to a Division. The Ulster Unionists on the Committee took a very similar position to that of Sinn Féin: we told the Chairman that we reserved our position. Would it not be fair for the House to accept that the Ulster Unionist Party reserved its position until a day such as

today or until Further Consideration Stage? That is precisely what we did.

We are unable to grasp an accurate definition of "sectarianism". When we had the parades Bill, and when we did not have the wisdom of the Attorney General at that time, I asked the people who represented your Department at the time whether they could give a definition of "sectarianism". They were unable to do so. In that short time, we have moved from the parades Bill, which was unable to give a definition of "sectarianism", to a situation in which we now have your Department and you being clearly in a position to give a definition. Has the Minister sought advice from the Attorney General on a definition of "sectarianism" that his Department accepts? Is that definition open or closed to any legal challenge? I am unable to accept the definition of "sectarianism" as he interprets it. He rather flippantly interprets it on the basis of things that may not happen. What kind of law do you try to introduce on the basis that things may not happen? Who makes up their minds about who does those things?

I am grateful to the Minister for the time that he has allocated me for my intervention. Perhaps he will accept that the Ulster Unionist Party deferred its decisions in Committee in the main. That has been recorded. Perhaps he will understand our entitlement to address these issues today and at Further Consideration Stage.

Mr Deputy Speaker: I remind all Members that interventions should be short and to the point.

The Minister of Justice: I will remember that the next time I think of letting an Ulster Unionist in. I understand that there were something like 40 Divisions, which shows that there was a significant degree of engagement when the Committee considered the Bill. I was not present.

On the issue of the Ulster Unionist Party recording its reservations: page 141 of the Committee report shows that, on that day, Lord Empey and Mr David McNarry sent apologies for that meeting. They were not actually present when the issue was discussed, although I have not had the opportunity to check the report to see whether they were present when the Committee made a request about the issue. However, as I repeated earlier —

Mr B McCrea: Will the Minister give way?

The Minister of Justice: I gave way quite long enough to your colleague.

If somebody wants to have a serious discussion because they have concerns about an issue, they do it quietly. If they want to grandstand in this place, they are entitled to do it. However, they are not entitled to suggest that that is a serious way to address a concern that allows matters to be looked at in detail. If there is no way in which the issue is raised —

Mr Poots: On a point of order, Mr Deputy Speaker. It has just been relayed to the House that certain individuals were at a Committee and reserved their position on a particular issue. The Minister stated that those members did not attend the meeting. Is that a case of misleading the House? Will you look at the Hansard report and clarify the matter at a later point?

Mr Deputy Speaker: That was not a point of order; it was a point of information.

The Minister of Justice: To recognise the point that was made, I think that Mr McNarry was talking about the Ulster Unionist Party's general position that it wished to reserve its position. However, on this issue, it took no position; its members were not there; and they made no effort to raise the matter in a way that might have allowed it to have been considered between Committee Stage and Consideration Stage.

Mr B McCrea: Will the Minister give way?

The Minister of Justice: As I said, I gave way for quite long enough to the Member's colleague, who made a speech. I will not do it again.

The reality is that the Department and the Committee had a clear agreement, on which there was no division. Therefore, I presumed that the other three parties represented on the Committee were happy enough with the definition, not, as Mr McNarry highlighted —

Mr McNarry: *[Interruption.]*

The Minister of Justice: I am sorry, Mr Deputy Speaker; I am still trying to refer to points raised in previous interventions.

The Bill does not define sectarianism; it defines that, for the purposes of this section, chanting is of a sectarian nature. That is what it says; it is not an all-encompassing definition of sectarianism. It is not an attempt to change

Northern Ireland criminal law. It is a matter of dealing with a significant and serious problem at a minority of sporting events. It is an attempt to back up the good work being done by the IFA in conjunction with the Community Relations Council and by IFA and GAA representatives with others in the Unite Against Hate campaign. It reinforces good behaviour in the specific context of regulated sports events. Therefore, for the Ulster Unionist Party to suggest that it is unworkable or that it enlarges the law in a ridiculous way is simply not correct.

As Conall McDevitt said many hours ago, the Bill will set norms for sporting behaviour; norms with which Ulster Unionist Party Members profess to agree, yet they are not prepared to put them into law. There is a real issue with that, and I have no doubt that, if further legislation were to emerge that started to look to a definition of sectarianism, there will be robust debate in the House to ensure that the matter is covered properly.

1.00 pm

The Bill as introduced had the approval of the Department, the Executive and the Attorney General, and it was accepted as legitimate by the Speaker. Therefore, the fact that Basil McCrea described it this morning, on one of his many appearances on 'The Stephen Nolan Show', as a dog's breakfast is somewhat insulting to all those involved in producing a significant Bill to deal with the deficit that existed when devolution happened last year. The vast majority of the Bill has been agreed in good process between the Committee — at least with those members of the Committee who bothered to attend — and departmental officials. We have seen very significant engagement with a crowd of stakeholders, and huge issues have been covered in a meaningful and significant way. Therefore, to have that solid, constructive progress disrupted by a stunt by Ulster Unionist Members demeans the procedures of the House.

[Interruption.]

Mr Deputy Speaker: Order.

The Minister of Justice: I do not actually believe that Basil McCrea is sectarian, but, given the way in which he and his colleagues presented their arguments today and last night, there is a real danger that their party will be seen as being soft on sectarian behaviour. I believe, unfortunately, that that is the reality. I said quite specifically and, if it pleases them, I repeat: I do not believe that they are sectarian, but they need to be very careful about their words and, in a few moments, their actions.

I urge the House to support the amendments in group three and to retain clauses 41 to 43.

Question, That amendment No 10 be made, put and agreed to.

Amendment No 11 made: In page 25, line 29, at end insert

> *"(e) in Chapter 6, to a match to which any of the paragraphs of that Schedule applies." — [The Minister of Justice (Mr Ford).]*

Amendment No 12 made: In page 25, line 32, leave out from "two hours before" to end of line and insert

> *"one hour before the start of the match or (if earlier) one hour". — [The Minister of Justice (Mr Ford).]*

Amendment No 13 made: In page 25, line 34, leave out "one hour" and insert "30 minutes". *— [The Minister of Justice (Mr Ford).]*

Amendment No 14 made: In page 25, line 38, leave out "two hours" and insert "one hour". *— [The Minister of Justice (Mr Ford).]*

Amendment No 15 made: In page 25, line 39, leave out "one hour" and insert "30 minutes". *— [The Minister of Justice (Mr Ford).]*

Clause 36, as amended, ordered to stand part of the Bill.

Clause 37 (Throwing of missiles)

Amendment No 16 made: In page 26, line 8, leave out "anything" and insert

> *"any article to which this subsection applies". — [The Minister of Justice (Mr Ford).]*

Amendment No 17 made: In page 26, line 13, at end insert

> *"(1A) Subsection (1) applies to any article capable of causing injury to a person struck by it." — [The Minister of Justice (Mr Ford).]*

Clause 37, as amended, ordered to stand part of the Bill.

Clause 38 (Chanting)

Amendment No 18 made: In page 26, line 22, leave out "an" and insert "a sectarian or". — *[The Minister of Justice (Mr Ford).]*

Amendment No 19 proposed: In page 26, line 25, leave out "religious belief,". — *[The Minister of Justice (Mr Ford).]*

Question put.

The Assembly divided: Ayes 38; Noes 39.

AYES

Mr Attwood, Mr Boylan, Mr D Bradley, Mrs M Bradley, Mr Brady, Mr Burns, Mr Butler, Mr Callaghan, Mr Dallat, Mr Doherty, Dr Farry, Mr Ford, Mr Gallagher, Mrs D Kelly, Mr G Kelly, Ms Lo, Mr Lunn, Mr Lyttle, Mr A Maginness, Mr A Maskey, Mr P Maskey, Mr F McCann, Mr McCartney, Mr McDevitt, Dr McDonnell, Mr McElduff, Mrs McGill, Mr McGlone, Mr McLaughlin, Ms Ní Chuilín, Mr O'Dowd, Mr O'Loan, Mrs O'Neill, Mr P Ramsey, Ms S Ramsey, Ms Ritchie, Mr Sheehan, Mr B Wilson.

Tellers for the Ayes: Ms Lo and Mr Lyttle.

NOES

Mr S Anderson, Mr Armstrong, Mr Bell, Mr Bresland, Lord Browne, Mr Buchanan, Mr Campbell, Mr T Clarke, Mr Cobain, Mr Craig, Mr Cree, Mr Easton, Mr Elliott, Lord Empey, Mr Frew, Mr Gibson, Mr Givan, Mr Hamilton, Mr Hilditch, Mr Humphrey, Mr Kinahan, Mr McCallister, Mr McCausland, Mr B McCrea, Mr I McCrea, Mr McFarland, Miss McIlveen, Mr McNarry, Mr McQuillan, Lord Morrow, Mr Poots, Ms Purvis, Mr G Robinson, Mr K Robinson, Mr P Robinson, Mr Ross, Mr Spratt, Mr Storey, Mr Weir.

Tellers for the Noes: Mr Buchanan and Mr B McCrea.

Question accordingly negatived.

Mr Deputy Speaker: Amendment No 20 is consequential to amendment No 18, which has been made.

Amendment No 20 proposed: In page 26, line 26, at end insert

> *"(3A) For the purposes of this section chanting is of a sectarian nature if it consists of or includes matter which is threatening, abusive or insulting to a person by reason of that person's religious belief or political opinion or to an individual as a member of such a group." — [The Minister of Justice (Mr Ford).]*

Question put.

The Assembly divided: Ayes 38; Noes 40.

AYES

Mr Attwood, Mr Boylan, Mr D Bradley, Mrs M Bradley, Mr Brady, Mr Burns, Mr Butler, Mr Callaghan, Mr Dallat, Mr Doherty, Dr Farry, Mr Ford, Mr Gallagher, Mrs D Kelly, Mr G Kelly, Ms Lo, Mr Lunn, Mr Lyttle, Mr A Maginness, Mr A Maskey, Mr P Maskey, Mr F McCann, Mr McCartney, Mr McDevitt, Dr McDonnell, Mr McElduff, Mrs McGill, Mr McGlone, Mr McLaughlin, Ms Ní Chuilín, Mr O'Dowd, Mr O'Loan, Mrs O'Neill, Mr P Ramsey, Ms S Ramsey, Ms Ritchie, Mr Sheehan, Mr B Wilson.

Tellers for the Ayes: Ms Lo and Mr Lyttle.

NOES

Mr S Anderson, Mr Armstrong, Mr Bell, Mr Bresland, Lord Browne, Mr Buchanan, Mr Campbell, Mr T Clarke, Mr Cobain, Rev Dr Robert Coulter, Mr Craig, Mr Cree, Mr Easton, Mr Elliott, Lord Empey, Mr Frew, Mr Gibson, Mr Givan, Mr Hamilton, Mr Hilditch, Mr Humphrey, Mr Kinahan, Mr McCallister, Mr McCausland, Mr B McCrea, Mr I McCrea, Mr McFarland, Miss McIlveen, Mr McNarry, Mr McQuillan, Lord Morrow, Mr Poots, Ms Purvis, Mr G Robinson, Mr K Robinson, Mr P Robinson, Mr Ross, Mr Spratt, Mr Storey, Mr Weir.

Tellers for the Noes: Mr Buchanan and Mr B McCrea.

Question accordingly negatived.

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

Clauses 39 and 40 ordered to stand part of the Bill.

Clause 41 (Being drunk at a regulated match)

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

The Assembly divided: Ayes 16; Noes 61.

AYES

Mr Attwood, Mr Buchanan, Mr Craig, Dr Farry, Mr Ford, Mr Frew, Mr Givan, Mr Humphrey, Ms Lo, Mr Lunn, Mr Lyttle, Mr McCausland, Mr Poots, Mr Spratt, Mr Storey, Mr B Wilson.

Tellers for the Ayes: Ms Lo and Mr Lyttle.

NOES

Mr S Anderson, Mr Armstrong, Mr Bell, Mr Boylan, Mr D Bradley, Mrs M Bradley, Mr Brady, Mr Bresland, Lord Browne, Mr Burns, Mr Butler, Mr Callaghan, Mr Campbell, Mr T Clarke, Mr Cobain, Rev Dr Robert Coulter, Mr Cree, Mr Dallat, Mr Doherty, Mr Easton, Mr Elliott, Lord Empey, Mr Gallagher, Mr Gibson, Mr Hamilton, Mr Hilditch, Mrs D Kelly, Mr G Kelly, Mr Kinahan, Mr A Maginness, Mr A Maskey, Mr P Maskey, Mr McCallister, Mr F McCann, Mr McCartney, Mr B McCrea, Mr I McCrea, Mr McDevitt, Dr McDonnell, Mr McElduff, Mr McFarland, Mrs McGill, Mr McGlone, Miss McIlveen, Mr McLaughlin, Mr McNarry, Mr McQuillan, Lord Morrow, Ms Ní Chuilín, Mr O'Dowd, Mr O'Loan, Mrs O'Neill, Ms Purvis, Mr P Ramsey, Ms S Ramsey, Ms Ritchie, Mr G Robinson, Mr K Robinson, Mr Ross, Mr Sheehan, Mr Weir.

Tellers for the Noes: Mr O'Dowd and Mr G Robinson.

Question accordingly negatived.

Clause 41 disagreed to.

1.30 pm

Clauses 42 and 43 disagreed to.

Clause 44 (Offences in connection with alcohol on vehicles)

Amendment No 21 made: In page 28, line 32, leave out "or from". — *[The Minister of Justice (Mr Ford).]*

Amendment No 22 made: In page 29, line 6, leave out subsection (5). — *[The Minister of Justice (Mr Ford).]*

Amendment No 23 made: In page 29, line 15, leave out paragraph (c). — *[The Minister of Justice (Mr Ford).]*

Clause 44, as amended, ordered to stand part of the Bill.

Clause 45 disagreed to.

Clauses 46 to 48 ordered to stand part of the Bill.

Clause 49 (Banning orders: "violence" and "disorder")

Amendment No 24 made: In page 33, line 6, after "up" insert "sectarian hatred or". — *[The Minister of Justice (Mr Ford).]*

Amendment No 25 proposed: In page 33, line 8, leave out "religious belief,". — *[The Minister of Justice (Mr Ford).]*

Question put and negatived.

Mr Deputy Speaker: Amendment No 26 is consequential to amendment No 24, which has been made.

Amendment No 26 proposed: In page 33, line 14, leave out subsection (3) and insert

> *"(3) For the purposes of this section sectarian hatred is hatred against a group of persons defined by reference to religious belief or political opinion or against an individual as a member of such a group." — [The Minister of Justice (Mr Ford).]*

Question put.

The Assembly divided: Ayes 37; Noes 41.

AYES

Mr Attwood, Mr Boylan, Mr D Bradley, Mrs M Bradley, Mr Brady, Mr Burns, Mr Butler, Mr Callaghan, Mr Dallat, Mr Doherty, Dr Farry, Mr Ford, Mr Gallagher, Mrs D Kelly, Mr G Kelly, Ms Lo, Mr Lunn, Mr Lyttle, Mr A Maginness, Mr A Maskey, Mr P Maskey, Mr F McCann, Mr McCartney, Mr McDevitt, Dr McDonnell, Mr McElduff, Mrs McGill, Mr McGlone, Mr McLaughlin, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr P Ramsey, Ms S Ramsey, Ms Ritchie, Mr Sheehan, Mr B Wilson.

Tellers for the Ayes: Ms Lo and Mr Lyttle.

NOES

Mr S Anderson, Mr Armstrong, Mr Bell, Mr Bresland, Lord Browne, Mr Buchanan, Mr Campbell, Mr T Clarke, Mr Cobain, Rev Dr Robert Coulter, Mr Craig, Mr Cree, Mr Easton, Mr Elliott, Lord Empey, Mr Frew, Mr Gibson, Mr Givan, Mr Hamilton, Mr Hilditch, Mr Humphrey, Mr Kennedy, Mr Kinahan, Mr McCallister, Mr McCausland, Mr B McCrea, Mr I McCrea, Mr McFarland, Miss McIlveen, Mr McNarry, Mr McQuillan, Lord Morrow, Ms Purvis, Mr G Robinson, Mr K Robinson, Mr P Robinson, Mr Ross, Mr Spratt, Mr Storey, Mr Weir, Mr S Wilson.

Tellers for the Noes: Mr Buchanan and Mr B McCrea.

Question accordingly negatived.

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

Clauses 50 to 59 ordered to stand part of the Bill.

Mr Deputy Speaker: The Consideration Stage of the Justice Bill has some time to run yet. The Business Committee has agreed that the sitting may suspend for 30 minutes. I propose, therefore, by leave of the Assembly, to suspend the sitting until 2.30 pm.

The sitting was suspended at 1.55 pm.

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

2.30 pm

Mr Deputy Speaker: We now come to the fourth group of amendments, which deal with the treatment of offenders and alternatives to prosecution. With amendment No 27, it will be convenient to debate amendment No 28.

New clause

The Minister of Justice: I beg to move amendment No 27: After clause 59, insert the following new clause:

"Sexual offences: review of indefinite notification requirements

59A.—(1) The Sexual Offences Act 2003 (c. 42) is amended as follows.

(2) In section 82 (the notification period) at the end insert—

'(7) Schedule 3A (which provides for the review and discharge of indefinite notification requirements) has effect.'.

(3) After Schedule 3 insert the following Schedule—

'SCHEDULE 3

REVIEW OF INDEFINITE NOTIFICATION REQUIREMENTS

Introductory

1.—(1) This Schedule applies to a person who, on or after the date on which section (Sexual offences: review of indefinite notification requirements) of the Justice Act (Northern Ireland) 2011 comes into operation, is subject to the notification requirements for an indefinite period.

(2) A person to whom this Schedule applies is referred to in this Schedule as "an offender".

(3) In this Schedule—

"sexual harm" means physical or psychological harm caused by an offender doing anything which would constitute an offence listed in Schedule 3 if done in any part of the United Kingdom;

"the notification requirements" means the notification requirements of Part 2 of this Act;

"relevant event", in relation to an offender, is a conviction, finding or notification order which made the offender subject to the notification requirements for an indefinite period.

Initial review: applications

2.—(1) Except as provided by sub-paragraph (2), an offender may, at any time after the end of the initial review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) Subject to sub-paragraph (4), the initial review period is—

(a) in the case of an offender under the age of 18 at the date of the relevant event, 8 years beginning with the date of initial notification;

(b) in the case of any other offender, 15 years beginning with the date of initial notification.

(4) In calculating the initial review period—

(a) in a case where an offender is subject to the notification requirements for an indefinite period as a result of two or more relevant events, the calculation is to be made by reference to the later or latest of those events;

(b) in any case, there is to be disregarded any period during which the offender is, in connection with a relevant event—

(i) remanded in, or committed to, custody by an order of a court;

(ii) in custody serving a sentence of imprisonment or detention; or

(iii) detained in a hospital.

(5) The date of initial notification is—

(a) in the case of an offender who is subject to the notification requirements for an indefinite period by virtue of section 81, the date by which the offender was required to give notification under section 2(1) of the Sex Offenders Act 1997;

(b) in the case of any other offender, the date by which the offender is required to give notification under section 83(1) (or would be so required but for the fact that the offender falls within an exception in section 83(2) or (4)).

(6) An application under this paragraph must be in writing and must include—

(a) the name, address and date of birth of the offender;

(b) the name and address of the offender at the date of each relevant event (if different);

(c) the date of each relevant event, and (where a relevant event is a conviction or finding) the court by or before which, the conviction or finding occurred,

(d) any information which the offender wishes to be taken into account by the Chief Constable in determining the application.

(7) The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate.

Initial review: determination of application

3.—(1) On an application under paragraph 2 the Chief Constable shall discharge the notification requirements unless the Chief Constable is satisfied, on the balance of probabilities, that the offender poses a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom.

(2) In deciding whether that is the case, the Chief Constable must take into account—

(a) the seriousness of the offence or offences—

(i) of which the offender was convicted,

(ii) of which the offender was found not guilty by reason of insanity,

(iii) in respect of which the offender was found to be under a disability and to have done the act charged, or

(iv) in respect of which (being relevant offences within the meaning of section 99) the notification order was made,

which made the offender subject to the notification requirements for an indefinite period;

(b) the period of time which has elapsed since the offender committed the offence or offences;

(c) whether the offender has committed any offence under section 3 of the Sex Offenders Act 1997 or under section 91 of this Act;

(d) the age of the offender at the time of the decision;

(e) the age of the offender at the time any offence referred to in paragraph (a) was committed;

(f) the age of any person who was a victim of any such offence (where applicable) and the difference

in age between the victim and the offender at the time any such offence was committed;

(g) any convictions or findings made by a court in respect of the offender for any other offence listed in Schedule 3;

(h) any caution which the offender has received for an offence which is listed in Schedule 3;

(i) whether any criminal proceedings for any offences listed in Schedule 3 have been instituted against the offender but have not concluded;

(j) any assessment of the risk posed by the offender which has been made by any of the agencies mentioned in Article 49(1) of the Criminal Justice (Northern Ireland) Order 2008 (risk assessment and management);

(k) any other information relating to the risk of sexual harm posed by the offender to the public, or any particular members of the public, in the United Kingdom;

(l) any information presented by or on behalf of the offender which demonstrates that the offender does not pose a risk of sexual harm to the public, or any particular members of the public, in the United Kingdom; and

(m) any other matter which the Chief Constable considers to be appropriate.

(3) The functions of the Chief Constable under this paragraph may not be delegated by the Chief Constable except to a police officer not below the rank of superintendent.

Initial review: notice of decision

4.—(1) The Chief Constable must, within 12 weeks of the date on which an application under paragraph 2 is received, comply with this paragraph.

(2) If the Chief Constable discharges the notification requirements—

(a) the Chief Constable must serve notice of that fact on the offender, and

(b) the offender ceases to be subject to the notification requirements on the date of service of the notice.

(3) If the Chief Constable decides not to discharge the notification requirements—

(a) the Chief Constable must serve notice of that decision on the offender; and

(b) the notice must—

(i) state the reasons for the decision; and

(ii) inform the offender of the effect of paragraphs 5 and 6.

Initial review: application to Crown Court

5.—(1) Where—

(a) the Chief Constable fails to comply with paragraph 4 within the period specified in paragraph 4(1), or

(b) the Chief Constable serves a notice under paragraph 4(3),

the offender may apply to the Crown Court for an order discharging the offender from the notification requirements.

(2) An application under this paragraph must be made within the period of 21 days beginning—

(a) in the case of an application under sub-paragraph (1)(a), on the expiry of the period mentioned in paragraph 4(1);

(b) in the case of an application under sub-paragraph (1)(b), on the date of service of the notice under paragraph 4(3).

(3) Paragraph 3(1) and (2) applies in relation to an application under this paragraph as it applies to an application under paragraph 2, but as if references to the Chief Constable were references to the Crown Court.

(4) The Chief Constable and the offender may appear or be represented at any hearing in respect of an application under this paragraph.

(5) Where an application under this paragraph is determined, the appropriate officer of the Crown Court must send a copy of the order made by the Crown Court to the offender and the Chief Constable.

Further reviews

6.—(1) Except as provided by sub-paragraph (2), where a notice is served on an offender under paragraph 4(3) or 5(5), the offender may, at any time after the end of a further review period, apply to the Chief Constable to discharge the offender from the notification requirements.

(2) Sub-paragraph (1) does not apply at any time when—

(a) the offender is also subject to a sexual offences prevention order; or

(b) the offender is also subject to the notification requirements for a fixed period which has not expired.

(3) A further review period is the period of 5 years beginning on the date of service of a notice (or the last notice) served on the offender under paragraph 4(3) or 5(5).

(4) Paragraphs 2(6) and (7), 3, 4 and 5 apply with appropriate modifications to an application under this paragraph as they apply to an application under paragraph 2; and a reference in this Schedule to a provision of paragraph 4 or 5 includes a reference to that provision as applied by this sub-paragraph.

Discharge in Scotland

7.—(1) An offender who is, under corresponding legislation, discharged from the notification requirements by a court, person or body in Scotland is, by virtue of the discharge, also discharged from the notification requirements as they apply in Northern Ireland.

(2) In subsection (1) "corresponding legislation" means legislation which makes provision corresponding to that made by this Schedule for an offender who is subject to the notification requirements as they apply in Scotland for an indefinite period to be discharged from those notification requirements.'."

The following amendment stood on the Marshalled List:

No 28: In clause 82, page 48, line 18, at end insert

"(5A) No order may be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Minister of Justice (Mr Ford).]

The Minister of Justice: Amendment No 27 brings a change to the law on sex offender notification, more commonly known as the sex offender register, as a result of a Supreme Court ruling last year. The amendment will add a provision to the Sexual Offences Act 2003 as it applies to Northern Ireland. The current law attaches notification requirements for an indefinite period to offenders who have been sentenced to 30 months or more for a sexual offence. The judgement of the Supreme Court found that that indefinite period of notification, without the prospect of any review, is incompatible with article 8 of the European Convention on Human Rights, relating to the right to private and family life.

That judgement has implications for the law in all three jurisdictions of the UK. Scotland has already brought in remedial legislation. Proposals for England and Wales were the subject of some debate in Westminster last week. We have responded to the judgement in a way that will not weaken the effectiveness of the notification arrangements. No offender will be discharged from his duty where there is any concern that he continues to pose a risk of harm. The amendment will simply provide an avenue for offenders to apply to the police for removal of the notification requirements after a period of 15 years from the date of release from prison. That period will be reduced to eight years if the offender was under 18 at the time of conviction.

The bar for removal is set at a high level. The police will discharge the notification requirements only if the offender no longer continues to pose a risk of sexual harm to the public. The criteria for determining the application are set out in detail in the legislation. The police have been fully consulted on the legislative proposals to ensure that there will be no increase in risk to the public. However, we have also decided, in the interests of meeting the demands of the court judgement, that, if the police decide not to discharge the requirements, the offender will be able to make an application to the Crown Court for a review of his case. Failing that, a further application to the police can be made in five years' time. I am content that that legislative change meets fully the requirements of the Supreme Court judgement while maintaining the contribution to public protection for which the original legislation was designed. I believe that that is the fundamental principle on which that legislative change should be judged, which is that we are maintaining public protection consistent with the Supreme Court judgement. There will be no question of anyone being released from the notification requirements without full assessment of their application after a minimum period of 15 years.

Amendment No 28 actions a recommendation from the Examiner of Statutory Rules and the Committee for Justice, so that the Order-making power in clause 82(5) is subject to the affirmative procedure. Clause 82 makes provision for the mandatory production of a code of practice for the use of conditional cautions. It provides that such a code may not be published or amended without the consent of the Attorney General. The amendment ensures that, once consent is received, the code of practice will be laid before and approved by a resolution of the

Assembly before being brought into operation by Order. Amendment No 28 makes that change in clause 82 and has a consequential effect on clause 103, which is amended by amendment No 44, to which we will return.

The Chairperson of the Committee for Justice: During Committee Stage, the Department advised the Committee of its intention to introduce new provisions on sex offender notification as amendments at Consideration Stage. Given the Supreme Court ruling that indefinite notification requirements attached to sex offenders who had been sentenced to 30 months or more imprisonment were incompatible with article 8 of the European Convention on Human Rights, there appears to be no choice but to table an amendment to provide for a review mechanism as described by the Minister. Given that necessity, the Committee will support the inclusion of a new clause.

The Committee supports Part 6 of the Bill, which provides for two divisionary disposals — penalty notices and conditional cautions — aimed at dealing effectively, outside the courtroom, with minor offences. In suitable cases, those may be offered to offenders as an alternative to prosecution, but offenders will retain the right to ask to have their case heard at court instead.

On the basis of advice that the Examiner of Statutory Rules provided on the delegated powers in the Bill, it is the Committee's view that the Order bringing the code of practice on the application of conditional cautions into operation should be subject to the affirmative procedure rather than to negative resolution. The current provision requires the code of practice to be laid before the Assembly in draft form, after which the Department may make an Order to bring the code into operation. That Order will be subject to negative resolution, and amendment No 28 will make the necessary change to require the code to be subject to the affirmative procedure. I welcome the Minister's willingness, at the Committee's request, to move that amendment.

Furthermore, now that I am on my feet, I ask the Minister to outline, in the light of the views that the Prime Minister and others expressed, whether his proposals reflect the absolute minimum that has to be done. I also ask him not to move the amendment today but to wait until Further Consideration Stage so that Members and the Committee have another opportunity to consider the matter. However, when I talk about referring it to the Committee, I am not talking about some distant point in the future. The Committee will meet tomorrow afternoon, and it is its intention to have this item on the agenda so that it can give it its full consideration. I trust that the Minister will take on board what we are saying and will give our views some consideration. I also trust that he will not move the amendment at this time.

Ms Ní Chuilín: Go raibh maith agat, a LeasCheann Comhairle. I want to speak to amendment No 27, which will insert a new clause. I will reserve my remarks on other proposed amendments until the Committee meeting.

There has been recent speculation about the introduction of the proposed new clause, and I want to have it on the record that, until today, no view has ever been expressed that indicated to any Committee member that anyone was going to be soft on sexual offences. That was certainly the case in Committee, and I assume that that was the situation across the board. The new clause will be in the part of the Bill that deals with the treatment of offenders. The Department briefed the Committee on the amendment, which would look at a review of mechanisms that could assess sex offenders. The amendment would allow an offender to apply to the PSNI for a review of notification after 15 years or, if the offender was under 18 years of age at the time of conviction, after eight years. When the proposed amendment was brought to the Committee, members were content with it, simply because it contained checks and balances and because it would create strong accountability. Members were also content that the risk assessments that are in place will be retained. It will also be set against clear guidelines, which, I understand, will be produced. If he does not mind, I want the Minister to outline, as a point of information, how those guidelines will be brought forward.

Like the system that is in place now, which involves agencies that deal with the management of sexual offenders, the risk assessment process will involve a multi-agency approach. The conditions built into the review will look at the seriousness of the offence, whether the offender was found guilty by reason of insanity, whether he or she has committed any other offence under section 3 of the Sex

Offenders Act 1997 and at the age of the offender and, indeed, the victim at the time of the offence. Those are just a few examples. Proceedings for other offences listed in the schedule that have not been concluded against someone who is applying for the discharge will be taken into consideration. Above all else, as far as I can see, public safety is an important element of the proposed new clause. It will also look at the risk to the public of reoffending and at any other criteria that need to be considered as part of this or any other application.

I was content that an application for indefinite notification reviews could not be delegated to any PSNI officer other than the Chief Constable or to any officer below the rank of superintendent. I think that that was one of the safeguards that was included, and I was happy to see it.

As with any other legislation that is going through the House, if existing law needs to be strengthened, we should take any opportunities to do that in Committee. As it was presented, we were content that it would safeguard and enhance public safety. If the PSNI Chief Constable refuses an application, there is still the opportunity for the offender to go back to the courts after a period of time.

Amendment No 28 may be technical. However, as the Chairperson said in relation to the new clause, it is important that the affirmative resolution process is used so that any change or variation to it can only happen with the Assembly's consent. I support the introduction of the clause.

Mr B McCrea: I have serious reservations about this legislation. The Member who spoke previously mentioned that it had been brought through Committee and that we had been briefed. She said that there was general agreement and no particular objections. However, I looked at the minutes of the relevant meeting on the Committee's website. Mr Givan said:

> *"I agree to its inclusion although I probably do not support it. However, we have no choice".*

The Chairperson said:

> *"It is Hobson's choice".*

Ms Ní Chuilín said:

> *"Just because it is in our report does not mean that we like it".*

That does not seem to be an overwhelming endorsement. I have to say that my concerns about it —

Ms Ní Chuilín: I thank the Member for giving way, as I appreciate that he is just starting. I understand that the Member has picked out various extracts of Committee minutes to make a point. However, to be fair, similar comments could be made about any part of the legislation. Members used the Committee process to express any reservations that they had. They used the Committee process to ask questions, particularly when officials were in attendance. I understand that the Member uses those extracts to make a point — particularly given that he appeared on a radio programme yet again — but the same could be said about any part of the Bill.

Mr B McCrea: I am not sure why I was so chastised by the Member. I am bringing to the attention of the Assembly the fact that there was not opinion that this was OK. *[Interruption.]*

Mr Deputy Speaker: Order.

Mr B McCrea: I hope to explain why there are difficulties with the legislation. I do not know whether other Members have had a chance to read the Supreme Court ruling, but I have had a look at it. Whether or not others have looked at it does not normally stop them — I suppose that they can make an opinion. All I can say is that what the Supreme Court stated is in black and white. Paragraphs 38 and 39 in the document are directly relevant. It does not state, for example, that there ought to be a review after 18 years, 15 years, five years or any particular time. All that it says is that there should be a review. Where did we get the great consideration for the timescale that would come forward? The Supreme Court found that it infringed article 8 of the European Convention on Human Rights, but it did so on a very narrow decision. It stated that there should be a review. I am all for having a review, but I wonder why it should be automatic that people can get a review and why a timescale for when it happens should be brought in.

2.45 pm

Mr O'Dowd: I thank the Member for giving way. I have actually taken the time to read the decision, but I did so through the eyes of a lay person. As the Member will be aware, Supreme Court rulings, in particular, are very detailed

and require a certain legal background. All Committees in the Assembly rely on the advice of Committee and departmental officials and other evidence sources.

The ruling said that there should be a review. However, given the timescale of the review as set out in legislation and particularly given that the Supreme Court said that that infringes on the right to privacy under article 8, is the Member saying that — I know that we have to be careful because the issue of sex offenders is a delicate and sensitive one — holding a review after 15 years is not reasonable? That is less than some people serve for a life sentence. If the Member would like to suggest another period after which we should hold a review, we would welcome hearing that.

Do not lambaste Committee members and Members in the Chamber because you are, in some way, more knowledgeable than us and because you have brought forward this wealth of knowledge today that we should have known all along. Like you, I read the ruling, but I did so through the eyes of a lay person.

Mr Deputy Speaker: Will the Member refer all his remarks through the Chair?

Mr B McCrea: Once again, I am surprised at the Member's tone. I have not lambasted anybody yet. I have only explained why I am concerned. When I looked through the minutes of the two Committee sessions on this issue, I was surprised to see how much concern was expressed about it by not only the party to my right but the party to my left. Committee members said that they felt a little bit bound by it. So, it appears that it would be appropriate for us to look at it a little further. I am not saying that I am a barrister; however, I am a Member of a legislative Assembly, and we are here to legislate. I think that we have to look at the legislation to see what it means.

Mr Givan: Will the Member give way?

Mr B McCrea: Mr Deputy Speaker, I was chastised by the Speaker for being a little too generous with my interventions earlier. However, I am doing my best to accommodate Members.

Mr Givan: I appreciate the Member's giving way. He is right about the grave concern that there was among Committee members, and I support his view that the issue should be given more consideration. That is why our party and the Chairperson have requested that this is not moved, so that further consideration can be given to it in order to ensure that it is, as the Prime Minister David Cameron said, the ultimate bare minimum to comply with the Supreme Court ruling. I support what the Member is saying.

Mr B McCrea: I am grateful for the Member's intervention, and I concur with him. His point, which is a fair one, is recorded in the minutes. We are now at the stage where we want to raise issues such as whether this really is the bare minimum. We saw the outrage among the public about this. The reason why there are notification requirements for sexual offenders is that people are worried that those offenders will reoffend. In normal circumstances, there is a presumption of innocence after people have done their time for a crime, and the slate is, therefore, wiped clean so that it does not have any sort of hold on them in the future. The problem with offences of a sexual nature is that there is a possibility that people will reoffend, and that is why there are notification requirements for sexual offenders.

The Supreme Court judgement said:

> *"In this case the importance of the legislative objective has never been in doubt."*

In other words, people understand that judges are not being soft in that regard. They know that the reason for having notification requirements is to prevent serious harm to members of the public, and I agree that having such requirements is the right way to do that. However, the Supreme Court ruling mentioned that just having a review does not mean that it will be successful.

One of my concerns about the legislation, which I think rather gilds the lily and takes things further than the Supreme Court said was necessary, is that it changes things about the time frame for offenders being brought forward for an automatic review. Who said that it should be that length of time? Why not make it 10 years, 30 years or whatever? Regardless of whatever length of time is felt to be appropriate, people need to have that debate and to come to a conclusion about the right way forward.

Another issue that keeps coming up is that under the legislation — I believe that this is a really fundamental point of law — the Chief Constable will carry out those reviews. All that the Supreme Court said was that a review

should be taken forward by judicial review. Perhaps other bodies, such as a parole body or a life-sentencing review, are technically trained in how to properly and professionally hold tribunals. The danger in doing it through the Chief Constable is that, good as he is at policing, he may not be best trained or resourced to carry out a tribunal review. Therefore, if he does that, the problem will then be that there will be a further judicial review of what the Chief Constable has said. To me, an unacceptable amount of resource has been put aside without giving the people responsible the necessary backup to do it.

As itemised in paragraph 3, the Chief Constable will have a lot of work to do. What happens if the person in question committed the original offence in a different jurisdiction, such as England, Wales or Scotland? Does the Chief Constable then have to go and find the details of the original offence? Of course the person making the application must provide details of what he or she has done. However, how do we know that those details are correct? There is a flaw in the legislation. That information must be able to be checked.

The other serious issue is that there seems to be a change in the burden of proof. Originally, it was that the applicant should be allowed to request a review. It was up to the applicant to say why they should not be on the sex offenders register. They had to make the case. It transpires in the legislation that that is now the other way around. The obligation is reversed, and it is now for the Chief Constable to make that decision. The Chief Constable is responsible for making those calls. If that is not the case, applicants can go to judicial review. That is the wrong way round. That makes it softer for the sex offender, because he can then challenge decisions in a different way.

The implications of all those things must be fully thought out. I am happy to accept the point that Mr Givan and Lord Morrow made; we should go back and look at this again in detail. We should review the existing judgement. If necessary, if we are not competent, we should get barristers or the proper authorities to look at it and tell us what case was actually being made. What is the case that we are trying to make?

I am a believer in human rights. However, human rights are done no justice at all if the public think that we are using them to let sex offenders get off. This is not the way to go about it. People expect that, in these most difficult of crimes, our citizens and young people in particular will be protected. It behoves us all to make sure that we look at the issues in detail and make sure that the legislation is completely appropriate.

The new clause goes further than I think is necessary and puts huge burdens on the PSNI. The Minister said that he has been in consultation with the PSNI, but we are looking at this from a legislative point of view.

I will not go on, because I am hopeful that we will take the clause back. However, given that there was general concern in Committee and given that there was some indication that we could have more detail, I urge that we look again at the issue and do what is right for the people of Northern Ireland. We must not go soft on sex offenders, but we must find a way of giving them their appropriate rights.

Mr A Maginness: Together with other parties, we understand the necessity for the amendment. In principle, we are supportive of it. There are points of detail that could bear further scrutiny, and I hope that the Minister might accede to the invitation from the Chairperson of the Committee for it to look at the matter further.

The basic principle is that the legislation as it stands is incompatible with article 8 of the European Convention on Human Rights and must be amended. Some form of review system is necessary. Whether that should be after 15 years or another period is a matter for consideration and debate.

I take Mr McCrea's point about the review process, but I would have thought it more appropriate for it to be undertaken directly by the judiciary than the Chief Constable. I say that because of criticism made in past European cases. For example, the British Home Secretary established tariffs for prisoners given life sentences, and that was ruled to be incompatible with the European Convention.

I am not sure what the legal advice is on this, but it could well be that, if amendment No 27 is made, it could later be questioned or impugned under the European Convention, because this is, in a sense, part of sentencing. Although the notification period follows on from a person being convicted of or admitting to an offence and being sentenced to a custodial or other

sentence, it emanates from that sentence, so it could be deemed to be part of the sentence per se. If that is the case, it is a matter for a judicial body to determine. It may then be for a judicial body to review that element of it. That is an important point to look at. I have no answer to it, except to say that Mr McCrea has raised a relevant issue.

The Supreme Court has made a decision based on the European Convention on Human Rights, and we are obliged to follow that. The mechanism for doing so is a matter for debate. I am sure that the Minister is taking advice on that, and the issue could be further discussed in Committee.

Dr Farry: I will not detain the House for too long on this point, because there is probably a pragmatic consensus that the issue can be deferred and go back to the Committee for further exploration, with a view to returning to the issue at Further Consideration Stage. That said, this is something that we must do. As an Assembly, we have an obligation to ensure that our policies and practices are consistent with the European Convention on Human Rights — in this case article 8, which relates to the right to privacy. The legal challenge is there because our current situation is unsustainable. Although it may be difficult for us to face up to the issue, as a society based on the rule of law, which is in turn based on human rights, we must respond in kind.

I have a couple of points to make at this stage. First, it is important that Members avoid the temptation to play populism around issues regarding sex offenders. It is a difficult and sensitive issue, but it is one on which we need to have a sense of proportionality. We need to look to the wider public interest.

3.00 pm

The second point is about a review. I understand where Basil McCrea may well be coming from when he talked about a general review without dates being specified. There is a danger that that could become rather counterproductive because, if timescales are not specified, we could end up with in a situation in which, if there is a general right for a review, people may wish to try to test that after one or two years or something similar rather than waiting for what is defined in statute. That could lead to repeated legal challenges and judicial reviews of the system as opposed to having a degree of certainty around it. Although it may not necessarily have to be eight or 15 years, the timescales that we choose have to reflect a sense of balance and realism. It may not be very early because that, clearly, would not be necessary. Equally, however, if the timescales for the review are set far into the future, it could be interpreted by a court as not meeting the spirit of the judgement that has been reached and would, in essence, make it impractical for reviews to take place.

The other thing to stress is that a review is a review. There is no automatic right for a review to be upheld in the sense of someone coming off and it simply being a procedural matter. That need not mean that people will come off the register after eight or 15 years. I am certainly happy for the issue to be returned to the Committee so that we can make sure that everyone is happy with the route that we have to go down. However, we should be under no illusions that this is something that we, as an Assembly, have to do and something that all the other jurisdictions in the United Kingdom are facing up to at the moment.

The Minister of Justice: I am grateful to the five Members who spoke for the variety of points that they raised. The points emphasised the genuine concerns that there are about the operation of the sex offender notification legislation. I re-emphasise that the primary purpose of the Department of Justice is to ensure the continued protection of the public from the risk that is posed by sex offenders. That is why I sought and received assurances from the police and other agencies involved that the mechanism for review will not interfere with their primary objective of preventing crime and managing risk.

The proposals were developed to ensure that cases remain subject to notification as long as there is a continuing risk of harm. Removal will happen only where the police judge, after an application has been made by the offender, that no further value is added to public safety by maintaining those requirements. We believe that amendment is a balanced response to the legal judgement of the Supreme Court on compatibility with human rights legislation. It affects all jurisdictions in the UK. Legislation is being introduced in all three jurisdictions, and action has to be taken broadly in parallel to comply with those requirements. We have different responses in that sense, but they are

on the same broad basis. Our process tasks the police to make the decision on the basis of detailed criteria involving consultation with all the other relevant agencies. If turned down, the offender can then apply for a court review. The bar is set at a high level, even after the relatively long time period of 15 years. I believe that that provides the right balance of fairness between ensuring that the public benefit from the additional protection that is offered by notification arrangements and allowing the offender to have the requirement lifted if they no longer pose a risk.

I will now refer to some of the points that were made in Members' contributions. Lord Morrow referred to views that were recently expressed by the Prime Minister and talked about whether we are getting the absolute minimum that may be necessary to comply with the Supreme Court judgement. All that I can say in response is that there has been close engagement between the three jurisdictions. Scotland has legislated, and England and Wales will soon do so. Given the fact that we are on the same election timetable as Scotland, there is a degree of urgency about being seen to be complying with the Supreme Court ruling. The election would disrupt any possibility of delaying it significantly.

Carál Ní Chuilín outlined a number of the positives about the approach that was adopted and the way in which it was considered in the Committee. She asked me about guidelines. Certainly, there is a case for guidelines to be developed in conjunction with all the relevant agencies.

Although those decisions will be taken by the Chief Constable and, as she highlighted, they cannot be delegated to a rank lower than superintendent, if we look at paragraph 2(7) of the proposed new schedule, we can see that it is absolutely clear that:

> *"The Chief Constable may, before determining any application, request information from any body or person which the Chief Constable considers appropriate."*

It is obvious, therefore, that agencies, such as the Probation Board, that have a significant role in the management of offenders in the community will have an involvement, and we have an assurance from those concerned that they will be able to manage that.

I shall give a brief word of comparison with the other two jurisdictions. In Scotland, the legislation has the same 15-year time limit for the potential removal of an offender from the register. However, the obligation there to initiate the process is on the police. Our process is designed to commence on application by the offender after 15 years or more. In that sense, it is somewhat harder than in Scotland. In England and Wales, legislation has not yet been developed, but my understanding is that they will similarly operate on the basis of decisions taken by the police. However, they will not have the formal appeal mechanism to the Crown Court that we will have, with the result that, potentially, they may face endless judicial reviews, which are time-consuming, do not fit the standard pattern and are much more difficult and expensive to administer than the appeal process that we have set out.

In answer to some of Basil McCrea's points, the 15-year decision time is there because the three jurisdictions, using lawyers much brighter than me — Mr McCrea admitted this morning that he is not a barrister — determined that that is an appropriate timescale in which to operate. In that sense, it is seen as the bare minimum.

We could debate whether the legislation will place burdens on the Chief Constable to carry out his functions. All I can say is that, if the Chief Constable tells me that the police can do it, in conjunction with the Probation Board and others, it seems to me that that is the answer that the Assembly requires. Given that we are talking about potentially something like 20 people applying for review every year, it is not a massively significant resource issue.

Mr McCrea also raised issues about cross-jurisdictional applications. Frankly, that applies in all kinds of ways, not just in criminal law but in matters of mental health and family law, so it will not create particular difficulties for us. Dealing with applications in the first instance by the Chief Constable but with a clear right of appeal to the Crown Court will address the concerns raised by Mr Maginness and Mr McCrea. The Chief Constable will not be convening a tribunal; his duty will be to make a determination on the basis of evidence presented. If a tribunal is required, it will be carried through by the Crown Court.

I believe that we have already addressed a number of the concerns that have been raised.

Nonetheless, I recognise that there are other concerns, some of which were expressed by members of the Committee and some by those outside the Committee. On that basis, I am happy to accede to Lord Morrow's request that the Committee be given time to consider the matter, although I will hold him to the offer that he made in that, in reality, unless the Committee arranges a further meeting early next week, the only time available to it before Further Consideration Stage will be tomorrow's meeting. On that basis, it is right for the Committee to have an opportunity to consider Members' comments and comments that may be made by others to see whether it has further thoughts, although, at this stage, it is difficult to see that it will be possible to agree anything significantly different from the current proposals in amendment No 27. Nevertheless, I am certainly happy to allow the Committee the opportunity for further examination tomorrow. On that basis, although I will continue to support amendment No 28, at this stage, I beg to ask leave to withdraw amendment No 27.

Mr Deputy Speaker: The Minister has sought leave to withdraw amendment No 27.

Amendment No 27, by leave, withdrawn.

Clauses 60 to 81 ordered to stand part of the Bill.

Clause 82 (Code of Practice)

Amendment No 28 made: In page 48, line 18, at end insert

"(5A) No order may be made under subsection (5) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Minister of Justice (Mr Ford).]

Clause 82, as amended, ordered to stand part of the Bill.

Clauses 83 and 84 ordered to stand part of the Bill.

Clause 85 (Eligibility for criminal legal aid)

Mr Deputy Speaker: We now come to the fifth group of amendments, which deals with legal aid and solicitor advocates. With amendment No 29, it will be convenient to debate amendment Nos 30, 31, 32, 64 and 65.

The Minister of Justice: I beg to move amendment No 29: In page 49, line 34, at end insert

"(4) In Article 36 (rules as to legal aid in criminal cases) for paragraph (4) substitute—

'(4) Except as provided by paragraph (5), rules under this Article are subject to negative resolution.

(5) The rules to which paragraph (6) applies shall not be made unless a draft of the rules has been laid before, and approved by a resolution of, the Assembly.

(6) This paragraph applies to the first rules under this Article which—

(a) are made after the coming into operation of section 85 of the Justice Act (Northern Ireland) 2011; and

(b) contain any provision made by virtue of Article 31, as substituted by that section.'."

The following amendments stood on the Marshalled List:

No 30: After clause 91, insert the following new clause:

"PART 8

SOLICITORS' RIGHTS OF AUDIENCE

Authorisation of Society conferring additional rights of audience

91A.—(1) The Solicitors (Northern Ireland) Order 1976 (NI 12) is amended as follows.

(2) In Article 6 (regulations as to the education, training, etc. of persons seeking admission or having been admitted as solicitors) after paragraph (1) insert—

'(1A) The Society shall make regulations with respect to the education, training or experience to be undergone by solicitors seeking authorisation under Article 9A.'.

(3) After Article 9 insert—

'Authorisation of Society conferring additional rights of audience

9A.—(1) A person who is qualified to act as a solicitor may apply to the Society for an authorisation under this Article.

(2) An application under paragraph (1)—

(a) shall be made in such manner as may be prescribed;

(b) shall be accompanied by such information as the Society may reasonably require for the purpose of determining the application; and

(c) shall be accompanied by such fee (if any) as may be prescribed.

(3) At any time after receiving the application and before determining it the Society may require the applicant to provide it with further information.

(4) The Society shall grant an authorisation under this Article if it appears to the Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to him by virtue of regulations under Article 6(1A).

(5) An authorisation granted to a person under this Article ceases to have effect if, and for so long as, that person is not qualified to act as a solicitor.

(6) The Society may by regulations provide that any person who has completed such education, training or experience as may be prescribed, before such date as may be prescribed shall be taken to hold an authorisation granted under this Article.'.

(4) In Article 10 (practising certificates and register of practising solicitors) after paragraph (2C) insert—

'(2D) Every entry in the register shall include details of any authorisation granted under Article 9A to the solicitor to whom the entry relates.'." — [The Minister of Justice (Mr Ford).]

No 31: After clause 91, insert the following new clause:

"Rights of audience of solicitors

91B.—(1) In section 106 of the Judicature (Northern Ireland) Act 1978 (c. 23) (rights of audience in the High Court and Court of Appeal) after subsection (3) insert—

'(3A) A solicitor who holds an authorisation under Article 9A of the Solicitors (Northern Ireland) Order 1976 shall have the same right of audience in any proceedings in the High Court or Court of Appeal as counsel in those courts and any such right is in addition to any right of audience which a solicitor would have apart from this subsection.'.

(2) After Article 40 of the Solicitors (Northern Ireland) Order 1976 (NI 12) insert—

'Duty to advise client as to representation in court

40A.—(1) Paragraph (2) applies where—

(a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;

(b) either—

(i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or

(ii) that solicitor is an authorised solicitor and is minded to provide that representation; and

(c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.

(2) The solicitor must advise the client in writing—

(a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and

(b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.

(3) The Society shall make regulations with respect to the giving of advice under paragraph (2).

(4) A solicitor shall—

(a) in advising a client under paragraph (2), act in the best interest of the client; and

(b) give effect to any decision of the client referred to in paragraph (2)(b).

(5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.

(7) In this Article and Article 40B "authorised solicitor" means a solicitor who holds an authorisation under Article 9A.

Duty to inform court as to compliance with Article 40A(2)

40B.—(1) Where—

(a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;

(b) that client is to be represented in those proceedings by an authorised solicitor; and

(c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978,

the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal.'.

(3) In Article 50 of the County Courts (Northern Ireland) Order 1980 (NI 3) (rights of audience) in paragraph (1)(c) omit the words ', but not a solicitor retained as an advocate by a solicitor so acting'." — [The Minister of Justice (Mr Ford).]

No 32: After clause 91, insert the following new clause:

"Consequential and supplementary provisions

91C.—(1) In Article 75 (regulations) of the Solicitors (Northern Ireland) Order 1976 (NI 12) after paragraph (2) insert—

'(2A) Regulations under Article 6(1A), 9A(6) or 40A(3) also require the concurrence of the Department of Justice, given after consultation with the Attorney General.

(2B) The Department of Justice shall not grant its concurrence to any regulations under Article 6(1A) or 9A(6) unless regulations have been made under Article 40A(3) and are in operation.'.

(2) The Department may by order make such amendments to—

(a) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

(b) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8),

(c) the Access to Justice (Northern Ireland) Order 2003 (NI 10),

(d) section 184 of the Extradition Act 2003 (c. 41),

as appear to the Department to be necessary or expedient in consequence of, or for giving full effect to, the provisions of this Part." — [The Minister of Justice (Mr Ford).]

No 64: In schedule 7, page 87, line 38, at end insert

"PART 4

SOLICITORS' RIGHTS OF AUDIENCE

Short Title	*Extent of repeal*
The County Courts (Northern Ireland) Order 1980 (NI 3).	*In Article 50(1)(c), the words ', but not a solicitor retained as an advocate by a solicitor so acting'."*

— [The Minister of Justice (Mr Ford).]

No 65: In the long title, after "legal aid;" insert

"to confer additional rights of audience of certain solicitors;". — [The Minister of Justice (Mr Ford).]

The Minister of Justice: Amendment No 29 relates to clause 85, which deals with legal aid. I will also speak to the other amendments in the group, which seek to introduce powers to extend solicitors' rights of audience in the higher courts in Northern Ireland.

Clause 85 provides for the introduction of a fixed financial threshold to be applied by the judiciary when granting criminal legal aid to defendants at the Magistrate's Court and, on appeal, to the County Court. Although there is currently a means test for criminal legal aid in those courts, there are no fixed limits. That can lead to disparity in how legal aid is granted in the courts. It is hoped that the introduction of a fixed financial limit will help to target legal aid at those who need it most and make it easier for practitioners to determine whether their clients are likely to be eligible for legal aid.

I agree with the Committee that any proposals for a fixed means test should undergo close scrutiny before implementation. The Committee is content to include an enabling clause in the Bill. However, given the potential impact on access to justice, the Committee and I wish to ensure that any rules arising from that power will be subject to draft affirmative procedure rather than to negative resolution. Therefore, I propose amendment No 29 to provide for affirmative procedure when the rules in the clause are being considered for the first time. The negative procedure will apply to any subsequent amendments. The Committee is in agreement that amendment No 29 provides for full and rigorous scrutiny of the principle and procedures for the introduction of a fixed means test for criminal legal aid and, therefore, addresses its main concern.

I will now address the amendments that relate to solicitors' rights of audience. As the House

will recall, I advised at Second Stage that it had not proved possible to resolve some competence issues relating to the relevant clauses in time for inclusion in the Bill on its introduction but that I hoped to introduce provisions at this stage. I am now pleased to bring those clauses before the House by way of amendment Nos 30, 31, 32, 64 and 65. They are intended to give effect to the Bain recommendations to extend solicitors' rights of audience for suitably qualified solicitors in the higher courts. It is intended that that will give the public a wider choice of legal representation and enhance the provision of legal services in Northern Ireland.

My Department has engaged extensively with key stakeholders and worked closely with the Attorney General in developing the provisions. The Attorney General has stated formally that the clauses are within the legislative competence of the Assembly. Although it was content with the general principle of affording the public a wider choice of legal representation, the Committee did not have sufficient time to reach a view on the detail of the proposed new clause. I thank Committee members for their comments about and consideration of the amendment.

At present, solicitors in Northern Ireland enjoy unlimited rights of audience in the Crown Court, County Courts, Magistrate's Courts and tribunals. There are, however, restrictions placed on solicitors appearing at the High Court and the Court of Appeal, where, effectively, they may appear only in an insolvency matter, in chambers or where counsel is unavailable. The proposed new clauses create a system of authorisation for solicitors who wish to exercise extended rights of audience in the High Court and the Court of Appeal.

A solicitor may apply to the Law Society for authorisation. It will then be for the Law Society to decide how such an application is made, whether a fee is payable and what information the society requires. The new clauses will also require the Law Society to make regulations that set out the education, training or experience requirements that a solicitor must possess before it can grant authorisation. Those Law Society regulations will require the concurrence of my Department, given after consultation with the Attorney General.

A solicitor who holds authorisation will have the same rights of audience as counsel in the High Court and Court of Appeal.

3.15 pm

The clauses also contain a range of measures designed to ensure that competition for advocacy services is maintained and that conflicts of interest are prevented. They include the creation of a duty for a solicitor to advise the client in writing of the options available for representation in the High Court and the Court of Appeal. The detail of the matters covered by that advice is to be prescribed by the Law Society in regulations, which will require the concurrence of my Department, to be given after consultation with the Attorney General.

The measures will require a duty to act in the best interests of the client when providing that advice and to give effect to the decision of the client. There will be a duty to inform the courts, in a way and timescale that is provided by court rules, that they have complied with those requirements and that the client has been advised accordingly. Provision must be made to ensure that a complaint can be made to the solicitors' disciplinary tribunal where there has been an alleged breach of those requirements. The clauses also give my Department an order-making power to make technical amendments to certain legal aid primary legislation to take account of the extension of solicitors' rights of audience. Those orders will be subject to negative resolution procedure.

Implementing the rights of audience provisions has no cost implications for the legal aid fund. The proposal has been screened and is considered to be convention compliant. I recommend the amendments to the House.

The Chairperson of the Committee for Justice: Amendment No 29 provides for rules, when introduced for the first time as a result of clause 85, to be subject to affirmative procedure in the Assembly rather than negative resolution procedure, as is envisaged by the clause as it stands. The amendment has been tabled by the Minister at the request of the Committee.

Clause 85, which allows for the introduction of a fixed means test for criminal legal aid, attracted a range of responses in the evidence gathered by the Committee during Committee Stage. Many responses outlined concerns regarding implementation of the policy. Views included

the need for the levels of eligibility to be set appropriately to ensure effective representation for those who appear before the courts, the need for the interests of justice test to take precedence over means testing and clarification of the likely costs of the administrative arrangements as the potential for savings may outweigh the likely delays and increased administration.

The Committee received a briefing on the results of research commissioned by the Department into the impact of introducing a new means test for criminal legal aid. That research indicated that significant savings could be achieved only by reductions in the eligibility rate of 10% or more. The Minister made it clear to the Committee that proposals for a fixed means test would require close scrutiny prior to possible implementation, and, in his view, the option of introducing a fixed means test for criminal legal aid should, therefore, be kept open through the provision of that enabling clause.

The Committee is content to provide for this enabling clause in the Bill, but, given the impact on access to justice that the introduction of a fixed means test for criminal legal aid could have, it wants to ensure that rules arising from this power are subject to an appropriate level of control by the Assembly. It is the Committee's position that the draft affirmative procedure for the introduction of rules under this clause for the first time, rather than the negative resolution procedure, will provide that control. Amendment No 29, therefore, will provide for full and rigorous scrutiny of the principle and procedures for the introduction of a fixed means test for criminal legal aid by requiring full public and Committee consultation followed by an Assembly debate on the issue.

The Committee also notes the intention of the Minister of Justice to undertake a wider review of legal aid rule-making and notes his commitment to bring his proposals for such a review to the Committee and conclude it before any substantive proposals emerge to amend rules that are made under clause 85 after the first time by negative resolution. The Committee for Justice supports amendment No 29.

Amendment Nos 30, 31, 32, 64 and 65 introduce new clauses to extend solicitors' rights of audience in the High Court and the Court of Appeal. As already outlined by the Minister of Justice, the intention had been to introduce such clauses in the Justice Bill prior to its introduction to the Assembly. It is unfortunate that the Department was unable to do that, and, as a result, the Committee has been unable to consult fully on the proposed clauses.

The Committee received details of the content and text of the proposed new clauses on 28 January 2011. Considering that the Committee Stage of the Bill was due to end on 11 February, it had a very limited opportunity to consider the proposals. Given the interest of the Law Society and the fact it had been pressing for the introduction of solicitors' rights of audience in the higher courts for some time, the Committee invited written and oral evidence on the proposed new clauses from its representatives. The Committee also received written evidence on the issue from the Bar Council just prior to the completion of the Committee Stage of the Bill.

In the Law Society's evidence to the Committee, it commented on the insufficient time to consider the text of the proposed new clauses and indicated that, although it fully supports the policy and principle behind the new provisions, it has a number of concerns and issues regarding the clauses as currently drafted. Those concerns relate to the requirement to consult with the Attorney General and the engagement of the Department of Justice in the regulation of the profession. The Law Society regards that as wholly inappropriate and a significant departure from the norm. It also questioned the need for some of the provisions, because they duplicate existing practice, and sought clarity on some of the terms used in the clauses. In the Bar Council's written evidence, it outlined serious concerns about the underlying principle of extending solicitors' rights of audience.

Although the Committee for Justice supports the general principle of affording the public a wider choice of legal representation by extending solicitors' rights of audience in the higher courts, the Committee did not have sufficient time to reach a view on whether it was content with the detail of the amendments.

Mr McCartney: Go raibh maith agat, a LeasCheann Comhairle. We support the amendments. I will break my comments into two parts. First, I will cover legal aid, and then I will address the issue of solicitor advocates. When we discussed legal aid at Committee Stage, we were always keen to ensure that the guiding

principle should be that access to justice should not be made more difficult. Indeed, we argued that it should be made easier. Therefore, we are in agreement with those provisions, particularly because new article 31 states that if:

> *"there is a doubt whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid."*

We think that that is the guiding principle. We are also satisfied that it is enabling legislation that will provide rules. Those rules will have to be subject to affirmative resolution and to a debate in the House, which will allow us to examine whatever changes will be proposed. That will give us an idea of what the fixed limit will be and what impact it may or may not have in respect of access to justice.

As a guiding principle, we are satisfied with the clause and the amendment, and we are satisfied that our interests and concerns have been addressed. It is a similar position with the order to recover the costs of legal aid in respect of convictions. Again, we are satisfied that it is enabling legislation, which will lead to a set of rules that, again, will be subject to affirmative resolution and to a debate in the House. A number of concerns were addressed, and we got satisfactory answers that the provision should not be seen as an infringement on family members or relatives of a person who may be convicted. It should not impinge on their rights or properties, or whatever.

Clause 90 relates to litigation funding agreements. Again, we agree that people who do not take cases are sometimes put off because of fear of the cost. The clause will assist in some way by ensuring that there will be provision for a fund if a case is unsuccessful.

We are supportive of the new clauses in respect of solicitor advocates. The Chairperson outlined that, initially, the matter was to come before the Committee, but it was postponed because of concerns. The Committee did not consider it in the detail that we would have desired, but there were a number of discussions, and we had a number of presentations from the Law Society, the Bar Council and departmental officials. We are guided by the fact that the rights of audience have already been granted in lower courts. We asked questions and, to our knowledge, there has not been a successful appeal at the Court of Appeal: no one has said that the fact that they used a solicitor advocate meant that the level or competency of the legal representation was such that there was a successful appeal and a decision was overturned.

We also note that that is already in practice in the Twenty-six Counties, where no successful case has been taken to the appeal court to overturn a decision on the grounds that the solicitor advocate was incompetent in the particular job that they were tasked to do. There is an idea that people might use solicitor advocacy as a cheaper way to employ a brief or that solicitors may oversell themselves as the best and most competent person to take cases forward. However, research, particularly from courts in the Twenty-six Counties, shows that take-up is actually minimal. It is only used in circumstances when a solicitor advocate has a particular specialism or when a solicitor advocate has taken a case from its inception and the client, therefore, believes that they can offer the best representation.

As we said at Committee Stage, we have to keep an eye on the issue. The Committee had a number of evidence sessions with practitioners and officials. We want to ensure that the matter is reviewed or monitored so that people are not improperly advised. The Law Society has reassured us in that regard, and we discussed whether trial judges could have a role in ensuring that when people employ solicitor advocates or counsel, they can be assured that decisions that are made are in their best interests and, indeed, in the best interests of the wider justice system. Go raibh maith agat, a LeasCheann Comhairle.

Lord Empey: I agree with the Chairperson's remarks on amendment No 29. I want to address most of my comments to the question of solicitor advocacy. As the Chairperson said, representations, particularly from the Law Society, indicated that people would have liked more time to consider some of the proposals.

There is politics, there is church politics, university politics and legal politics. Some of us know that we are out of our depth when we get into the middle of some of those issues. I see at least one distinguished barrister in the room — I was talking about Mr McFarland there. *[Laughter.]* The fact is that for those of us who are not in the legal profession and are lay persons in these matters, it is quite a daunting

task because we are being lobbied by or are receiving presentations from some of the most articulate and persuasive professionals around. It is their job. That is what they do. Therefore, the lobbying and presentations are, obviously, of a very high calibre. Equally, the twists and turns of the law, how courts operate and the processes in place mean that, for a lay person, to understand the full implications of what we are doing is quite a difficult challenge. That is why that particular issue has created quite a lot of interest from the professions. I am sure that, in addition to presentations that we have had in Committee, most parties have received presentations from both the Bar Council and the Law Society in consultations over quite some time.

I must say, however, that at all times lobbying was done properly and informatively. People were co-operative. There was no attempt to harry, bully, or anything like that. It was all done in a positive way. That said, there is a general thrust at national level towards solicitors having greater access. The reality is that that will happen. The Law Society may have issues with the particular details of proposals.

The Minister has further things to do in that regard. Nevertheless, the extension of solicitors into the higher courts is going to happen.

3.30 pm

The Bar Council expressed genuine concern about a number of issues, and I will spend a moment or two talking about those. A solicitor is the first professional who is in contact with someone facing issues with the law. That solicitor knows the client, so it is easy for him to say: "We have a solicitor in-house who is qualified; you know our company; and we can offer this service and provide it to you." The solicitor will also have to advise the client that there are other options, and if the client wishes to engage a barrister, that option is still available. Nevertheless, I suspect that the larger law practices in the greater Belfast area will be able to set up advocacy units in their practices in which they will have a number of qualified advocates who will be able to represent clients in the High Court. Of course, it will depend on the location of a practice as to whether that might happen. However, I suppose that it is perfectly understandable that such units will be set up. I accept that solicitors are going to have to tell clients what their options are so that they can make informed choices. However, I suspect that that will be the practice, particularly in the larger companies in the greater Belfast area that have the ability to have a number of advocates in-house.

What are the implications? If we look across the water, we will see evidence that, by and large, barristers are not appearing in the lower courts to the extent that they did a number of years ago. It is most important that we keep a supply chain of qualified barristers coming into our system. Therefore, the question is whether this will damage the ability of the Bar to ensure that a continuous supply of highly qualified people is coming into the profession? Also, given that we are talking about reductions in legal aid generally, what will the economic impact of the situation be on the Bar Library, for instance?

I understand that 35 people are coming into the profession this autumn and that there are approximately 600 in the Bar Library at the moment. So, will this have an adverse economic impact on that situation? I suppose that those are the issues.

The objective is to ensure that a client facing a legal challenge is provided with advice of the highest quality. Although I have no problem with the concept that solicitors will migrate to the higher courts, as, I think, is already happening across the water, I have concern that there could be an adverse impact on the Bar. That would not be positive in the long-term. I hope that the Minister will, to some extent, be able to alleviate any concerns in his summing up.

The other area in which potential weakness might lie is in the degree to which the solicitor offers a genuine choice to the client on whether to seek the advice and services of a barrister or a solicitor advocate. If a company has a division comprising people who are solicitor advocates, there is almost a disincentive for a solicitor to push an alternative. This is where the clash is going to come. I know that the Minister and his officials are aware of the issue, and I suspect that he can address it. We need absolute assurance from the Law Society that solicitors will put a genuine, clear-cut choice before their clients, so that it is not all done in-house and without the option of going for advice outside the solicitors' practice. That said, we are broadly content with this group of amendments. I endorse the Chairperson of the Committee's assessment of the legal aid issue. I think that we all accept that, although people

must have a right to law, the system has been getting out of control in recent years. The truth is that problems in society call for a balance at all times. We all want to provide people with the best possible legal advice in as many areas as possible. However, if we do that, something else will suffer, whether that is education, health or another area. All those areas required a balance to be struck. Things had gone a bit too far in legal aid, and it is being reined in from a budgetary point of view, which is probably a positive move.

There is a balance to be struck on whether solicitor advocates will have a universal impact on the profession. I suspect that they will not, but I am anxious about the larger practices possibly having something of an advantage, particularly over the smaller practices, if they have a special team that concentrates on that area. That is where a risk could exist to the future of the Bar. In common with politicians, bankers, estate agents and now bankers, lawyers come in for a fair bit of criticism. Nevertheless, if there is not a long-term consistent supply of highly qualified people entering any profession — medicine, accountancy or whatever — society will ultimately be weakened.

I hope that we got the balance right and that the Minister and his Department will monitor how it is introduced. I hope that we will ensure that there are clear-cut guidelines on how solicitors are to notify their clients about the options open to them. If that is done properly, I suspect that we will have steered a middle course through those clauses.

Mr A Maginness: From the outset, I declare an interest as a member of the Bar of Northern Ireland. Lord Empey made a number of important points about the clauses under discussion. We will, of course, support the clauses that the Minister has brought forward on the fixed means test and the solicitor advocates.

I will make a couple of general comments. First, we were well warned in Committee by the Law Society and the Bar about certain dangers involved in the fixed means test. If the fixed means test is so high as virtually to exclude many people from access to justice through assisted criminal legal aid in serious cases, we do no service to the public. Of course, many people will say that it does not matter to them. However, once a serious problem reaches their family door, the test kicks in, and people become anxious about it.

If we take the average middle income here in Northern Ireland, it could well be that people could not personally afford to provide for their legal defence in a serious criminal trial. That is quite wrong. We have to balance access to justice with economy. We cannot have a free-for-all. I agree with Lord Empey that excessive fees are quite wrong, and we have to be vigilant about that.

So, when the Minister and departmental officials came to the Committee, it was right and proper that the Committee reached a consensus that in the event of the Bill being passed that at least the initial template for determining a fixed means test should go to the Committee, that the Committee and other stakeholders should be consulted, and that the regulations would be by affirmative resolution. I am grateful to the Minister for conceding on that point, and that is a useful compromise. The devil is in the detail, and we shall see exactly what is intended by this enabling legislation when it comes to determining those regulations.

With regard to solicitor advocates, the legislation relates to the extension of representation in the higher courts: the High Court and Court of Appeal. The Committee, quite rightly, insisted on safeguards for that, and the Department accepted the need for safeguards. Thus there are safeguards for:

> *"the Law Society to make regulations setting the education, training or experience requirements which a solicitor must meet before authorisation can be granted".*

That is right and proper. We have talked a lot about unintended consequences. As a result of that, however, we could have two tiers of solicitor advocates: one in the High Court and Court of Appeal, which have more rigorous regulations for training, education and experience, and one in the lower County Courts, Crown Courts and Magistrates' Courts. That may or may not be the result of this legislation. I suspect that it will, and that we will run into difficulties if that happens.

Lord Empey put his finger on the problems associated with solicitor advocates. The ordinary solicitor's office in Magherafelt, Antrim or throughout Northern Ireland is probably

too small to afford to have someone become a solicitor advocate, and it is not in their commercial or professional interests to have a solicitor advocate attached to that office. It could well be possible, however, for bigger firms, particularly criminal law firms, to have a special section dedicated to solicitor advocacy, particularly in Crown Courts.

That will have a consequence that is, perhaps, not intended. The consequence is twofold. First, it makes the smaller firms appear less professional or makes them less attractive to clients because the client will say: "That other firm is bigger and has a section with solicitor advocates but you, the smaller, professional firm in a county town, do not have that capacity and, therefore, I am not going to use you." That could have a knock-on effect on smaller firms throughout Northern Ireland and that should be considered by not just us but also by the Law Society.

3.45 pm

The second point, which Lord Empey dwelt on, is about the type of legal profession that we want. Do we want an independent Bar in Northern Ireland? Most of us do, but this small jurisdiction would find it difficult to sustain an independent Bar in a situation where a significant part of its work is being taken from it. In those circumstances, we weaken the scope for opportunities, particularly for younger barristers, both male and female, to get into areas of work initially and thereby gain experience and, after gaining that experience, to attain a certain level of expertise that should be their stock in trade. If we squeeze those barristers out of the Crown Courts, for example, and the relatively modest or straightforward work that they do, such as pleas or defending less serious offences, we are effectively weakening the Bar and undermining its independence, because it has to have work to sustain itself. So, we have to be cautious and look at the issue very carefully.

I go back to the original point that I made; we could have two tiers of solicitor advocates, which could lead to further tensions within the solicitor profession and between solicitors and barristers. We need to seriously consider the advice that solicitors will be giving their clients. As Lord Empey said, the solicitor is the professional who has the first interface with the client. In other words, the client goes to the solicitor and has a level of faith and confidence in him or her. If that solicitor is considering giving the client the services of a solicitor advocate, he or she is being asked to give what amounts to independent advice to the client. From a human point of view and from a professional point of view, that is not an easy task. The solicitor will be conflicted between giving independent advice and, due to the natural and proper professional self-interest that he has, getting the client to employ his solicitor advocate. There is a tension there, which is very difficult to resolve.

The general principle of solicitor advocates is great, and we can all say that we agree with it, but it is the implementation of the measure that will be very difficult. In Committee, I said that the solicitor was not only a gatekeeper between the client and the legal profession but a self-interested gatekeeper. That is a matter that we must look at very carefully.

Mr McNarry: I want to pose a question that may be a dilemma for the public if the legislation is passed. It comes down to money and is based on the perception of people who had to pay that barristers seemed to earn more money than solicitors. Would the payment that is made to a solicitor advocate be equal to the payment that is made to a barrister for the same case? Would the public be able to perceive and grasp, in getting down to brass tacks, that a solicitor with the new special qualification would be equal to a barrister but that there would there be no differential in the charge? If there was a differential, I can imagine the catch-22 situation of clients thinking that, if one is cheaper than the other, but both will have equal status and will give service, they should take whatever is best. However, if one happens to be much cheaper, the natural instinct would be to go with that person, because clients have been told throughout the process that that is where they are. If clients lost the case, they would feel sick at the thought that the dearer fella might have done a better job and represented them better. How can that be dealt with in the perception of the public, when the public are going to have to be made aware of it?

Mr A Maginness: The Member raised a series of interesting questions. I am unsure how remuneration would take place, at what levels, whether it would be equal or whether there would be some discounting for those who instruct solicitor advocates or counsel privately.

I am not certain how it operates at the moment when public funds are concerned. Some arguments were made to the Committee by the Bar and, although I cannot remember the actual detail of those arguments, it did suggest that, in certain circumstances, solicitor advocates receive more money than barristers.

(Mr Speaker in the Chair)

One has to remember that solicitors have had the right of audience since 1978 and that they did not act upon that to any great extent in the lower courts. They did act upon that right in the Magistrate's Court, but they did not do so in the Crown Court or County Court to any great extent. The reason why solicitor advocates now practise in the Crown Court is because the remuneration is there for them and it is better commercially for them to participate in that sort of activity.

If there was equality between the Bar and solicitors, and solicitor advocates did not get an advantage, the issue may fade away. However, I think that there is an element of commercial advantage for solicitor advocates, and that must be looked at carefully.

Even if a separate solicitor advocate does the job of counsel in the Crown Court, he still belongs to the firm that instructs him and that represents the client, and I cannot get away from the idea that there will be a double payment to the solicitor firm and the solicitor advocate. That is something that legal aid should look at and it cannot be determined through the clauses that are under discussion today. However, it is an important issue that should be looked at carefully to see whether an equitable arrangement can be reached between solicitor advocates and barristers.

I return to the central point that was raised by Lord Empey, which is whether we want an independent Bar and an independent legal profession. We all say that we want an independent judiciary; that is very important and we all support that. However, in any democracy, it is important to have an independent Bar, which is not under the control of the state or of big interests and which is truly independent. If we remove the capacity of the Bar to sustain itself by adverse innovations, we do it a disservice and undermine its independence.

We need to scrutinise any subsequent subordinate legislation and, throughout all this, we need to preserve the basic principle of access to justice. Access to justice is paramount for ordinary people, not just in criminal trials but in civil litigation. The professional capacity must be there when we want it, and we may arrive at a situation in which that capacity has been undermined and reduced. According to a Westminster Public Accounts Committee report, in England and Wales that capacity has been undermined by the removal of the Bar from our Crown Courts and the introduction of solicitor advocates. The quality of professional representation has been reduced, and we should be wary of that here.

That said, it is a matter of raising the issues; it is not a matter of rowing back and saying that these developments should not happen. However, as they happen, they should be looked at carefully and scrutinised so as to maintain access to justice and the independence of our legal professions.

The Minister of Justice: Welcome back to the Chamber, Mr Speaker. Some of us have been here for quite a long time. We must all have had a very good lunch, because the tenor of the debate seems to be significantly easier than it was before lunchtime.

I thank Members for the considered way in which they have been looking at these two issues, particularly the issue of solicitors' rights of audience, which has preoccupied the work of the Department for a considerable time. A lot of information had to be accessed, a lot of lobbying was done and advice had to be obtained for the Attorney General and others to ensure that we got a balanced set of proposals for these clauses.

Turning first to the legal aid proposals, it is clear that there is a general welcome for what has been proposed. The amendment will provide a more structured approach to the granting of criminal legal aid, which will ensure that those who can afford to pay for their own defence costs will do so, and that the valuable and finite and, unfortunately, decreasing resources are more effectively and fairly targeted at defendants who most need them.

Mr Maginness raised concerns that there might be an adverse impact on access to justice. I do not accept that that is the case. The driver for the means test is to ensure targeting of legal aid funds where they are most needed. That is the intention behind this, and I believe that that is what Department officials have worked up in

a way that will be manageable and will ensure that access to justice is a key principle for us in the future.

I welcome the agreement in general to the clause that Lord Morrow first outlined on behalf of the Committee and that others have supported. The clauses extending rights of audience for solicitors in the higher courts have attracted a considerable amount of lobbying. Lord Empey highlighted the lobbying from the articulate gentleman who represented the Bar. Almost equally articulate gentlemen represent the Law Society and, if it is any consolation to members of the Committee, at least there are generally seven or eight of them sitting round the table when they are lobbied. When I am lobbied, I am on my own.

There are issues of legitimate concern in getting the balance between the two professions right and to ensure that, if we make the proposals to extend rights of audience, we ensure that clients are treated correctly and fairly and that the best advice and support that they can receive is available. The balance of the clauses that we now have gives us the opportunity to do things right, namely to extend the rights of audience for solicitors to the higher courts, while ensuring the need to maintain competition for advocacy services and fundamentally to protect the public interest. As I said earlier, we were unable to introduce those clauses at Second Stage because we did not have the full authorisation that they were competent at that stage.

I acknowledge the points that Lord Morrow made about the limited time that the Committee has had to consider the clauses, but the Committee has certainly accepted in principle that this is the correct direction of travel to ensure a wider choice of legal representation, and I am grateful for that support.

4.00 pm

As I said, we have engaged with key stakeholders over a significant period in developing the clauses, and I believe that we now have a fair balance. The Bill provides for a system of authorisation by the Law Society for solicitors who wish to exercise extended rights of audience in the High Court and the Court of Appeal and requires the Law Society to make regulations setting out the education, training or experience requirements that a solicitor must meet before getting authorisation. The regulations to be made will require the concurrence of the Lord Chief Justice and the Department of Justice in consultation with the Attorney General. That measure is designed to ensure that the standard of advocacy in the higher courts is fully maintained. We have a range of measures to ensure that competition is properly maintained and that conflicts of interest are prevented. The provisions will now ensure that the client can get sufficient information to allow him or her to make an informed choice of representation in the higher courts. The measures certainly should reinforce consumer confidence and reassure clients that their needs are paramount.

Clearly, there will always be a tension between the two branches of the profession, and that was articulated for us when Mr Maginness specifically talked about the tension regarding the role of solicitors. He described the solicitor as potentially "a self-interested gatekeeper". I suppose that the alternative is the Irish situation, where solicitors have full rights of audience and where it might be said that the solicitor is a self-interested gate-slammer. On that basis, by seeking to get that tension addressed, we have perhaps highlighted it, but we have also done things that will ensure that the client's choice is paramount and that the interests of justice are properly covered.

Let me repeat some of the points I made earlier. The clauses create a duty on solicitors to advise the client in writing of the options available. They have a duty to act in the best interests of the client when providing that advice. There is a duty to inform the court that the solicitor has given that advice properly. There were no concerns when equality-screening exercises were carried out on that. There are no specific costs for private business or the voluntary sector. This is a matter of management within the legal professions.

I fully appreciate that the Committee had a short time to consider the clauses, and I note that it is content with the general principle of extending solicitors' rights of audience and agreed with the principle of those clauses.

Let me refer to some of the specific contributions made. Lord Empey made a number of points about the operation of the provisions. However, the safeguards that I have just outlined will ensure that competition is properly maintained. Let me repeat them: the Bill will provide for the duty to provide advice, the duty

to ensure that the client can make an informed choice and the duty to act in the best interests of the client. It will also provide for regulations to be made to carry that through, and those regulations must have the concurrence of my Department after consultation with the Attorney General. Those are all lacking in the current arrangements in England and Wales. That is where we have gone significantly further in protecting the rights of individuals.

I believe that barristers will always be required, and we will see that the clauses will give effect to the report of the Bain committee to ensure that there is wider access to legal opportunities. Lord Empey talked about the role of the Department and where it would stand on monitoring arrangements. The fact that we have a duty to concur with the Law Society regulations gives us that reassurance. On the basis of the articulate representations made by both branches of the legal profession, I have no doubt that, if there are concerns on either side that matters are not operating properly, the profession will soon be back at the door of the Department of Justice to ensure that we are carrying things through. I believe that we will ensure, as we keep an eye on the regulations and monitor training and experience, that there will be no need for concern on that.

Alban Maginness talked about what he described as the potential unintended consequences for smaller solicitor firms, but I do not believe that that is a real danger. There is always a danger from the law of unintended consequences, but those clauses give effect to the Bain recommendations and have been given significant consideration over a period. They may have been introduced relatively late to the Bill, but it was in the context of ensuring that everything was right and was certified as such by the Attorney General before their introduction.

It is not a matter that was not properly considered; it has been fully considered elsewhere and in different ways. The aim has been welcomed by the Law Society and the practical measures by the Bar Council, which is a significant achievement for the Bill. The same applies to the issue of whether granting solicitors extended rights will impact, to a degree, on the Bar. As I understand it, the experience in England, Wales and even more so in the Republic is that there was not that much of an impact on the work of the Bar in higher courts. Mr McCartney highlighted examples of solicitors with niche expertise or who have been so closely involved with a client that the client may want that solicitor to represent them higher up.

I know from my previous occupation that barristers frequently appear in lower courts on behalf of solicitors who have other work to do. Therefore, there is something of a mixed market starting to operate at all levels. Clearly, there are the potential dangers of self-interest. However, as I said, the fact that the Bill requires proper advice to be given to enable a client to make an informed choice is a significant step forward in reducing the danger of self-interest on the part of solicitors compared with what exists in the South or across the water.

Mr McNarry asked about the cost of solicitor advocates. I believe that, at the Justice Committee meeting tomorrow, he will see a paper that deals with certain legal aid issues. The Department's current recommendation is that regulations provide the same legal aid rates for solicitors in the higher courts as for junior counsel, which clearly recognises the comparability of the work that will be done. In civil cases and others that are not legal-aided, it would be a matter for negotiation between a client and his or her legal representative, with a dispute referred to the taxing master. I do not believe that there will be any significant issue that will lead to people being diverted into suggesting that they are somehow getting a cheaper deal and, therefore, justice on the cheap.

The group 5 amendments should stand. They represent a significant step forward in legal aid and in resolving the difficult and vexed issue of advocacy powers for solicitors in higher courts. I recommend them to the House.

Question, That amendment No 29 be made, put and agreed to.

Clause 85, as amended, ordered to stand part of the Bill.

Clauses 86 to 91 ordered to stand part of the Bill.

New Clause

Amendment No 30 made: After clause 91, insert the following new clause:

"PART 8

SOLICITORS' RIGHTS OF AUDIENCE

Authorisation of Society conferring additional rights of audience

91A.—(1) The Solicitors (Northern Ireland) Order 1976 (NI 12) is amended as follows.

(2) In Article 6 (regulations as to the education, training, etc. of persons seeking admission or having been admitted as solicitors) after paragraph (1) insert—

'(1A) The Society shall make regulations with respect to the education, training or experience to be undergone by solicitors seeking authorisation under Article 9A.'.

(3) After Article 9 insert—

'Authorisation of Society conferring additional rights of audience

9A.—(1) A person who is qualified to act as a solicitor may apply to the Society for an authorisation under this Article.

(2) An application under paragraph (1)—

(a) shall be made in such manner as may be prescribed;

(b) shall be accompanied by such information as the Society may reasonably require for the purpose of determining the application; and

(c) shall be accompanied by such fee (if any) as may be prescribed.

(3) At any time after receiving the application and before determining it the Society may require the applicant to provide it with further information.

(4) The Society shall grant an authorisation under this Article if it appears to the Society, from the information furnished by the applicant and any other information it may have, that the applicant has complied with the requirements applicable to him by virtue of regulations under Article 6(1A).

(5) An authorisation granted to a person under this Article ceases to have effect if, and for so long as, that person is not qualified to act as a solicitor.

(6) The Society may by regulations provide that any person who has completed such education, training or experience as may be prescribed, before such date as may be prescribed shall be taken to hold an authorisation granted under this Article.'.

(4) In Article 10 (practising certificates and register of practising solicitors) after paragraph (2C) insert—

'(2D) Every entry in the register shall include details of any authorisation granted under Article 9A to the solicitor to whom the entry relates.'." — [The Minister of Justice (Mr Ford).]

New clause ordered to stand part of the Bill.

New Clause

Amendment No 31 made: After clause 91, insert the following new clause:

"Rights of audience of solicitors

91B.—(1) In section 106 of the Judicature (Northern Ireland) Act 1978 (c. 23) (rights of audience in the High Court and Court of Appeal) after subsection (3) insert—

'(3A) A solicitor who holds an authorisation under Article 9A of the Solicitors (Northern Ireland) Order 1976 shall have the same right of audience in any proceedings in the High Court or Court of Appeal as counsel in those courts and any such right is in addition to any right of audience which a solicitor would have apart from this subsection.'.

(2) After Article 40 of the Solicitors (Northern Ireland) Order 1976 (NI 12) insert—

'Duty to advise client as to representation in court

40A.—(1) Paragraph (2) applies where—

(a) it appears to a solicitor that a client requires, or is likely to require, legal representation in any proceedings in the High Court or the Court of Appeal;

(b) either—

(i) that solicitor is minded to arrange for another solicitor who is an authorised solicitor to provide that representation; or

(ii) that solicitor is an authorised solicitor and is minded to provide that representation; and

(c) in representing that client in the High Court or Court of Appeal, a solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978.

(2) The solicitor must advise the client in writing—

(a) of the advantages and disadvantages of representation by an authorised solicitor and by counsel, respectively; and

(b) that the decision as to whether an authorised solicitor or counsel is to represent the client is entirely that of the client.

(3) The Society shall make regulations with respect to the giving of advice under paragraph (2).

(4) A solicitor shall—

(a) in advising a client under paragraph (2), act in the best interest of the client; and

(b) give effect to any decision of the client referred to in paragraph (2)(b).

(5) For the purposes of this Article compliance with paragraph (2) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(6) If a solicitor contravenes this Article, any person may make a complaint in respect of the contravention to the Tribunal.

(7) In this Article and Article 40B "authorised solicitor" means a solicitor who holds an authorisation under Article 9A.

Duty to inform court as to compliance with Article 40A(2)

40B.—(1) Where—

(a) a solicitor has complied with Article 40A(2) in relation to the representation of a client in any proceedings in the High Court or Court of Appeal;

(b) that client is to be represented in those proceedings by an authorised solicitor; and

(c) in representing that client in those proceedings the authorised solicitor would need to exercise the right of audience conferred by section 106(3A) of the Judicature (Northern Ireland) Act 1978,

the solicitor shall inform the High Court or (as the case may be) the Court of Appeal of the fact mentioned in sub-paragraph (a) in such manner and before such time as rules of court may require.

(2) For the purposes of this Article compliance with paragraph (1) in relation to any proceedings in a court in any cause or matter is to be taken to be compliance with that paragraph in relation to any other proceedings in that court in the same cause or matter.

(3) If a solicitor contravenes paragraph (1), any person may make a complaint in respect of the contravention to the Tribunal.'.

(3) In Article 50 of the County Courts (Northern Ireland) Order 1980 (NI 3) (rights of audience) in paragraph (1)(c) omit the words ', but not a solicitor retained as an advocate by a solicitor so acting'." — [The Minister of Justice (Mr Ford).]

New clause ordered to stand part of the Bill.

New Clause

Amendment No 32 made: After clause 91, insert the following new clause:

"Consequential and supplementary provisions

91C.—(1) In Article 75 (regulations) of the Solicitors (Northern Ireland) Order 1976 (NI 12) after paragraph (2) insert—

'(2A) Regulations under Article 6(1A), 9A(6) or 40A(3) also require the concurrence of the Department of Justice, given after consultation with the Attorney General.

(2B) The Department of Justice shall not grant its concurrence to any regulations under Article 6(1A) or 9A(6) unless regulations have been made under Article 40A(3) and are in operation.'.

(2) The Department may by order make such amendments to—

(a) the Criminal Appeal (Northern Ireland) Act 1980 (c. 47),

(b) the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 (NI 8),

(c) the Access to Justice (Northern Ireland) Order 2003 (NI 10),

(d) section 184 of the Extradition Act 2003 (c. 41),

as appear to the Department to be necessary or expedient in consequence of, or for giving full effect to, the provisions of this Part." — [The Minister of Justice (Mr Ford).]

New clause ordered to stand part of the Bill.

Clauses 92 to 94 ordered to stand part of the Bill.

New Clause

Mr Speaker: We now come to the sixth group of amendments for debate, which are miscellaneous amendments to Part 8 of the Bill. With amendment No 33, it will be convenient to debate amendment Nos 34 to 46 and amendment No 63.

The Minister of Justice: I beg to move amendment No 33: After clause 94, insert the following new clause:

"Power of Department to make payments in relation to prevention of crime, etc.

94A.—(1) The Department may, with the consent of the Department of Finance and Personnel, make such payments to such persons as the Department

considers appropriate in connection with measures intended to—

(a) prevent crime or reduce the fear of crime; or

(b) support the recovery of criminal assets and proceeds of crime.

(2) A payment under subsection (1) may be made on such conditions as the Department may, with the consent of the Department of Finance and Personnel, determine."

The following amendments stood on the Marshalled List:

No 34: After clause 94, insert the following new clause:

"Variation of firearms certificate

94B.—(1) Article 11 of the Firearms (Northern Ireland) Order 2004 shall be amended as follows.

(2) For paragraph (3) substitute—

'(3) If a person—

(a) sells a shotgun or other firearm ('the first shotgun or firearm') to the holder of a firearms dealer's certificate ('the dealer'); and

(b) as part of the same transaction purchases a shotgun or other firearm ('the second shotgun or firearm') of the same calibre or type from him,

the dealer may vary that person's firearm certificate by substituting the second shotgun or firearm for the first shotgun or firearm.'

(3) No firearm may be sold or purchased under Article 11 of the Firearms (Northern Ireland) Order 2004 that is a prohibited firearm set out under Article 45 of the Firearms (Northern Ireland) Order 2004 (Weapons subject to general prohibition)." — [Lord Morrow.]

No 35: After clause 94 insert, the following new clause:

"Review of certain variation of firearms certificate

94C.—(1) The Department must review and publish a report on the current provisions relating to the variation of firearms certificates.

(2) The report under paragraph (1) must report on the desirability of bringing forward legislation to enable registered firearms dealers to vary a person's firearms certificate where that person has sold a firearm to the dealer and purchased another firearm of similar type and calibre." — [Lord Morrow.]

No 36: After clause 94, insert the following new clause:

"Review of supervised shooting restrictions for young persons

94D.—(1) The Department must review and publish a report on the current provisions relating to supervised shooting restrictions for young persons.

(2) The report under paragraph (1) must detail current practices in England, Scotland and Wales and report on the desirability of bringing forward legislation to enable supervised shooting for persons under the age of 18." — [Lord Morrow.]

No 37: In clause 96, page 54, line 39, after "Committee)" insert

"in paragraph (g) for 'one other' substitute 'a' and ". — [The Minister of Justice (Mr Ford).]

No 38: In clause 96, page 55, line 1, leave out "person" and insert

"practising member of the Bar of Northern Ireland or a practising solicitor". — [The Minister of Justice (Mr Ford).]

No 39: In clause 97, page 55, line 5, after "Committee)" insert

"in paragraph (d) for 'one other' substitute 'a', ". — [The Minister of Justice (Mr Ford).]

No 40: In clause 97, page 55, line 7, leave out "person" and insert

"practising member of the Bar of Northern Ireland or a practising solicitor". — [The Minister of Justice (Mr Ford).]

No 41: In clause 97, page 55, line 1eave out "person" and insert "barrister or solicitor". — *[The Minister of Justice (Mr Ford).]*

No 42: After clause 97, insert the following new clause:

"Funds in court: investment fees or expenses

97A.—(1) Section 81 of the Judicature (Northern Ireland) Act 1978 (c. 23) (investment of funds in court) is amended as follows.

(2) The existing provision becomes subsection (1) of that section.

(3) After that subsection insert—

'(2) If the High Court or (as the case may be) the county court so orders, the power of the Accountant General under subsection (1)(a) (iii) or (iv) to invest a sum of money in the Court of Judicature or the county court in securities

includes the power to pay out of that sum any fees or expenses which are—

(a) incurred in connection with, or for the purposes of, investing that sum; and

(b) of an amount or at a rate approved by the High Court or (as the case may be) the county court.

(3) A court shall not make an order under subsection (2) unless the court considers it necessary and proportionate in all the circumstances to do so.

(4) The High Court or (as the case may be) the county court may, on an application made to it, order that all or part of any sum paid by way of fees or expenses under subsection (2) be refunded where it appears to the court to be in the interests of justice to do so.'." — [The Minister of Justice (Mr Ford).]

No 43: In clause 102, page 61, line 15, at end insert

"(5) No order may be made under subsection (1) containing provision which amends or repeals a provision of an Act of Parliament or Northern Ireland legislation unless a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Minister of Justice (Mr Ford).]

No 44: In clause 103, page 61, line 18, leave out subsections (2) to (4) and insert

"(2) Subject to subsection (3), orders made by the Department under this Act are subject to negative resolution.

(3) Subsection (2) does not apply to—

(a) an order under section 1(7), 5(1)(c), 6(3), 44(9), 64(2), 82(5) or 107(3);

(b) an order under subsection (1) of section 102 to which subsection (5) of that section applies." — [The Minister of Justice (Mr Ford).]

No 45: In clause 107, page 62, leave out line 8 and insert

"(c) sections 94 and (Power of Department to make payments in relation to prevention of crime, etc.)". — [The Minister of Justice (Mr Ford).]

No 46: In clause 107, page 62, line 30, at end insert

"(3A) No order may be made under subsection (3) bringing into operation any provision of section 43 unless a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Minister of Justice (Mr Ford).]

No 63: In schedule 6, page 83, line 32, at end insert

"The Judicature (Northern Ireland) Act 1978 (c. 23)

. In section 82(1) (rules as to funds in court)—

(a) in paragraphs (c) and (d) for '81(b)(ii)' substitute '81(1)(b)(ii)'; and

(b) in paragraph (k) for '81(a)(iv)' substitute '81(1)(a)(iv)'." — [The Minister of Justice (Mr Ford).]

The Minister of Justice: I believe that we are now making history, Mr Speaker. I am not aware that we have ever debated a sixth group of amendments at Consideration Stage of a Bill. I will now address amendment No 33 and the other amendments in this miscellaneous and final group, as we look at the clock some 24 hours on.

The amendments in this group cover five areas: assets recovery proposals; changes to court rules committees; proposals for court fund powers; a series of changes to supplementary provisions around new affirmative resolution powers; and commencement arrangements. In addition to the amendments that I have tabled with the agreement of the Committee, Lord Morrow has tabled three amendments to firearms legislation, which appear in this group. I propose to deal with my amendments first and then to deal with Lord Morrow's amendments.

Amendment No 33 relates to assets recovery and gives my Department the power, with the consent of the Department of Finance and Personnel, to allocate the proceeds of criminal assets that are remitted to the Northern Ireland Consolidated Fund to prevent crime, reduce the fear of crime and support the recovery of criminal assets. Following devolution, there is no longer authority for the proceeds from criminal confiscation orders to be paid to the Home Office, as was the case until last year. Instead, the receipts of criminal confiscation orders are now remitted to the Northern Ireland Consolidated Fund.

The Department of Finance and Personnel is engaged with the Treasury to agree arrangements whereby the Department of Justice may draw on the proceeds of criminal confiscation receipts up to a certain limit. That is in line with the limits agreed for England and Wales and for Scotland. To allocate those funds, primary legislation is required to give the Department of Justice the authority to

make payments from funds remitted to the Consolidated Fund, hence the amendment. In the interim, the Department of Finance and Personnel will give the Department of Justice powers, under the sole authority of the Budget (No.2) Act (Northern Ireland) 2010, to allocate a portion of the funds in 2010-11. To ensure that that interim period is as short as possible, I have also tabled the linked amendment No 45, which sets out that the provision is to commence on Royal Assent.

I will now turn to the issue of the rules committees. Amendment Nos 37 to 41 are introduced at the request of the Committee and have the support of the Attorney General. Clauses 96 and 97 provide for changes to the membership of two of the statutory rules committees. Clause 96 provides that the Crown Court Rules Committee shall include representatives of the Attorney General and the Director of Public Prosecutions. Clause 97 provides that the Court of Judicature Rules Committee shall include the Attorney General or his nominee.

Rules committees are statutory bodies that make rules for the purpose of regulating and prescribing the practice and procedure to be followed in the courts. There is a separate rules committee constituted to prescribe procedure for each judicial tier. The original clauses specified that the Director of Public Prosecutions' nominee should be a public prosecutor but did not specify any particular qualification for the Attorney General's nominee. At the Committee's suggestion, I have agreed that the clauses should specify that the Attorney General's nominee should be either a practising member of the Bar or a practising solicitor. The Attorney General and the Lord Chief Justice, who chairs both committees, are content with the amendment. Specification such as that is in line with the specification for other members of the rules committees.

Amendment No 42 introduces a new clause 98 on funds in court. As the House will recall, it had been my intention to bring forward at Second Stage an appropriate clause amending courts' funds legislation. I then advised that some issues touching on legislative competence had not been resolved in time. I am now pleased to advise the House that the Attorney General has confirmed that the clause in question is within the legislative competence of the Assembly. In its recent report on the Bill, the Committee for Justice also confirmed that it supports the proposed amendment, and I am grateful for its careful consideration of the clause and for its support.

I will summarise: the new clause 98 relates to the handling of funds in court, where the County Court or the High Court has ordered that moneys are paid into court to be placed under its protective jurisdiction. That will occur, for example, where a minor has been awarded damages or where a person is deemed to no longer have sufficient mental capacity to manage their own affairs. In such cases, the moneys would be paid over to the accountant general of the Court of Judicature, who, under the Judicature (Northern Ireland) Act 1978, is responsible for managing and investing funds in court.

4.15 pm

The director of the Northern Ireland Courts and Tribunals Service acts as accountant general, and his functions are exercised by the Court Funds Office (CFO). That is an office in the Courts and Tribunals Service that manages funds in court until they are paid. That could be when a minor reaches the age of 18, for example. Funds held in court may be invested in various ways, with judicial approval. Those ways are prescribed in the 1978 Act, and they include placing funds in deposit accounts or in short- and long-term investment accounts, as well as investment in certain designated securities, that is, equities or government bonds. For investments in securities, the CFO uses stockbrokers to advise on the most appropriate investments for all new funds that come into court and to review existing investments. In return, the stockbrokers charge an annual management fee. Until recently, those fees were deducted directly from the funds of the clients whose funds were the subject of the stockbrokers' advice and management. However, legal advice that my Department obtained last year suggested that there is a doubt as to whether, in the absence of a specific legislative power, it is permissible to deduct stockbroker management charges directly from funds in court. It is important to be able to use stockbrokers to enhance clients' investment returns. Without them, the CFO would have little alternative but to hold funds as cash deposits. That would be to their clients' detriment, as they would not have the opportunity to enhance the return on their funds.

Stockbrokers have to be paid for their services, and, in principle, rather than coming from the public purse, that cost should be met by those who avail themselves of the services. Therefore, to seek legal clarity, an application will be made to the High Court for a declaration on that issue. Should it find that sufficient authority exists to permit the deduction of stockbrokers' fees directly from clients' funds, the CFO will be allowed to revert to such practice. However, there is a possibility that the court may rule that there is no current authority for deducting such fees. In that case, an amendment to the 1978 Act would be required to provide that authority. This Bill is an opportunity to make such an amendment. Accordingly, the proposed new clause would authorise, with court approval, the deduction of stockbrokers' fees directly from the funds of CFO clients. The court will also have the power to approve the rate or the amount of the fees in question, and it will not make an order authorising the deduction of such fees unless it is both necessary and proportionate to do so.

The court will also have a power to order that either the whole or a part of any sum paid by way of fees or expenses be refunded where it is in the interests of justice to do so. Consequential to amendment No 42 is amendment No 63, which will make the required changes to the Judicature (Northern Ireland) Act 1978.

Amendment Nos 43 to 46 all relate to Part 9 of the Bill, which deals with supplementary provisions. The amendments provide for additional affirmative procedures to be engaged in a number of Order-making powers. Amendment No 43 will simply reposition a subsection that had been in clause 103. What was previously clause 103(3) will now be moved to the overarching requirements of clause 102. It does not reflect a change of policy.

Amendment No 44 is consequential to amendment No 43. The subsections of clause 103 have been re-ordered somewhat, with the insertion of clause 82(5) as a provision that requires affirmative procedure. That insertion is a consequence of amendment No 28, which was discussed in the debate on the group 4 amendments. The code of practice for public prosecutors and police in using conditional cautions will be approved by affirmative procedure.

Amendment No 45 deals with commencement powers in respect of amendment No 33, which is concerned with the proposed power for the Department to make payments arising from assets recovery. It will allow that new power to commence on the day after the Justice Act receives Royal Assent.

Amendment No 46 will provide for the affirmative resolution procedure in respect of clause 43. I touched on that when we considered the provisions on alcohol in my sports law proposals. I described how the powers in clause 43, which is concerned with the possession of alcohol in sports grounds, would be commenced only by affirmative procedure. Amendment No 46 would have provided for that requirement, but, given that clause 43 has fallen, that is redundant. Any proposal to commence the possession of alcohol powers would have been brought to the Justice Committee and would then have gone to the Assembly for full debate. Perhaps that will be a solution that the Assembly will decide on at a future stage. We will have to see.

Finally, I turn to amendment Nos 34 to 36, which were tabled by Lord Morrow and deal with firearms legislation. In brief, amendment No 34 would allow a firearms dealer to vary a firearms certificate and notify the Police Service if a certificate holder sells a firearm to the dealer and buys another firearm of the same calibre or type. That so-called one-for-one transaction already exists for shotguns.

Amendment No 35 concerns the same topic as amendment No 34 but would put into law a requirement that my Department should review and publish a report on the current provisions relating to the variation of firearms certificates, including the desirability of bringing forward one-for-one transactions for all firearms. I will wait to hear what Lord Morrow says specifically, but I interpret amendment No 35 as an alternative to amendment No 34. We will have to consider how we deal with those two.

Amendment No 36 would put into law another requirement for review. It requires that I review and publish the current provisions relating to the restrictions placed on young people shooting under supervision. That would include detailing practices in England, Wales and Scotland and reporting on the desirability of legislation to enable supervised shooting for persons under 18.

I have a degree of sympathy with the proposals that are being put forward and, in particular, with amendment No 34, as I have been lobbied on that specific issue in the past. I see potential merits in extending the one-for-one transaction arrangement to other firearms to make the matter less bureaucratic. I have already considered the issue in the context of a review of firearms licensing fees. Similarly, with amendment No 36, my officials have been looking at the potential options for varying the age limits.

Policies are already under review in each of those areas. However, for differing reasons, although they are related, it is not realistic to make change at this stage. The proposed changes are significant and should be considered in a wider context and with fuller consultation, not on the basis of amendments to this Bill that were produced at a relatively late stage. Firearms licensing policy is a serious matter. Any change to the existing policy must be well thought through and consulted on, and a variety of views should be taken, including those of the Chief Constable.

As for the proposal to put a review requirement into law, I do not think that that is necessary in a process that is already under way. It would be the proverbial sledgehammer to crack a nut. Nevertheless, there is merit in the proposals, and I will consider them. I give a commitment to Lord Morrow that I intend to bring proposals to the Assembly in due course, once the policy has been developed more fully. We will look to have a full public consultation with interested parties and the wider public.

I have to say that I oppose the amendments at this stage. I hope that the House and Lord Morrow, in particular, will accept a commitment that the matter is already being examined in the Department and that it is my intention for proposals to be brought forward for full public consultation so that the matter can be considered properly. Regrettably, some matters have to be dealt with at a relatively late stage. The great majority of what is in the Bill has been consulted on in various guises and in different ways over a period of time. To make such significant changes to firearms legislation without having a full consultation process around what other aspects of firearms legislation should be changed would be a step too far at this stage.

The Chairperson of the Committee for Justice: I want to deal first with amendment No 33, which gives the Department of Justice the power, with the consent of the Department of Finance and Personnel, to allocate the proceeds of criminal assets remitted to the Northern Ireland Consolidated Fund — up to a limit agreed by the Department of Finance and Personnel and HM Treasury — to prevent crime, reduce the fear of crime and support the recovery of criminal assets.

During Committee Stage, the Department briefed the Committee on a proposal to insert such a new provision into the Bill at Consideration Stage. The Department explained that, following the devolution of policing and justice, there is no longer authority for the proceeds from criminal confiscation orders imposed under the Proceeds of Crime Act 2002 to be paid to the Home Office. Instead, the receipts of criminal confiscation orders are now remitted to the Northern Ireland Consolidated Fund. Primary legislation is required to give the Department of Justice the authority to make payments. The Committee supports amendment No 33. It will give the Department access to additional funds previously received by the Home Office, which, given the current budgetary position, is welcome news.

I now wish to move on to amendment Nos 37 to 41, which have been tabled by the Minister in response to a request from the Committee for clarification of the wording in clauses 96 and 97 about the person nominated by the Attorney General for membership of the Crown Court Rules Committee and the Court of Judicature Rules Committee. The amendments now specify that the nominees shall be either practising members of the Bar or practising solicitors and are supported by the Committee.

Amendment No 42 covers a new clause that the Department, during Committee Stage, advised the Committee of its intention to introduce. It will make provision for funds in court and will specifically allow a court to give the accountant general a specific power to deduct, with the approval of the court, certain fees charged by stockbrokers for the management and investment of funds held in court. The Minister has outlined the purpose of and need for the new clause, and I do not intend to rehearse that information. Suffice it to say that the Committee agreed that the principle of using a stockbroker to provide advice on the most appropriate

investments and to review existing investments is of benefit to clients and that the cost should be met by those who avail themselves of those services rather than by the public purse. The Committee, therefore, supports amendment No 42.

I also draw attention to an issue that arose during Committee scrutiny of the "Miscellaneous" section of the Bill. When looking at clauses 95 and 99, the Committee considered why rules made by the Magistrates' Court Rules Committee and the County Court Rules Committee are not subject to Assembly procedures. The Committee sought the Minister's views on changing the position so that Magistrates' Court rules and County Court rules would be subject to negative resolution procedure and the feasibility of taking that forward by way of an amendment to the Justice Bill. The Minister indicated his support for a change to the position but outlined that, for a number of reasons, it would not be possible to make the necessary provision in the Bill. The Committee welcomes the Minister's commitment to bring this forward in the next available Bill and is content with that position.

With your permission, Mr Speaker, I will now turn to amendment Nos 34, 35 and 36, which stand in my name. I want to emphasise that I speak not in my capacity as Chairperson of the Committee but rather as an MLA. Mr Speaker, if you are unhappy about my speaking from here, I can retreat to the Back Bench.

Mr Speaker: You are all right.

Lord Morrow: Thank you, Mr Speaker.

First, I want to say that the Minister started very well but finished not so well. I listened intently to his comments about my amendments. As regards the variation of firearm certificates, the objective is to extend the one-on, one-off facility for the variation of a firearm certificate currently in place for shotguns to all sporting firearms. A mechanism to allow one-on, one-off transactions for all shotguns has operated successfully since 2005. What is a one-on, one-off transaction? Under article 11 of the Firearms (Northern Ireland) Order 2004, a firearm certificate holder who has been approved to possess a shotgun of a specific make, model and serial number may take that shotgun to a registered firearm dealer and exchange it for another shotgun over the counter. The registered firearms dealer then notifies the PSNI and the firearm certificate is amended accordingly.

An applicant for a firearm certificate is subject to stringent checks. They must demonstrate that they have good reason to possess a particular firearm, have suitable lands to use it on and are of suitable character, and they must supply suitable references. If they are a first-time applicant, they must also make arrangements to use their firearm under the supervision of an experienced shooter for a specified time.

Amendment No 34 will extend that one-on, one-off facility to all sporting firearms and will have two main benefits. First, it will have an economic benefit, because it will considerably enhance stock turnover for the registered firearms dealer as the transaction can be completed on the spot. If that mechanism were not in place, an application for variation of a firearm certificate would take six months or more, and no business can afford to have stock tied up for that length of time.

Stock is tied up because only one applicant can apply to have a specific firearm — that is, make, model, serial number, etc — added to a firearms certificate at any one time.

4.30 pm

There are 60,000 firearms certificate holders in Northern Ireland. Shooting sports generate some £50 million annually in Northern Ireland and are responsible for 2,100 full-time jobs.

I turn now to the practicalities. The facility would also be of significant benefit to famers or gamekeepers engaged in pest control who find that their firearm has become defective. For example, a hill farmer needs a firearm to protect lambs from predation for a specific period, a farmer with crops needs to protect them from pests, and a gamekeeper needs to protect wildlife during the breeding season. If their firearm becomes defective, a one-on, one-off facility would allow those people to exchange it for another of similar type and calibre without delay, thereby avoiding potentially significant losses.

Similarly, a sporting shooter may book and pay for a number of days shooting. Should his firearm become defective, he may exchange it for another properly functioning, and therefore safer, firearm and continue to enjoy his sport.

The amendment would not in any way compromise the safety of the public. Only those persons who are already authorised to possess a firearm of a particular type and calibre would be eligible for a one-on, one-off transaction. Those people will have already passed stringent police checks, demonstrated that they have a good reason to possess a firearm of that type and calibre and shown that they can be entrusted to possess it without endangering the safety of the wider public.

In summary, the introduction of a one-on, one-off facility for all sporting firearms would protect jobs, enhance the rural community and economy, and assist with better pest and predator control without presenting any danger to the safety of the wider public. I rest my case.

Mr McCartney: Go raibh maith agat, a Cheann Comhairle. I will speak first to amendment No 34, which Lord Morrow has just outlined. We support the new clause. It is our view that the one-on, one-off scenario means that the people concerned will already have passed checks and have a certificate. I know that the PSNI is working on this, but the six-month delay between the purchase of a new weapon and the issuing of a certificate is problematic. There has been enough time to address that. In light of the fact that it would not mean a new person getting a certificate, we feel that the amendment should be supported.

We support amendment Nos 38 to 41. A number of issues were raised at Committee Stage, but we feel that the provisions clarify those.

Officials briefed the Committee on the legal advice that they received on the use of court funds and the ability to draw money from court orders to pay stockbrokers. We feel that amendment No 42 as tabled clarifies that and will allow that provision to go forward.

Lord Empey: Amendment Nos 33 and 45 are, obviously, linked. We are broadly supportive of Lord Morrow's personal amendments. There is an opportunity for simplification without any risk to the general public, because everybody will have to have gone through the necessary checks to avail themselves of the opportunity in the first place. Therefore, no principle already in place to protect the general public from persons who should not have firearms in their possession is being breached. All we are talking about is swapping a weapon in the event of somebody deciding to change it for reasons, for example, of maintenance and repairs, as those needs arise. Therefore, I do not see what the purpose of public consultation would be, because, as I see it, this is an administrative matter. Maybe Lord Morrow will correct me if I have picked it up wrong, but I see it as more of an administrative matter and a practical response to a day-to-day situation, without, in any sense, making any change in principle to the existing law, which, of course, we support.

I will focus most of my remarks on amendment No 33, which introduces a new clause 94A. The rationale for it is quite positive. A large part of the recovered assets went to the Home Office in London and was not available to the Department of Justice to disperse in Northern Ireland, so it is a good news story that we will have access to that resource. We also accept fully that the Minister needs a power or mechanism to disperse that fund, because the advice that we have been given indicates that he does not have that.

Lord Morrow and the Minister said in their introductions that the clause gives the Department the power to deal with the criminal assets money. That is not what this clause says. It is in a section that deals with miscellaneous matters. When we say miscellaneous, that is exactly what it is. The first clause in Part 8 deals with compassionate grounds for bail. The next ones deal with the possession of an offensive weapon with intent to commit an offence, the publication of material relating to legal proceedings, witness summons and appeals from Crown Court. In other words, it is a mixture and a tidy-up of bits and pieces from all over the place. What the clause says, as opposed to what we think it says, is:

> *"The Department may, with the consent of the Department of Finance and Personnel, make such payments to such persons as the Department considers appropriate in connection with measures intended to—*
>
> *(a) prevent crime or reduce the fear of crime".*

The clause does not mention criminal assets. Even if it did, the clause states that the Department may:

> *"make such payments to such persons as the Department considers appropriate".*

What could that mean? I have no doubt whatsoever that the Minister and the Committee, because it has dealt with this

matter, have in the back of their minds what they mean, but we must look to the future. We are making legislation that will probably be on the statute book for many years. I will not put a tooth in what I will say. My concern, and that of my party, is that this could give the Minister a power to give money to groups that some people in the community may consider should not get it. Those groups could be associated with paramilitaries and all sorts of things. This gives the Minister and the Department the power to make such payments to such persons as they consider appropriate. It has nothing to do with criminal assets.

The Department needs a power to dispense the money that we are glad to see coming back to Northern Ireland rather than going to the Home Office. That is fine; we are 100% behind that. I do not know whether this is technically a Henry VIII clause or whatever. The Department of Finance and Personnel has to establish that the Department of Justice proposes to spend the money for a legitimate purpose within its vote and that it has the money to do so. Quite clearly, with such an open clause as this, it would be very hard to say that the Department did not have the power to do that. The DFP control is very narrowly focused and limited.

I think that we are all at one in what we are trying to achieve. It is good news that we have that money that we did not have before. I understand — the Minister will correct me if I am wrong — that there is a possibility, on present estimates, that that could bring in around another £1·4 million a year.

I would certainly like, and I know that the party would like, that money to be spent on preventing crime and on helping communities to deal with crime. However, we are unable to support the proposed new clause in its present form because, given that it is so widely drawn, it could ultimately lead to resources going to groups and elements for which no criteria are spelled out. Money could go to anybody: that is what the proposed new clause says. The clause would appear in the Part dealing with miscellaneous matters, under:

> *"Power of Department to make payments in relation to prevention of crime, etc.",*

— but the issue of criminal assets does not even come into it. The Minister could decide to dispense money from any part of his budget to any community group, so I just wanted to make him aware of our concerns. I want a tighter drafting of the proposed new clause to make it relevant to specific criteria and to give us confidence that money will go only to groups to which the House would want it to go, because that is not my interpretation of what it says. That is my fundamental point.

We have no argument with the principle or with the fact that the Department needs the power. We are delighted that money that would otherwise go out of Northern Ireland will come in, and we welcome another resource to help to reduce the fear of crime and to do other things. However, we are interested to hear whether the Minister will consider tightening the proposed new clause for Further Consideration Stage to ensure that there is no prospect of money going to groups and organisations that Members would feel uncomfortable about receiving it. Although we are unable to support the proposed new clause in its present form, the problem is perfectly capable of being resolved. It may be, and it is understandable, that, in drafting the clause, the Minister and the Department took their cue from drafts that they saw across the water. Unfortunately, there are certain types of people who run about this place who are not running about across the water. Those are the elements that we hope to prevent from receiving funds, and we believe that it is perfectly possible to resolve the matter by tightening up the proposed new clause.

Nevertheless, the possibility of having a new resource is a good news story, and I believe that the Minister can direct that resource towards helping communities to fight crime and towards removing the fear of crime. Groups, for example, could apply for money to improve lighting in an estate in which people feel frightened about going through a dark alley. There are all sorts of ways in which such money could be used to prevent crime and to remove the fear of crime, and we would support all of them. However, there is an inherent flaw in the drafting because, although everybody said that they have in mind what they want the money to do, that is not what the proposed new clause says.

Mr McDevitt: I shall rattle quickly through the amendments as they appear on the Marshalled List. The SDLP is sympathetic to the intent of amendment No 33, which was debated at length in Committee, so it is in no one's interests to rehearse the arguments that were presented there.

I heard what Lord Empey said, but in my limited experience, I do not see how the clause to which he referred could be considered as a Henry VIII clause. Whatever else it might do, as I understand it, it does not appear to give the extensive powers that a Henry VIII clause would give. Nonetheless, the point about the law of unintended consequences and money ending up where it was not intended to end up was well made, and I expect and hope that the Minister will address it forcefully.

However, I must come back to the reason why the new clause is in front of us: so that we can receive back to this region money that, in my opinion, we are owed. That money has been confiscated or brought into the public purse as a consequence of positive action against serious and organised crime.

4.45 pm

The other amendments on the Marshalled List originate from Committee Stage and are the result of Committee decisions. I am very glad that they are in front of us, and they will enjoy our support. Amendment No 42 is a welcome amendment, and it clarifies a very important aspect of court duty that is often invisible to the lay person. I would not have thought that the vast majority of people out there in the real world would have been as aware as they may be after today's debate that, in fact, courts manage and act as custodians for very large sums of money on behalf of a considerable number of people. Amendment No 42 deals with some necessary improvements in that regard.

I ask the Minister to address amendment No 46 when he is summing up. It seems to me that it is unnecessary to move that amendment this afternoon given that, as the Minister rightly points out, the relevant clause has been voted out of the Bill today. So, I expect that to disappear, and I hope that the Minister will respond positively.

I will now turn to Lord Morrow's amendments. The SDLP is sympathetic to the argument presented. However, I want to put on record the fact that I and, as far as I am aware, my colleague on the Justice Committee were never approached by anyone inside or outside the House about the potential loophole. The first that I heard of it was when I saw the amendments on the Marshalled List. I understand that the loophole exists, and I have been fortunate to be informed by colleagues who are more expert in those matters than me over the past couple of days.

However, I make an appeal on behalf of all of us, as legislators. We are well disposed to being approached by people outside the House or inside it who genuinely want to see an improvement to legislation. I ask people, wherever they may be, to please approach us and to not be blinded by prejudice or by whatever way we may or may not have voted previously on an issue in another place. If this is, in fact, a technical change, there would be no reason why we could not deal with it tonight. However, in all honesty, I am not in a position to form an opinion on that because, unlike the amendments that we debated for nearly seven hours earlier today that were trailed over a seven- or eight-month period, this is genuinely a novel issue to me. So, we wish it to receive further consideration.

Is Lord Morrow happy to intervene to clarify the status of amendment Nos 35 and 36? I might have misheard him, I am not entirely sure, but I am happy to give way to Lord Morrow if he would be so kind as to clarify what he intends to do.

The Chairperson of the Committee for Justice: It is not my intention to move amendment Nos 35 and 36 today.

Mr McDevitt: I welcome that intervention and thank Lord Morrow for being so frank about that. In that case, I will not address those amendments; we can return to them at another stage.

Given that this will be the last opportunity to speak on this stage of the Bill, I say to Members that, as we return to the Bill for further consideration and, hopefully, return to some of the substantial issues that we debated earlier in the Consideration Stage, I hope that we are able to return with the same spirit that we had this afternoon, which is one of positive engagement and of trying to focus substantially on the issues. I very much look forward to debating the next stage of the Bill.

Dr Farry: I will be extremely brief at this point; we have had a very long day. Clearly, some parts of the Bill were areas of considerable discussion, and other parts, even though they were complicated and quite far-reaching, have received a very strong consensus. It is important to note that.

The issue concerning firearms has evolved in a direction with which I am comfortable and with which I am sure that the Minister will be comfortable in that amendment No 34 has been well argued and reasoned and people understand it. There are reservations about amendment Nos 35 and 36, and although they have been probed in the debate, we will all be more than happy to return to those issues in the future.

Amendment No 33 relates to the issue of money coming back from assets recovery and the alleged super-discretion that goes to the Minister of Justice. It is worth stressing that the dangers that Members identified in the expenditure of money are no different than with any expenditure of money. The normal rules of accountability, scrutiny and intervention by the Audit Office will still apply. Money will come in from an external source and will go out in the same way as money comes into Departments from the block grant and rates revenue and goes out in formal budget allocations. Therefore, the risks are the same and are extremely low. Checks and balances already exist, so there is a danger of trying to put in place an unnecessarily cumbersome system for one type of expenditure that would be in place for another. In that sense, the integrity of the amendment is right, and we should proceed on that basis.

Mr McGlone: Go raibh maith agat, a Cheann Comhairle. I support the principles that Lord Morrow enunciated earlier on amendment No 34. Those of us who are involved in country sports and who have many constituents who are involved in country sports know the anomaly that exists. The right has been established, within reason, to hold a firearm — in this case, a shotgun. It has already been established that people can conduct a one-off, one-on transaction, and the amendment allows an extension of that. From talking to other Members today, I believe that the proposal has been discussed with the police, who do not see any problem with it. Likewise firearms dealers, with whom I have a fair bit of communication, also presented the proposals and discussed them at length, through their organisation, with the police.

Therefore, the proposal is not new to the House. Perhaps a bit of dialogue should have been conducted with my colleagues who are members of the Committee, but we can park that now and move on and discuss issues. Maybe there are lessons for the future. People can conduct those transactions already, and the amendment is a way of extending and expanding it to, for example, air weapons. Incidentally, in Britain, a firearms certificate is not needed if an air rifle is under 12 foot pounds force. A person who obtains a new air weapon has to apply for it under a variation, which, as Lord Morrow mentioned, can go up to firearms licensing headquarters and take quite a considerable time.

The amendment would move that transaction, whether for an air weapon, a rimfire rifle or a centre-fire weapon, to a like-for-like transaction. It would be a one-off, one-on transaction. It is a simple transaction that has been conducted already by the dealers, and the facility can be extended to those other weapons. It makes practical common sense, and it also facilitates the movement of stock among gun dealers, many of whom find that such delays cause problems for their businesses. I support the principles behind the amendment, which I regard as good common sense.

Mr McFarland: I was reading the Committee for Justice's discussions on issues concerning amendment No 33, which are included in the Committee's report. I try not to be sceptical, but like my colleague Lord Empey, I wonder where the amendment has come from and what it is for. I understand the point about needing to use the assets that are recovered in some way; that is a really good idea.

However, systems are already in place — through his Department, presumably — for allocating funds to the PSNI or whoever else needs them. When I read the way in which the amendment is written, it takes me back to 2002 and the community safety partnerships. As I recall, the NIO slipped in a few words about raising additional funds so that communities could provide their own safety. At the time, and perhaps for understandable reasons, communities were to be allowed to provide various local security services and to end up providing policing on their own street corners, because, at the time, the PSNI was not acceptable.

The situation now is that additional funds are coming in, but they are not part of the Budget that goes through this place. The Minister has been advised to insert a new clause, which allows him to pay such persons as he thinks suitable to prevent crime or reduce the fear of crime. I worry that he received advice that it

would be useful to go to community groups that might otherwise not get money to help them to prevent crime or reduce the fear of crime.

Will the Minister assure the House that the assets will go through official police schemes and official community schemes that have been examined and are bona fide, and that we are not trying to slip in the same old nonsense that we tried in 2002, which is to give people some sort of authority to provide security in their areas with a few additional funds that the Minister has been given?

The Minister of Justice: Members will be delighted to hear that I do not propose to go back through all the amendments in this group, but I want to speak to a number of points that have attracted the limited amount of interest that remains at this late sitting of the Assembly.

Assets recovery is a positive benefit of devolution. It is a matter of using criminal assets recovered in Northern Ireland for the benefit of Northern Ireland. The alternative is that they remain in the Home Office to be used for the benefit of England and Wales. Given that almost everyone in the Chamber today is in favour of devolution, we want that money to be used to reduce crime and the fear of crime and to support the assets recovery process in Northern Ireland. To be able to do that, this new clause is a requirement. Without this requirement in primary legislation, the one-year agreement with the Department of Finance and Personnel, which is covered by the Budget, would not carry forward, and the Assembly would wave farewell to approximately £1·4 million a year. On that basis, we are all in favour of it.

Twice, the new clause states that the approval of DFP is required, and it makes clear what the money can be used for. That should provide a certain reassurance. I hope that Mr McFarland will accept my personal assurance that, as long as I am Minister of Justice, the money will be used through the existing structures, the new PCSPs and our other direct linkages. The money will be fed back into asset recovery to ensure that it is used entirely for the benefit of legitimate organisations in this community. He may choose to make allegations about slush funds operated by other people in the past, but that is not the aim of this new clause.

I accept what Lord Empey said earlier about there being some concerns. However, I believe that this is the same effective basis in statute that already applies to the work of the community safety unit. In accepting that there are legitimate concerns about how money might be used at some point in the future, I ask the House to agree to amendment No 33, to build it up as good news, as Lord Empey described, and to ensure that we retain the £1·4 million.

5.00 pm

I will give an undertaking to Lord Empey and to any other concerned Members — Mr McFarland may wish to join that group — that I will engage with them and with my officials to see what practical strengthening is possible and, if necessary, to table amendment at Further Consideration Stage and, perhaps, to add further subsections to the clause to ensure that it is made quite clear how the money will be administered; what checks there will be; and whether it relates to consultation with the Committee or to producing an annual report, for example. I am determined to see that that money is retrieved from the Home Office because we have spent several months debating with it the issue of when our money will come back here for us to spend. I am determined to carry that through. I am also determined that concerns that have been raised by Lord Empey will be covered and that we will ensure that money is used legitimately, as stated in the amendment, to:

> *"(a) prevent crime or reduce the fear of crime; or*
>
> *(b) support the recovery of criminal assets and proceeds of crime.",*

in a way that benefits the community legitimately, straightforwardly and fairly. I hope that Lord Empey will accept that assurance that I take his concerns seriously. I hope that we will pass the amendment and consider what more is necessary.

Lord Empey: I thank the Minister for his comments and undertakings. He has summed it up for us: it is a good-news story. We want to ensure that he has the power to dispense funds. However, Mr McFarland reminded us of a previous attempt at such things. Perhaps, because of our conditioning over the years, we are super-sensitive to those things.

I may be making a mistake, and not for the first time, but I am prepared to trust the Minister's word that he will bring additional clauses, hopefully, during the next Stage of the Bill, to

strengthen it. That is our only problem with it. We do not object in principle to 94A(1)(a) and (b) as they stand; the issue is that they do not include anything else. The Minister has made a commitment to the House and has indicated that he will engage with those of us who have concerns or with the Committee. On that basis, my party will not oppose the amendment.

The Minister of Justice: I thank Lord Empey. It is worthwhile giving way on some occasions. I have a slight caveat, however: I did not promise to bring forward additional clauses; I promised to examine what we could do to strengthen the clause. That may or may not require an additional clause or subsection. However, we will examine it in full and discuss it with any interested Members.

Lord Empey: The Minister knows our concerns. I have no hang-up about the precise mechanism, the nature of the clause or its language. However, we believe the clause, as it stands, to be inadequate; therefore, we could not support it. We will not oppose it on the understanding that the Minister will seriously engage with the objective of ensuring that something is introduced that will strengthen it. I have no doubt that he will do so. I cast no aspersions on the Minister that he would dream of giving money to an illegitimate group or to a group that he, or any of us, would regard as unsatisfactory. However, even he would have to concede that he may not be Minister of Justice for ever. *[Laughter.]*

Mr McNarry: Hear, hear.

The Minister of Justice: I do not believe that I ever claimed that that would be the case, Mr Speaker. However, I am moderately hopeful of remaining Minister of Justice till early May 2011.

Lord Empey makes the point, entirely fairly, that that is a legitimate concern. However, I ask that as well as making jokes about whether I will be Minister for ever, he acknowledges that I am the Minister under devolution. I report to the Assembly. Concerns that might have been expressed about certain activities by certain people under direct rule are no longer relevant.

Few points were made about rules committees other than that which was made by Lord Morrow, and which I will acknowledge, that there are issues with rules committees that could not be addressed in the Bill because of timing. However, we will seek to address them when the Department of Justice next produces legislation. We will probably get stick for that being yet another miscellaneous provision.

It seems that the court funds issue is generally accepted. I welcome that, because it is something that will clarify the law. Similarly, some of the rules and regulations as to how we deal with introducing more affirmative action are being welcomed across the House.

Finally, let me turn to an issue on which Lord Morrow and others have made particularly strong cases for changes, although I acknowledge that Lord Morrow has said that, at this point, he does not intend to push his amendment Nos 35 and 36. I accept that there is a strong case for extending the principle of the one-for-one transactions, whether it be one-off, one-on, or one-on, one-off, and that has been stated around the House. We seem to agree on the principle, if not on the wording. Since it has worked reasonably satisfactorily for shotguns for five years, there is merit in examining the issue to see whether it can be extended further.

I have slight concerns with the precise wording of amendment No 34, as has been put forward by Lord Morrow. I will give an undertaking to go as speedily as I can to legislative draftsmen to seek their advice on ensuring that we have the best possible wording for it, and Lord Morrow or I could introduce at Further Consideration Stage amendment No 34 as it stands or something with slightly different wording. It is clear that there is a significant body of opinion round the House that wishes to see that move forward.

The Chairperson of the Committee for Justice: The charms of the Minister know no bounds. I was often told that the tone of what a person says is as important as the content. I have listened to the tone of the Minister today, and I have noted it. When it comes to the moved or not moved stage, I will bear in mind what the Minister has said.

The Minister of Justice: I am not sure whether there are any Kremlinologists in the House to ascertain how I should respond to that. It certainly was a Delphic comment.

It is clear that there is a mood round the House that we need to look at this. With due respect to Lord Morrow, let us ensure that an amendment that he has introduced has the best possible wording for what he seeks to do and

what the House clearly wishes to do. I ask him to exercise that degree of caution today. The alternative might be that I will be back at Further Consideration Stage proposing an amendment to what he has amended at this stage, in order to ensure that it is properly watertight. I do not think that that would be satisfactory.

I move now to Lord Morrow's other amendments. He has highlighted that he does not intend to push them today, but I will repeat the commitment that has been given that the Department will look as early as possible at the general issue of firearms legislation. Five years have passed since the 2005 legislation was introduced. It is entirely reasonable that we should look to see how it works and at what meets the needs of Northern Ireland and those who will legitimately hold firearms in this society in coming years. I am prepared to say that we will have a wider look at the other issues that he has raised, but the issue at this point is to ensure that, if we are to extend one-for-one transactions, it is done in a way that is absolutely watertight and meets our needs.

I think that we can conclude the discussion at this point, though I expect, Mr Speaker, that you have several minutes' more work to get the Divisions through. I shall relax through them.

Question, That amendment No 33 be made, put and agreed to.

New clause ordered to stand part of the Bill.

New Clause

Mr Speaker: Amendment No 34 is mutually exclusive with amendment No 35. If amendment No 34 is made, I will not call amendment No 35. I call Lord Morrow to move amendment No 34.

Amendment No 34 not moved.

Amendment Nos 35 and 36 not moved.

Clause 95 ordered to stand part of the Bill.

Clause 96 (Membership of Crown Court Rules Committee)

Amendment No 37 made: In page 54, line 39, after "Committee)" insert

"in paragraph (g) for 'one other' substitute 'a' and ". — [The Minister of Justice (Mr Ford).]

Amendment No 38 made: In page 55, line 1eave out "person" and insert

"practising member of the Bar of Northern Ireland or a practising solicitor". — [The Minister of Justice (Mr Ford).]

Clause 96, as amended, ordered to stand part of the Bill.

Clause 97 (Membership of Court of Judicature Rules Committee)

Amendment No 39 made: In page 55, line 5, after "Committee)" insert

"in paragraph (d) for 'one other' substitute 'a', ". — [The Minister of Justice (Mr Ford).]

Amendment No 40 made: In page 55, line 7, leave out "person" and insert

"practising member of the Bar of Northern Ireland or a practising solicitor". — [The Minister of Justice (Mr Ford).]

Amendment No 41 made: In page 55, line 1eave out "person" and insert "barrister or solicitor". *— [The Minister of Justice (Mr Ford).]*

Clause 97, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 42 made: After clause 97, insert the following new clause:

"Funds in court: investment fees or expenses

97A.—(1) Section 81 of the Judicature (Northern Ireland) Act 1978 (c. 23) (investment of funds in court) is amended as follows.

(2) The existing provision becomes subsection (1) of that section.

(3) After that subsection insert—

'(2) If the High Court or (as the case may be) the county court so orders, the power of the Accountant General under subsection (1)(a)(iii) or (iv) to invest a sum of money in the Court of Judicature or the county court in securities includes the power to pay out of that sum any fees or expenses which are—

(a) incurred in connection with, or for the purposes of, investing that sum; and

(b) of an amount or at a rate approved by the High Court or (as the case may be) the county court.

(3) A court shall not make an order under subsection (2) unless the court considers it necessary and proportionate in all the circumstances to do so.

(4) The High Court or (as the case may be) the county court may, on an application made to it, order that all or part of any sum paid by way of fees or expenses under subsection (2) be refunded where it appears to the court to be in the interests of justice to do so.'." — [The Minister of Justice (Mr Ford).]

New clause ordered to stand part of the Bill.

Clauses 98 to 101 ordered to stand part of the Bill.

Clause 102 (Supplementary, incidental, consequential and transitional provision, etc)

Mr Speaker: Amendment No 43 has already been debated. I call the Minister to move formally amendment No 43.

The Minister of Justice: Moved.

Mr Speaker: The Question is that clause 102, as amended, stand part of the Bill. All those in favour say Aye.

Some Members: Aye.

Mr Speaker: Contrary, if any, No.

The Ayes have it.

Clause 103 (Regulations and orders)

Amendment No 44 made: In page 61, line 18, leave out subsections (2) to (4) and insert

"(2) Subject to subsection (3), orders made by the Department under this Act are subject to negative resolution.

(3) Subsection (2) does not apply to—

(a) an order under section 1(7), 5(1)(c), 6(3), 44(9), 64(2), 82(5) or 107(3);

(b) an order under subsection (1) of section 102 to which subsection (5) of that section applies." — [The Minister of Justice (Mr Ford).]

Clause 103, as amended, ordered to stand part of the Bill.

Clauses 104 to 106 ordered to stand part of the Bill.

Clause 107 (Commencement)

Amendment No 45 made: In page 62, leave out line 8 and insert

"(c) sections 94 and (Power of Department to make payments in relation to prevention of crime, etc.)". — [The Minister of Justice (Mr Ford).]

Mr Speaker: I will not call amendment No 46, as it is related to clause 43, which does not stand part of the Bill.

Clause 107, as amended, ordered to stand part of the Bill.

Clause 108 ordered to stand part of the Bill.

Schedule 1 (Policing and community safety partnerships)

Amendment No 47 made: In page 65, line 9, leave out sub-paragraph (12). — *[The Minister of Justice (Mr Ford).]*

Mr Speaker: Amendment No 48 is mutually exclusive with amendment Nos 49 and 50. If amendment No 48 is made, I will not call amendment No 49.

Amendment No 48 proposed: In page 66, line 4, at end insert

"(2A) The joint committee shall issue to PCSPs a list of organisations appearing to the joint committee to be appropriate for designation under sub-paragraph (1).

(2B) The joint committee may revise and re-issue that list.

(2C) In making any designation under sub-paragraph (1) a PCSP must take into consideration any organisation for the time being on a list issued under sub-paragraph (2A) or (2B)." — [The Minister of Justice (Mr Ford).]

Question put.

The Assembly divided: Ayes 6; Noes 63.

AYES

Mr Attwood, Dr Farry, Mr Ford, Ms Lo, Mr Lunn, Mr Lyttle.

Tellers for the Ayes: Ms Lo and Mr Lunn.

NOES

Ms M Anderson, Mr S Anderson, Mr Armstrong, Mr Bell, Mr Boylan, Mr D Bradley, Mrs M Bradley, Mr Brady, Mr Bresland, Lord Browne, Mr Buchanan,

Mr Burns, Mr Butler, Mr Callaghan, Mr T Clarke, Mr Craig, Mr Cree, Mr Dallat, Mr Doherty, Mr Easton, Mr Elliott, Lord Empey, Mr Frew, Mr Gibson, Ms Gildernew, Mr Hamilton, Mr Humphrey, Mr Irwin, Mrs D Kelly, Mr G Kelly, Mr Kinahan, Mr A Maginness, Mr A Maskey, Mr P Maskey, Mr McCallister, Mr F McCann, Mr McCartney, Mr B McCrea, Mr I McCrea, Mr McDevitt, Dr McDonnell, Mr McElduff, Mr McFarland, Mrs McGill, Mr McGlone, Miss McIlveen, Mr McLaughlin, Mr McQuillan, Lord Morrow, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr P Ramsey, Ms S Ramsey, Ms Ritchie, Mr G Robinson, Mr K Robinson, Mr Ross, Mr Sheehan, Mr Spratt, Mr Weir, Mr Wells.

Tellers for the Noes: Mr D Bradley and Mr Brady.

Question accordingly negatived.

Amendment No 49 made: In page 66, line 4, at end insert

"(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each PCSP; and

(b) a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 50 made: In page 66, line 5, after "PCSP" insert

"or by an order under sub-paragraph (2A)". — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 51 made: In page 68, line 4, Leave out sub-paragraphs (4) and (5) and insert

"(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election." — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 52 made: In page 70, line 19, at end insert

"Expenses

16A. The council may pay to members of a PCSP such expenses as the council may determine." — [The Minister of Justice (Mr Ford).]

Amendment No 53 made: In page 70, line 21, leave out paragraph 17 and insert

"17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with PCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned." — [The Minister of Justice (Mr Ford).]

Schedule 1, as amended, agreed to.

Schedule 2 (District policing and community safety partnerships)

Amendment No 54 proposed: In page 73, line 36, leave out sub-paragraph (11). — *[The Minister of Justice (Mr Ford).]*

Question put.

Mr Speaker: I think the "Noes" have it.

I will put the Question again. There may be some confusion around the Chamber, so let us bring some clarity to it.

Question put.

Mr Speaker: Order. I am conscious that there is some slight confusion around the House, so I am suspending the sitting to allow Members to try to come to an understanding.

The sitting was suspended at 5.38 pm and resumed at 5.40 pm.

Mr Speaker: I shall put the Question again on amendment No 54.

Question, That amendment No 54 be made, put and agreed to.

Amendment No 55 proposed: In page 74, line 36, at end insert

"(2A) The joint committee shall issue to DPCSPs a list of organisations appearing to the joint committee to be appropriate for designation under sub-paragraph (1).

(2B) The joint committee may revise and re-issue that list.

(2C) In making any designation under sub-paragraph (1) a DPCSP must take into consideration any organisation for the time being on a list issued under sub-paragraph (2A) or (2B)." — [The Minister of Justice (Mr Ford).]

Question put and negatived.

Amendment No 56 made: In page 74, line 36, at end insert

"(2A) The Department may by order designate organisations for the purposes of this paragraph.

(2B) No order may be made under sub-paragraph (2A) unless—

(a) the Department has consulted each DPCSP; and

(b) a draft of the order has been laid before, and approved by a resolution of, the Assembly." — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 57 made: In page 74, line 37, after "DPCSP" insert

"or by an order under sub-paragraph (2A)". — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 58 made: In page 76, line 35, leave out sub-paragraphs (4) and (5) and insert

"(4) At any time thereafter, there shall be—

(a) a chair appointed by the council from among the political members; and

(b) a vice-chair elected by the independent members from among such members.

(5) In appointing to the office of chair, the council shall ensure that, so far as is practicable—

(a) a person is appointed to that office for a term of 12 months at a time or, where that period is shorter than 18 months, for a period ending with the reconstitution date next following that person's appointment;

(b) that office is held in turn by each of the four largest parties represented on the council immediately after the last local general election." — [The Chairperson of the Committee for Justice (Lord Morrow).]

Amendment No 59 made: In page 79, line 21, at end insert

"Expenses

16A. The council may pay to members of a DPCSP such expenses as the council may determine." — [The Minister of Justice (Mr Ford).]

Amendment No 60 made: In page 79, line 23, leave out paragraph 17 and insert

"17.—(1) The Department and the Policing Board shall for each financial year make to the council grants of such amounts as the joint committee may determine for defraying or contributing towards the expenses of the council in that year in connection with DPCSPs.

(2) A grant made by the Department or the Policing Board under this paragraph—

(a) shall be paid at such time, or in instalments of such amounts and at such times, and

(b) shall be made on such conditions,

as the joint committee may determine.

(3) A time determined under sub-paragraph (2)(a) may fall within or after the financial year concerned." — [The Minister of Justice (Mr Ford).]

Schedule 2, as amended, agreed to.

Schedule 3 (Regulated matches)

Amendment No 61 made: In page 81, line 7, leave out from "or" to end of line 9. — *[The Minister of Justice (Mr Ford).]*

Amendment No 62 made: In page 81, line 19, leave out from "or" to end of line 21. — *[The Minister of Justice (Mr Ford).]*

Schedule 3, as amended, agreed to.

Schedules 4 and 5 agreed to.

Schedule 6 (Minor and consequential amendments)

Amendment No 63 made: In page 83, line 32, at end insert

"The Judicature (Northern Ireland) Act 1978 (c. 23)

. In section 82(1) (rules as to funds in court)—

(a) in paragraphs (c) and (d) for '81(b)(ii)' substitute '81(1)(b)(ii)'; and

(b) in paragraph (k) for '81(a)(iv)' substitute '81(1)(a)(iv)'." — [The Minister of Justice (Mr Ford).]

Schedule 6, as amended, agreed to.

Schedule 7 (Repeals)

Amendment No 64 made: In page 87, line 38, at end insert

"PART 4

SOLICITORS' RIGHTS OF AUDIENCE

Short Title	*Extent of repeal*
The County Courts (Northern Ireland) Order 1980 (NI 3).	*In Article 50(1)(c), the words ', but not a solicitor retained as an advocate by a solicitor so acting'."*

— [The Minister of Justice (Mr Ford).]

Schedule 7, as amended, agreed to.

Long Title

Amendment No 65 made: After "legal aid;" insert

"to confer additional rights of audience of certain solicitors;". — [The Minister of Justice (Mr Ford).]

Long title, as amended, agreed to.

Mr Speaker: Just before we conclude the Consideration Stage of the Justice Bill, I want to refer Members back to amendment No 43. To give clarity, amendment No 43 has been made and clause 102, as amended, ordered to stand part of the Bill. I see that all Members understand what I am saying.

Mr B McCrea: Amendment No 42?

Mr Speaker: Amendment No 43.

That concludes the Consideration Stage of the Justice Bill. The Bill stands referred to the Speaker. I ask the House to take its ease before we move on to the Consideration Stage of the Autism Bill.

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

Private Members' Business

Autism Bill: Consideration Stage

Mr Deputy Speaker: I call the sponsor, Mr Dominic Bradley, to move the Consideration Stage of the Autism Bill.

Moved. — [Mr D Bradley.]

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 the provisional grouping of amendments selected list.

There is one group of amendments. The single debate will be on amendment Nos 1 and 2, which deal with the definition of disability in the Disability Discrimination Act 1995 (DDA) and autism awareness training. When the debate on the group is completed, the Question on amendment No 1 will be put. The second amendment in the group will be moved formally when we come to clause 3. The Question on it 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 (Amendment to the Disability Discrimination Act 1995 (c. 50))

Mr Deputy Speaker: We now come to the group of amendments for debate. With amendment No 1, it will be convenient to debate amendment No 2. The amendments deal with the removal of a subsection of clause 1, which would have amended the definition of disability in the Disability Discrimination Act 1995, and the removal of a subsection of clause 3 relating to autism awareness training.

Mr D Bradley: Go raibh maith agat, a LeasCheann Comhairle. I beg to move amendment No 1: In page 1, line 5, leave out subsection (2).

The following amendment stood on the Marshalled List:

No 2: In clause 3, page 2, line 28, leave out subsection (5). *— [Mr D Bradley.]*

Mr D Bradley: As is appropriate at Consideration Stage, I will address the two amendments on the Marshalled List. I dealt with the general principles of the Bill at Second Stage, and it is not my intention to rehearse the points that I made on that occasion.

Amendment No 1 refers to clause 1, line 5. It seeks to omit subsection (2), which sought to amend the Disability Discrimination Act 1995 by inserting the words "social" and "communication" after the words "a physical". The legal advice that was available to me strongly suggested that the insertion of the words "social" and "communication" could, in fact, be detrimental to the Bill rather than helpful, which was my original intention. The Health Committee advice concurs with the advice that I received. I am happy to agree with the Committee on that issue.

It is considered that the terms "physical" and "mental" together are all-encompassing and that adding additional categories would carry the legislative risk of restricting the scope of the Bill rather than expanding it, which was my original intention. The term "physical or mental" in the DDA is considered to be all-encompassing. Specifying additional categories could mean that categories not included could be excluded from the scope of the DDA.

The possible addition of the terms "sensory" or "communication" to broaden the definition of disability, as contained in the DDA, was referred to in a proposed measure of the National Assembly for Wales. The House of Commons Welsh Affairs Committee addressed that issue and noted:

> *"Both this Committee and the Assembly Committee examined whether the term 'physical or mental impairment' needed to be qualified in order to ensure that persons with a sensory or communications impairments, for example, would be included within its scope…*
>
> *The Assembly Parliamentary Service Legal Division confirmed that…it seems clear that a communication impairment will inevitably fall under either a 'mental' or 'physical' impairment…*
>
> *Advice prepared by the Assembly Parliamentary Service Legal Division for the Assembly Committee noted…if a definition is a broad one (as 'physical or mental impairment' appears to be) then there are risks in grafting on to it references to specific conditions which are already covered. For example, adding a specific reference to 'communication impairment' could give the impression that 'physical or mental impairment' is not as all-encompassing a definition as it would otherwise appear to be.*
>
> *It is a principle of statutory interpretation that if there are a number of similar specific situations and only some of them are mentioned then the intention must be to exclude the ones which are not."*

Clause 1(3), which amends the Disability Discrimination Act 1995, states:

> *"At the end of paragraph 4(1) of Schedule 1 insert —*
>
> *"(i) taking part in normal social interaction; or*
>
> *(j) forming social relationships."*

I am content that that will ensure that autism can and will be included in the definition of disability under the Disability Discrimination Act 1995. On that basis and on the basis of the legal advice available and the experience in other legislatures, I am happy to move amendment No 1.

Amendment No 2 would omit clause 3(5), which sought to place a duty on the Department to set out the steps it proposed to take to ensure that Northern Ireland Civil Service staff who deal directly with the public in their duties be given autism awareness training. I am satisfied that clause 3(4), which places a duty on the Department to set out proposals for promoting an autism awareness campaign, will obviously contain an element of staff training. I contend that the autism strategy, which is outlined in some detail in the Bill, also implies an element of staff training. I am, therefore, happy to leave a certain degree of flexibility to the Department in that respect, as I wish to avoid unnecessary duplication in the Bill. The level and extent of training will be for the Department to decide within the parameters of the prevalence of autism among the population, which will in itself help to determine the strategy.

I believe that I have honestly addressed the concerns that arose about the Bill at Committee Stage, which was conducted by the Health Committee. I thank the members of the all-party group on autism, which has supported the Bill at every stage and given me valuable help and assistance when asked to do so. I also thank the Health Committee and its staff for their close scrutiny of the Bill and co-operation. The staff in the Bill Office, including Eilis Haughey, who is here today, have also been very helpful

during the various stages of the Bill. I also thank Autism NI and PAL for their support. I ask Members to support the amendments.

I commend the amendments to the House.

6.00 pm

The Chairperson of the Committee for Health, Social Services and Public Safety (Mr Wells): On behalf of the Committee, I welcome the Consideration Stage. The Bill is timely and welcome. Having looked closely at the Bill and what it has to offer, the Committee is confident that it will enhance the provision of services to and support for people who are on the autism spectrum.

The Bill was referred to the Committee on 7 December 2010. The Committee sought a short extension of three days to 11 February to ensure that it dealt with it in a timely manner and to allow sufficient time for it to progress through the necessary legislative stages before the dissolution of the Assembly on 24 March 2011.

The Committee received written submissions from 33 organisations and individuals and took oral evidence from representatives of the widest possible range of interested parties in the time available. Its report was concluded on 10 February 2011.

The Committee's detailed scrutiny led to it recommending to the sponsor of the Bill, Mr Dominic Bradley, that he table amendments to two clauses. I am pleased to report that all the recommendations have been accepted by Mr Bradley and are reflected in the amendments that we are considering today. I thank Mr Bradley for his co-operative approach and for taking on board the Committee's recommendations.

Before I talk specifically about the amendments, I will provide a synopsis of the work undertaken by the Committee and an overview of the key issues that we identified as we scrutinised the Bill. First, we considered whether there was a need for an amendment to the Disability Discrimination Act 1995, or the DDA, as I will refer to it during the rest of my speech. We also considered whether there was a need to legislate for an autism strategy and the cost of any such strategy.

I will comment briefly on clause 1(3), which seeks to expand the list of normal day-to-day activities contained in schedule 1 to the DDA. Clause 1(3) seeks to add to the list, "taking part in normal social interaction" and "forming social relationships". A consultation document was published in Great Britain on guidance for defining disability in the context of the Equality Act 2010. The document includes the following day-to-day activity:

> *"significant difficulty taking part in normal social interaction or forming social relationships".*

The Committee noted that the wording is very similar to that used in clause 1(3) and was, therefore, content that the schedule to the DDA should be amended in that way.

The Committee also debated issues around clause 2, which effectively legislates for a cross-departmental strategy on autism. Opinion was divided among stakeholders on the merits or otherwise of legislation for an autism strategy. It was noticeable that there were deeply held views on both sides. The evidence was by no means uniform, and the witnesses were certainly not united on the issue.

Those who supported the clause made the general argument that legislation is required to ensure that all Departments work in a joined-up manner to produce a comprehensive strategy to deal with ASD. However, other organisations took the view that the current autism strategies delivered by the Department of Health, Social Services and Public Safety and the Department of Education work well and that to create a new strategy would result in more bureaucracy. Furthermore, they argued that designing —

Mr I McCrea: Will the Member give way?

The Chairperson of the Committee for Health, Social Services and Public Safety: Certainly.

Mr I McCrea: I thank my colleague for giving way. He referred to the fact that other organisations gave evidence to the Committee, some of which obviously did not support the need for the Autism Bill. One person who gave evidence was the chairperson of the Regional Autistic Spectrum Disorder Network Reference Group, Ken Maginnis. He spoke on behalf of that organisation when not everyone in that organisation agreed with what he was saying. Does the Member accept that, although Ken Maginnis was giving a view as the chairperson of that group, he is also appointed to that group by the Minister and, therefore, his views would be based on the Minister's beliefs? Obviously, everyone knows that the Minister

does not support the Autism Bill. Does the Member accept that some of the views that Ken Maginnis gave may not have been representative of the thoughts of everyone in that organisation?

Mr Deputy Speaker: I inform Members that latitude is available only to the Chairperson of the Committee. All other Members will have to talk to the amendments.

The Chairperson of the Committee for Health, Social Services and Public Safety: When he gave evidence, Lord Maginnis made it clear that he was speaking on behalf of a group within which there was a divergence of opinion on the issue. It was quite clear from his evidence that he was opposed to the proposed Bill. We were not left in any doubt about that whatsoever. I should add that other organisations such as the Aspergers Network made it equally clear that they were opposed to the Bill. Other groups, of course, very strongly supported the Bill, but it was noticeable —

Mr D Bradley: Will the Member give way?

The Chairperson of the Committee for Health, Social Services and Public Safety: Yes.

Mr D Bradley: I debated the Autism Bill in public with Lord Maginnis. He was opposed to the Bill before it was even drafted and before he knew what it would contain. It was always going to be difficult to convince Lord Maginnis because, without having seen the Bill, he was opposed to it.

Mr Deputy Speaker: I again remind Members that they must focus on the amendments. Only the Chairperson has latitude, and I am sure that he will use it wisely.

The Chairperson of the Committee for Health, Social Services and Public Safety: I did not realise that I had such power, Mr Deputy Speaker.

Some who were opposed to the Bill argued that designing a new autism strategy would be costly in time and money, and that resources would be better used to provide services for people with ASD. After considering the evidence, the Committee came to the view that a legislative requirement for all Departments to co-operate in the production of an autism strategy was a positive step forward. The Committee's view was that, without legislation, it would be difficult to ensure that Departments other than the Department of Health, Social Services and Public Safety and the Department of Education fully participated in the strategy.

I turn to the first amendment, which concerns the Disability Discrimination Act 1995. The Committee welcomes amendment No 1, which would delete clause 1(2) from the Bill. Clause 1(2) as originally drafted had the purpose of clarifying that people with ASD fell within the scope of the DDA. A view has been expressed by stakeholders that there is ambiguity as to whether people on the autistic spectrum are currently covered by the DDA, and that that can have a detrimental effect on their ability to access services and benefits. However, the Committee considered a range of evidence that suggested that it might be problematic to amend the DDA in the way that had been proposed by the sponsor of the Bill.

The Committee considered a research paper that pointed to a view that the term "physical or mental impairment" had been intended as all-encompassing when the DDA was introduced. That paper also noted that a view had been expressed in other jurisdictions that to amend the term "physical or mental impairment" could, in fact, narrow the scope of those who would fall within the definition of a person with a disability. When the Committee took evidence from Mr Bradley on the Bill, members raised those issues of concern with him. Mr Bradley advised the Committee that he had further considered amending the definition of disability and had reached the decision to leave out clause 1(2). The Committee welcomed Mr Bradley's commitment to introduce an amendment to that effect.

I turn to amendment No 2 to clause 3(5), which deals with the provision of autism awareness training for civil servants who deal directly with the public. A number of stakeholders raised concerns about the potential financial implications of that proposal. The Health Department indicated that it would likely cost £1·8 million to train civil servants. The Minister of Finance and Personnel also indicated to the Committee that he had concerns about the cost. Other groups were anxious that money not be directed away from front line services in health and social care trusts and towards training for civil servants. On hearing those views, Mr Bradley initially advised the Committee that he believed that the figure of £1·8 million, which was quoted by the Department, was too high, and that some of that cost was already

being met by the system because some public servants already receive autism training.

Mr Bradley further indicated that he was considering an amendment to change the reference from "Civil Service staff" to "public servants". In response, the Minister of Health, Social Services and Public Safety wrote to the Committee to express concern that such an amendment could potentially cost his Department some £4·6 million. When Mr Bradley was made aware of those concerns, he wrote to the Committee to advise that he intended to completely withdraw clause 3(5). The Committee was content with that proposed amendment.

I have outlined the view of the Committee, and I must emphasise that I am speaking in my capacity as Chairman. Those views are not necessarily my own.

Mrs O'Neill: Go raibh maith agat, a LeasCheann Comhairle. Given your ruling, Mr Deputy Speaker, I will speak to the two amendments. I declare an interest as a member of the all-party working group on disability.

I am in favour of the two amendments that have been tabled. Both amendments were suggested by the Committee as part of its deliberations on the Bill, and I am delighted that Mr Bradley has taken them on board and tabled them. The Committee spoke to many groups, organisations and stakeholders in the brief time that was available to it, and I put on record the Committee's thanks to all the groups that contributed in any way.

I think that it is fair to say that, while there are many who are in favour of the Bill, there are some who have concerns about it. It is important that all those views are heard and reflected. There are also those who fear that we could create a hierarchy of disability. I want to the set the record straight today: that is not the intention of the Bill, nor is it the intention of Sinn Féin, which believes in equality for everyone. I do not believe that the Bill will create a hierarchy of disability.

Sinn Féin supports amendment No 1, which proposes to leave out subsection (2) of clause 1. Concerns were expressed that amending the DDA to include social and communication disability would, in fact, dilute the DDA. Removing subsection (2) addresses those concerns. Sinn Féin is not interested in diluting disability discrimination legislation, nor do I believe that any other party in the Chamber is.

Sinn Féin welcomes amendment No 2, which proposes to remove subsection (5) from clause 3. Given the difficult financial climate that we find ourselves in, training all public service staff would be very costly, but it is something that we could return to later, when the autism strategy is being developed.

It is no secret that the Minister, Michael McGimpsey, has been opposed to the Bill from the outset. It is reflective of his attitude to date that he is not in the Chamber today to speak to this legislation. That is typical of his flippant attitude, and he is holding the House in contempt by not being here today to address the positions that the parties have put forward on the amendments. I think that it is time that we had a new Health Minister. His position is not good enough. If he had been here, he would have talked about the good work that the Department has done in bringing forward an action plan, and, obviously, that is something that we welcome. However, the legislation that is being discussed today provides the legislative framework to meet the needs —

Mr Deputy Speaker: Order. The Member is straying well off the amendment.

Mrs O'Neill: I believe that this —

Mr McCallister: On a point of order, Mr Deputy Speaker. Can you give us any guidance as to whether there is any duty on the Minister to be here to respond to a private Member's Bill?

Mr Deputy Speaker: That is entirely a matter for the Executive. It has nothing to do with the Deputy Speaker.

Mrs O'Neill: I think that it would show good leadership, even in times of difficult decisions or difficult issues, for a Minister to respond —

Mr Deputy Speaker: Order, please. The Member is once again straying from the amendment.

Mrs O'Neill: The legislation and the amendments provide us with the opportunity to build on a legislative framework to meets the needs of all those with autism.

Mr McCallister: I thank Mr Bradley for bringing the Bill to the House, and I thank the Committee, the staff and all the witnesses who helped us in our scrutiny of the Bill. It is well

known that I and the rest of the Ulster Unionist Party have huge concerns about the Bill. Mrs O'Neill mentioned a hierarchy of disability. How do we legislate for a cross-departmental strategy, considering that one Department has a strategy that seems to be obsessed with a place in Middletown that does not meet any real needs?

I will move quickly back to the amendments, which I welcome. I have serious concerns and reservations about the Bill. I have concerns about its compatibility with human rights. However, I welcome the amendments that Mr Bradley proposes around the changes to the DDA and the cost of training. It is useful to remove some of the pressures that the Health Minister and the Minister of Finance and Personnel have identified.

6.15 pm

Mr D Bradley: The Member may recall that when we discussed the Second Stage of the Bill on 7 December 2010, his colleague the Minister of Health, Social Services and Public Safety told us that he had concerns about the Bill's compliance with the European Convention on Human rights. He said:

> *"I have sought the view of the Attorney General on the Bill's competence and will return" — [Official Report, Bound Volume 58, p345, col 2].*

Mr Deputy Speaker: Order. Mr Bradley, that is not in the amendment.

Mr D Bradley: I stand corrected, Mr Deputy Speaker. However, Mr McCallister referred to that, and I want to make the point that the Minister said that he would return to Members when that view had been received. He has not returned to Members. Therefore, I take it that no human rights issues were raised by the Attorney General.

Mr Deputy Speaker: Members really must speak to the amendments; that will make it a good debate for everybody. Everybody will be treated in exactly the same way. I made the ruling clear at the beginning of the debate; I now insist that it remain that way.

The Chairperson of the Committee for Health, Social Services and Public Safety: On a point of order, Mr Deputy Speaker. You were very generous in allowing me, as Chairman of the Committee, to bring up issues. The difficulty that I have with the way that the debate is going is that, since Second Stage, quite a lot has happened to the Bill that extends beyond the amendments that have been brought by Mr Bradley. A serious debate has taken place. Are you saying that none of those issues can be debated this evening and that all that Members, apart from me, can discuss are the two amendments?

Mr Deputy Speaker: That is absolutely correct, Mr Wells. I remind Members that there will be an opportunity at Final Stage for a full debate on the merits of the Bill. Today, however, we are debating the amendments only. I hope that that makes it clear for everybody.

Mr McCallister: Thank you, Mr Deputy Speaker. I will respond to Mr Bradley at Final Stage. I support the two amendments but have serious reservations about the Bill.

Mr Lyttle: I too want to recognise the work of the all-party group on autism, of which my colleague Kieran McCarthy is a member. I also recognise that there are organisations with substantive concerns about the Bill. However, I support its purpose and the amendments to it. There is an obvious need to amend the Disability Discrimination Act 1995 to clarify any ambiguity on whether autism spectrum disorder is a disability and to require cross-departmental co-operation.

Mr P Ramsey: Does the Member agree that the sponsor of the Bill, Mr Dominic Bradley, has made every possible effort, with the co-operation of the Health Committee and all parties in the Chamber, to get consensus in bringing forward two clear, definitive amendments dealing with training? The sponsor outlined the rationale behind the amendments, so I will not go over it. However, in bringing forward the Bill, he made every effort to ensure that there was no dissent and that the political will was there, which it clearly is.

Mr Lyttle: I thank the Member for his intervention. I wholeheartedly agree with what he said about the hard work that has gone into building consensus on the Bill. I hope that the amendments will tackle the concerns that have been raised about elevating autism above any other disorder and focus the provisions of the Bill on correcting the current omission of ASD from disability legislation. I support the amendments and am confident that they will strengthen those aims. I recognise that the Autism Bill will not be a silver bullet for all the

challenges faced by families with loved ones on the autism spectrum. However, sometimes we need targeted legislation to get things done.

There is an Autism Act in England, a Welsh Government action plan for ASD and a cross-departmental ASD strategy in Scotland. Therefore, I, and my party, think that it is high time that we improve the service and support that we deliver to people and families living with ASD in Northern Ireland. I will support the amendments in order to encourage the timely delivery of the Bill.

Mr Easton: I declare from the outset my full support for the Autism Bill.

Amendment No 1 to clause 1 relates to changes to the DDA. It was felt that clause 1(2) had the potential to narrow the scope of people who fall within the definition of disability. It has been noted that the sponsor of the Bill has decided to leave out that subsection. However, clause 1(3), which expands the list of day-to-day activities in the DDA and adopts a similar approach to that being consulted on for the Equality Act 2010, is to stay. That will help the aspects of autism that are missed out under the DDA to be more easily recognised and will help those who suffer from autism with such things as obtaining DLA.

Amendment No 2 refers to leaving out subsection (5) of clause 3, which would have ensured that Civil Service staff who deal with the public would be given autism awareness training. I regret that this subsection will be left out as I feel that the exaggerated cost claims by the Health Department were a cynical attempt to scupper the Autism Bill. However, clause 3 ensures that persons with autism will have a strategy in place for the rest of their lives, which is good. The Health Department's strategy does not cover that.

Mr Deputy Speaker: Order, please. Could we go back to the amendments?

Mr Easton: I am about to finish, anyway.

Mr B McCrea: That is all right, then.

Mr Easton: Yes, that is fine.

Mr McCallister: *[Interruption.]*

Mr Easton: Absolutely.

Finally, I pay tribute to Dominic Bradley for bringing the Autism Bill to this stage and to the role of the all-party autism working group. I also pay tribute to Autism Northern Ireland, particularly David Heatley and Arlene Cassidy, for keeping me sane and for helping me with the Bill.

Mr Callaghan: Go raibh maith agat, a LeasCheann Comhairle. I, like other Members, pay tribute to my colleague Dominic Bradley for his persistence, determination and consideration. Although he is not a member of the Health Committee, he continually engaged with Members from different parties as the Bill made its way through the Committee. He was very open-minded and thoughtful about ideas and suggestions that came from the Committee about how the Bill could progress and meet its objectives.

The first amendment, which proposes the deletion of clause 1(2), is a responsible approach to some of the legal issues that were raised with various people. It helps to provide a bit of certainty and clarity about the potential impact of the overall amendments to the DDA that would arise as result of the Bill.

As regards the second amendment, a number of issues were raised by the Department of Health, Social Services and Public Safety and others in written and oral submissions to the Committee about costs that may or may not have been consequential to the passing of the Bill in its original form. I, for one, am confident that the Bill's objective of ensuring that public and civil servants who deal with people with autism and their families can be met through the statutory provisions that are before us without the specific requirements of the subsection that is being removed by the second amendment.

I made a number of points at Second Stage, so I do not need to go into those today. Mr Deputy Speaker, you are, rightly, keeping us very tightly to the subject. However, I pay my regards and give my appreciation to a number of groups, including Autism NI, PAL and various others that gave very passionate opinion and evidence to the Health Committee. As somebody who is fairly new to the whole area, I certainly found it helpful in dealing with the various technical and broader substantive points that were under consideration at Committee Stage. I look forward to the Bill's progress through the House and its enactment before the end of the mandate.

Miss McIlveen: In the absence of the Chairman and Deputy Chairman, I will speak on behalf of the Education Committee.

I wish to inform the House about a particular aspect of the Department of Education's evidence to the Health Committee on how the Bill and the amendments might impact on existing special educational needs legislation. I use the word "might" deliberately, because I understand that the Committee for Education, the Health Committee and the Bill sponsor, Mr Bradley, do not know how the Bill, as it stands, or if the amendments are made, will impact on important existing education legislation. It is important, therefore, that I explain that to the House.

On 1 February 2011, the Committee for Education received a letter from the Department of Education in response to the Health Committee's question on the potential impact of the Autism Bill on the Special Educational Needs and Disability (Northern Ireland) Order 2005 (SENDO). Specifically, the letter referred to whether the Autism Bill would give priority to children with autism over children with other special educational needs. The issue was raised in the —

Mrs O'Neill: Will the Member give way?

Miss McIlveen: Certainly.

Mrs O'Neill: Does the Member agree that, currently, special educational needs are matched to the needs of children and not to diagnoses, so there is nothing in the Bill that would impact negatively on current SENDO legislation?

Miss McIlveen: I thank the Member for her intervention. There was some disparity in the information that came from the Department, and that needs to be cleared up in advance of the Committee making its final determination.

The issue was raised in the Minister of Education's letter of 19 January 2011 to the Chairperson of the Health Committee and, subsequently, in the evidence session with departmental officials at the Health Committee on 21 January 2011. The Department of Education's letter of 1 February 2011 to the Committee for Education, which is included at the end of appendix 4 in the Health Committee's report on the Bill that was published on 10 February 2011, stated:

> *"the Minister of Education supports the principle of the Bill. I also advised that the Minister has noted that the Bill, if passed, would have significant outworkings which would … impact upon existing special education legislation such as The Education (NI) Order 1996 and the Special Educational Needs and Disability (NI) Order 2005."*

The letter concluded:

> *"While the Minister supports the principle of the Bill, realising its strengths and overall cross-cutting benefits, she would wish to ensure that the Bill does not generate a situation whereby the provisions made available to those on the autism spectrum are given higher priority that those with other SENs. It is about this aspect of the Bill that she would ask the Committee to take cognisance of to avoid an introduction of a two tier system in special education provision."*

On page 7, the Health Committee's report stated that Department of Education officials:

> *"did not reach a conclusion on this matter before the completion of committee stage".*

The Department of Education stated that there are:

> *"complex and wide ranging needs of children and young people on the autism spectrum."*

On the basis of the correspondence that I just highlighted to the House, I consider that it is clearly for the Minister of Education to advise the Assembly on whether there are significant outworkings from the Bill on special educational needs legislation.

Mr McCallister: I am grateful to the Member. The issue that she raises goes to the heart of the concerns. During Committee Stage, it became obvious that we were not getting a complete answer on what would come first: the need or the autism. That goes to the heart of the debate.

Miss McIlveen: I thank the Member for his intervention. Hopefully, by the end of Final Stage, we will have a definitive answer on that point from the Minister of Education.

Mr Callaghan: I thank the Member for giving way. The Department of Education and the Department of Health, Social Services and Public Safety gave evidence on related points to the Health Committee, and I certainly did not come across any substantive point to back up their claim that hierarchical treatment would give preference to anybody with autism. Will the Member highlight which clause would give effect to a hierarchy that gives preference to people with autism over anybody else? It seems to me that the autism strategy that would arise as a

statutory duty from the Bill would in no way be at odds or in conflict with SENDO legislation, the DDA or any existing statutory instruments that protect people with disabilities, including those with autism.

6.30 pm

Miss McIlveen: I thank the Member for his intervention. I am the messenger, and this is the view that the Committee has come to. Confusion was caused by correspondence that was received by the Minister, and that is exactly what we want to clear up.

Mr Easton: I am not sure whether the Member is aware that the Committee sought legal advice on hierarchies of disabilities. That legal advice was that the evidence suggests that it does not create a hierarchy of disabilities. Maybe that will help to reassure the Member.

Mr Deputy Speaker: Order. I am concerned that we are, once again, drifting away from the amendments. I appreciate that Miss McIlveen is giving us a background to a Committee position, and I have given her some latitude on that. However, we must now draw the debate back in again.

Miss McIlveen: I am moving to a conclusion. The sponsor of the Bill, Mr Bradley, referred to the Department of Education's concern about that issue in his letter to the Committee. It said that no statement, analysis or conclusions were provided on that issue, and, therefore, in the absence of any detail, it is not possible to respond to it. I want to ask him whether the amendments will address the concerns. I understand that the Chairman of the Education Committee met the Chairman of the Health Committee and reiterated his concerns that it is important that we and the Members of the House know whether or not there are significant outworkings from the Bill that affect current special educational needs (SEN) legislation, which impacts on the learning provision of a lot of children and young people.

In conclusion, the Chairman raised that matter with members of the Committee today, and it was agreed that the Committee will write to the Department of Education to ask for a definitive response on that issue as soon as possible. On receipt of that, I have no doubt that the Education Committee will inform the Health Committee and, if necessary, inform the House at Final Stage.

Mr B McCrea: At this late hour, I do not propose to detain the Assembly overly long. However, there are a number of points to deal with in the amendments and in the general way that the Bill is coming through.

To avoid repetition, I will not go through the issues that have been raised by the previous Member who spoke. However, as a member of the Education Committee, I can confirm that that is the sort of conversation that we had and that clarity is required from the responsible Ministers.

I close on this issue, Mr Deputy Speaker, so I would appreciate if you will indulge me. There is sometimes an argument that, when people ask questions, they are somehow not supportive of the overall concept of the Bill or the amendments that have been put forward. That is not the case. It is right and proper that we do this, and we do it to try to make proper legislation that will benefit everybody. Where there are concerns, it is only right and proper that we tease them out and see whether we can make improvements.

I will conclude by thanking Autism NI and a number of other people who have been mentioned and reassure them that their concerns have been noted and that all of us here are trying to do the best for those people who have autism and their carers. We are all trying to do our best, but we have to get it right.

Mr D Bradley: Go raibh maith agat, a LeasCheann Comhairle. I thank all the Members who contributed to the debate today, and I appreciate the general support for the Bill in the House.

I will sum up on the contributions as I believe is my role. The Bill allows for a strategy to be formulated, and I believe that there is enough flexibility in that framework to take account of the various legal requirements in the existing legislation. The Bill helps to ensure that people with autism come within the definitions in the DDA. That neither creates a hierarchy of disability nor gives people with autism an unfair advantage over any other person with a disability. That is a very important point, and I hope that those Members who have concerns about a hierarchy of disability will listen carefully to that.

The Department of Health, Social Services and Public Safety has an action plan. The Department of Education had a task force and

established a centre of excellence for autism, and it has now initiated its own autism strategy. If that is not elevating autism to the extent where there is a hierarchy of disability in the education field and the health field, I do not know what is. Therefore, it ill behoves certain people to accuse me or the Bill of creating a hierarchy of disabilities when they themselves have created a hierarchy of disability.

Mr Wells, the Chairperson of the Health Committee, outlined the work of the Committee during Committee Stage in great detail. He presented an accurate summary of the Committee's work and was fair to everyone who contributed to the Committee's scrutiny of the Bill, whether they were in favour of or against the Bill. I thank Mr Wells for the objective and dispassionate way in which he conducted the Committee's business on the Bill.

Michelle O'Neill addressed points that some other Members raised, particularly on the issue of hierarchy of disability. She showed clearly that the Bill will not create such a hierarchy.

John McCallister raised some concerns about the Bill. Once again, he mentioned his fear that the Bill might create a hierarchy of disability, and I have dealt with that issue already. He also mentioned that he had concerns around the Bill's compliance with human rights. I have heard that several times. I have heard it from Mr McCallister and from the Minister, but I have not seen any substance to those claims. It has not been pointed out to me how and where the Bill fails to be compliant with human rights legislation. As I said earlier, at Second Stage, the Minister said that he was referring the Bill to the Attorney General and would return to the House to give us the views of the Attorney General on the Bill's compliance with human rights legislation. As Michelle O'Neill pointed out, the Minister chose not to be here today. He has not fulfilled his promise to return to the House and report to it.

Mr McCallister: Will the Member give way?

Mr D Bradley: As I said earlier, I can only conclude that the Attorney General has no concerns about the Bill's human rights compliance.

Mr McCallister: Will the Member give way?

Mr D Bradley: At Committee Stage, the Northern Ireland Human Rights Commission gave evidence to the Committee, and no serious issues regarding human rights compliance were raised then.

Mr B McCrea: Will the Member give way?

Mr D Bradley: Mr Deputy Speaker, I think that this particular reference —

Mr Deputy Speaker: Order, please. It is fairly clear that the Member is not giving way, and other Members should not persist.

Mr D Bradley: Thank you, Mr Deputy Speaker. Your impression is correct on this occasion.

Those issues have been raised, but no substantial proof, evidence or references to legislation have been offered. I hope to deal with that point later in the Bill's passage.

Mr Lyttle and Mr Ramsey spoke in support of the Bill, and I appreciate that support. Alex Easton referred to the cost of training, an issue that the Department of Health, Social Services and Public Safety raised. He thought that that was exaggerated, and I am inclined to agree with him, considering the fact that training costs are being met already by the Department of Education, the Department of Health, Social Services and Public Safety and other Departments.

Therefore, there will be some cost for additional training, but I do not think that it will be to the extent outlined by the Department of Health. I thank Pól Callaghan for his kind words. He paid tribute to Autism Northern Ireland and PAL, as did Basil McCrea. Michelle McIlveen outlined the evidence that the Committee for Education received from the Department of Education, and I have already written to the Committee on the issue.

Once again, the Department made some vague references to SEN legislation. It also mentioned the hierarchy of disability. There are no specifics in the Department's response to the Committee, but if the Department has serious considerations, its duty is to provide specifics, with references to legislation. However, it has not done that. It has responded in a general way. I think that I have covered most of the contributions made today. If I have left anyone out, I apologise.

I thank Members again for staying late this evening and for their contributions. I commend the amendments to the House. Go raibh míle maith agat, a LeasCheann Comhairle.

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

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

Clause 2 ordered to stand part of the Bill.

Clause 3 (Content of the autism strategy)

Amendment No 2 made: In page 2, line 28, leave out subsection (5). — *[Mr D Bradley.]*

Clause 3, as amended, ordered to stand part of the Bill.

Clauses 4 to 7 ordered to stand part of the Bill.

Long title agreed to.

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

Adjourned at 6.44 pm.

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