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Northern Ireland Assembly

Tuesday 19 February 2013

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

Members observed two minutes' silence.

Executive Committee Business

Budget Bill: Further Consideration Stage

Mr Speaker: I call the Minister of Justice to move the Further Consideration Stage of the Budget Bill.

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

Mr Speaker: No amendments have been tabled, so there is no opportunity to discuss the Budget Bill at this stage. The Bill's Further Consideration Stage is therefore concluded. The Bill stands referred to the Speaker.

Criminal Justice Bill: Consideration Stage

Mr Speaker: I advise Members that a petition of concern was tabled this morning to amendment Nos 21, 24 and 26. Today's proceedings on the Bill will therefore stop after the Question on amendment No 20. The Questions on the remainder of the Bill will be put at the next sitting of the House.

I call the Minister of Justice, Mr David Ford, to move the Consideration Stage of the Criminal Justice Bill.

Mr Ford (The Minister of Justice): I am sure that Members will be pleased that Sammy Wilson is not now on his feet. Before introducing the amendments for debate, I will say a few words about the progress of the Bill to date. I thank the Committee for its assistance in getting a relatively short but fairly complex Bill to Consideration Stage within the allotted time.

Mr Speaker: Minister, you just have to move the Bill at this stage.

Mr Ford: Mr Speaker, I beg to move amendment No 1.

Mr Speaker: Minister, you just have to move the Bill at this stage.

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

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

There are three groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1 to 13 and Nos 35 to 37, which deal with notification requirements for sex offenders and making human trafficking offences triable on

indictment only. The second debate will be on amendment Nos 14 to 17 and Nos 38 to 41, which deal with the release on licence of children convicted of a serious offence; enabling the operation of registered intermediary schemes; and the abolition of the offence of scandalising the judiciary. The third debate will be on amendment Nos 18 to 34, which deal with the retention of DNA profiles, fingerprints and photographic material.

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

Clause 1 ordered to stand part of the Bill.

New Clause

Mr Speaker: We now come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 13 and Nos 35 to 37. The amendments deal with increasing sex offender notification requirements and ensuring that human trafficking offences are triable on indictment only.

Mr Ford: I beg to move amendment No 1: After clause 1 insert

*"**Notification requirements: absence from notified residence***

***1A.**—(1) Part 2 of the Sexual Offences Act 2003 is amended as follows.*

(2) After section 85 insert—

"Notification requirements: absence from notified residence

85A.—(1) This section applies to a relevant offender at any time if the last home address notified by him under section 83(1),84(1) or 85(1) was an address in Northern Ireland such as is mentioned in section 83(7)(a) (sole or main residence).

(2) If the relevant offender intends to be absent from that home address for a period of more than 3 days ("the relevant period"), the relevant offender must, not less than 12 hours before leaving that home address, notify to the police the information set out in subsection (3).

(3) The information is—

(a) the date on which the relevant offender will leave that home address;

(b) such details as the relevant offender holds about—

(i) his travel arrangements during the relevant period;

(ii) his accommodation arrangements during that period;

(iii) his date of return to that home address.

(4) In this section—

"travel arrangements" include, in particular, details of the means of transport to be used and the dates of travel,

"accommodation arrangements" include, in particular, the address of any accommodation at which the relevant offender will spend the night during the relevant period and the nature of that accommodation.

(5) Where—

(a) a relevant offender has given a notification under subsection (2), and

(b) at any time before that mentioned in that subsection, the information notified becomes inaccurate or incomplete,

the relevant offender must give a further notification under subsection (2).

(6) Where a relevant offender—

(a) has notified a date of return to his home address, but

(b) returns to his home address on a date other than that notified,

the relevant offender must notify the date of his actual return to the police within 3 days of his actual return.

(7) Nothing in this section requires an offender to notify any information which falls to be notified in accordance with a requirement imposed by regulations under section 86.

(8) In calculating the relevant period for the purposes of this section there is to be disregarded—

(a) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, an address of the kind

mentioned in section 83(5)(g) notified to the police under section 83 or 85;

(b) any period or periods which the relevant offender intends to spend at, or travelling directly to or from, any premises, if his stay at those premises would give rise to a requirement to notify the address of those premises under section 84(1)(c).

(9) This section applies in relation to any relevant period which begins on or after the day after the coming into operation of section (Notification requirements: absence from notified residence) of the Criminal Justice Act (Northern Ireland) 2013.".

(3) In section 87(1) and (4) (method of notification) for "or 85(1)" substitute ", 85(1) or 85A(2) or (6)".

(4) In section 91 (offences)—

(a) in subsection (1)(a) after "85(1)" insert ", 85A(2) or (6)";

(b) in subsection (1)(b) for "or 85(1)" substitute ", 85(1) or 85A(2) or (6)";

(c) in subsection (3) for "or 85(1)" substitute ", 85(1) or 85A(2) or (6)"."

The following amendments stood on the Marshalled List:

No 2: In clause 3, page 2, line 31, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

No 3: In clause 3, page 2, line 32, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

No 4: In clause 3, page 2, line 35, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

No 5: In clause 3, page 3, line 14, leave out "State" and insert "country". *— [Mr Ford (The Minister of Justice).]*

No 6: In clause 3, page 3, line 24, leave out

"to the modifications set out below"

and insert

"—

(a) in all cases, to the modifications set out below; and

(b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96AA." — [Mr Ford (The Minister of Justice.]

No 7: In clause 3, page 4, line 18, leave out "State" and insert "country". *— [Mr Ford (The Minister of Justice).]*

No 8: In clause 3, page 4, line 24, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

No 9: In clause 3, page 4, line 25, at end insert

*"**Convictions, etc. in a country which is not a member of the Council of Europe***

96AA.—(1) The further provisions referred to in section 96A(5)(b) are as follows.

(2) Where P is charged with an offence under section 91(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).

(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).

(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—

(a) that any investigations or proceedings leading to it were conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and

(b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).

(5) In this section—

"the relevant conviction, finding or caution" means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part;

"the relevant court" means—

(a) in a case to which subsection (2) applies, the court before which P is charged;

(b) in a case to which subsection (3) applies, the High Court." — [Mr Ford (The Minister of Justice).]

No 10: In clause 3, page 4, line 26, leave out from beginning to "section 97" in line 29 and insert

"(3) Omit sections 97 to 101 (notification orders).

(4) Subsection (3) (and the related repeals in Part 1 of Schedule 4) do not affect the validity or effect of any order made under section 97 or 100". — [Mr Ford (The Minister of Justice).]

No 11: In clause 3, page 4, leave out line 33 and insert "for "98" substitute "96A(6)" ". *— [Mr Ford (The Minister of Justice).]*

No 12: In clause 5, page 6, line 2, leave out paragraph (a). *— [Mr Ford (The Minister of Justice).]*

No 13: After clause 6 insert

"Trafficking offences to be triable only on indictment

6A.*—(1) In section 57(2) of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation) omit paragraph (a).*

(2) In section 58(2) of that Act (trafficking within the UK for sexual exploitation) omit paragraph (a).

(3) In section 59(2) of that Act (trafficking out of the UK for sexual exploitation) omit paragraph (a).

(4) In section 4(5) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) omit paragraph (b).

(5) This section does not apply in relation to an offence committed before this section comes into operation." — [Mr Ford (The Minister of Justice).]

No 35: In schedule 4, page 24, line 17, at end insert

"PART 1

SEX OFFENDERS

Short Title	*Extent of Repeal*
The Sexual Offences Act 2003 (c. 42)	*Sections 97 to 101* *In section 136(8) "101". "*

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

No 36: In schedule 4, page 24, leave out line 25 and insert

	"In section 4(5), paragraph (b) and the word "or" immediately before it. *Section 5(1).* *Section 5(13)."*

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

No 37: In schedule 4, page 24, line 26, column 2, at beginning insert

	"Section 57(2)(a). *Section 58(2)(a).* *Section 59(2)(a)."*

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

Mr Ford: The new clause inserted by amendment No 1 will add to the range of information that a convicted sex offender is required to give to the police if they are subject to the notification framework set out in Part 2 of the Sexual Offences Act 2003. That framework is designed to assist the police to protect the public and prevent crime. The new provision will require sex offenders to notify the police of travel plans within the UK.

We know that sex offenders travel to commit crimes, and, too often, we have seen horrific sexual murders take place in areas that were not the home of the offender. One example was Robert Black's conviction in 2011 for the murder of Jennifer Cardy. The current notification regime addresses that issue in two ways. First, it requires offenders to tell the police in advance if they plan to travel to destinations outside the UK. This aims to make it more difficult for sex offenders to offend abroad by travelling to other jurisdictions where exploitation of children for sexual abuse is all too prevalent. There are many examples of such cases. The law can also prevent an offender from travelling to any country or all countries outside the UK for the purposes of protecting children from serious sexual harm. Secondly, the law requires offenders to tell the police of any address or addresses in the UK where they have stayed for at least seven days

within a 12-month period. Thus, police will know the likely or possible whereabouts of an individual if he is not at his main address. This is all useful information for the police to have to prevent crime and protect the public.

There is one loophole apparent in the provisions that this amendment seeks to address. The police brought this to our attention as the result of a particular case where an offender spent a large amount of time away from his home address but had not registered a second address. Although no offending behaviour was identified in that case, it became clear that those who, for example, travel with a touring caravan or stay at bed and breakfast accommodation for no longer than six nights at a time can be anywhere in the UK for any length of time without any requirement to tell the police. Since then, my officials have worked with the police and other key stakeholders to address the issue. The emerging proposals were shared with the Justice Committee, and members have been supportive. The resulting amendment before the House today aims to provide a method to plug the identified gap.

The provision will require an offender to notify the police in advance of their intention to travel away from their registered home address for more than three days. That will not be necessary if they are going to stay at another registered address or if they will be required to notify that address under existing law. In other words, if they are simply going to travel from place to place for short periods, they must at least tell police in advance of their plans. Such a requirement can never ensure that the police will know where an offender is all the time. That is an impossibility. Of course, the provision is only as good as the information that the offender can give at the time. However, it will at least allow the police to know that one of the notified offenders is travelling to another part of the UK and, where applicable, to inform the other police service of the likely presence of a known sex offender in that area. It may also allow the police to intervene if an offender plans to go somewhere where, the police believe, the offender may pose a specific risk, such as a theme park, perhaps.

I have consulted the Attorney about this provision. Although cautioning that the measure may draw close to a disproportionate interference, he considered that the proposed restriction on private life is likely to withstand a challenge on article 8 grounds on the basis of the legitimate aim of crime prevention. Our aim is to take effective but proportionate measures to ensure the safety of the public from harm, and I consider this measure to meet that aim.

The second group of amendments — Nos 2 to 11 — are to the sex offender provisions and extend the provision in clause 3 to require offenders with convictions from all other countries, not just those within the European Economic Area (EEA), to notify the police if they are in Northern Ireland. The existing provision is limited to those with convictions from EEA countries. This was a result of concerns expressed to me by the Attorney General, who felt that a wider application would not be compatible with article 6 of the European Convention on Human Rights (ECHR). However, the limited application of the provision did not find support from members of the Executive when I asked for approval to introduce the Bill. I therefore gave a commitment to work with the Attorney and with the Justice Committee during the passage of the Bill to bring forward an amendment to allow for a single, enhanced process for attaching notification. My Department worked with the Attorney's office and brought proposals to the Justice Committee. The amendment provides that a sex offender with a conviction from any country outside the UK will be statutorily bound to tell the police of his presence in Northern Ireland rather than having a court order made, as at present. However, to address the Attorney's article 6 concerns, there will be safeguards for those from countries outwith the Council of Europe. They will be able to apply to the High Court for the removal of any notification requirements on the basis that the conviction from their state of origin was unsound due to human rights abuses. There is also a defence on identical grounds against any charge of failure to comply. The Justice Committee supported the amended proposals, which we consider to be a proportionate method to meet the aim of improving public protection.

I will turn to amendment Nos 12 and 13, which make human trafficking offences triable on indictment only. Amendment No 13 inserts a new clause that amends sections 57, 58 and 59 of the Sexual Offences Act 2003 and section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 to remove the existing provision for summary convictions for human trafficking offences. At present, a trial may be directed to either the Magistrates' Court, where the maximum term of imprisonment is six months, or to the Crown Court, where the maximum term of imprisonment is generally 14 years. The proposed new clause will ensure that, from commencement, all future offences of human trafficking, whether for sexual or other

forms of exploitation, are triable on indictment in the Crown Court and will attract a maximum sentence of 14 years' imprisonment. A further consequence of the amendment is that sentences for human trafficking offences will automatically be included in the scheduled offences referable to the Court of Appeal by the Director of Public Prosecutions on the grounds that he considers sentences unduly lenient. I am sure that Members will welcome that particular provision.

In the course of the consultation on the Bill, strong views were expressed that sentencing for human trafficking offences should be an effective deterrent to this heinous crime. Those views were echoed by the Justice Committee, which emphasised its desire to see the strongest possible legislation introduced in Northern Ireland on human trafficking. Recent judgements in Northern Ireland have also reinforced the seriousness of human trafficking. In one case, Judge Burgess noted:

> *"Any case involving the trafficking of other human beings is a serious case and will merit a sentence which is proportionate to the offending and is a genuine and real deterrent."*

This, of course, is also in line with the spirit of the EU directive that highlights the gravity of the offence. I believe that the changes provided for in amendment Nos 12 and 13 reflect the seriousness of the offence and will act as an effective deterrent to traffickers. I therefore commend amendment Nos 1 to 13 and Nos 35 to 37 to the House.

10.45 am

Mr Givan (The Chairperson of the Committee for Justice): Before addressing the first group of amendments, with your indulgence, Mr Speaker, I wish to make a few general remarks about the Bill in my capacity as Chairman of the Committee for Justice. Although the Committee for Justice has agreed the clauses in the Bill as drafted or as drafted with proposed departmental amendments, as I indicated at Second Stage, the reality is that the Bill is considered a necessity rather than one that is particularly welcome. It is fair to say that the only parts of the Bill that had the wholehearted support of the Committee were the provisions introducing new offences to tackle human trafficking and sex offender provisions that will improve public protection arrangements. The Bill has, however, provided an opportunity for the Committee to table an amendment to do away with the archaic offence of scandalising the court. I will say more about that during the debate on the second group of amendments.

Given the importance of the three policy areas covered by the Bill — changes to the law on sex offender notification requirements; the introduction of two new offences aimed at preventing and combating human trafficking and protecting its victims; and the establishment of a new legislative framework for the retention of fingerprints and DNA samples and profiles — the Committee extended the Committee Stage of the Bill by a number of weeks to enable detailed and careful scrutiny of the 10 clauses and the four schedules. The Committee also considered other proposed provisions on unrelated issues that the Department indicated it intended to bring forward at Consideration Stage.

The Committee sought a wide range of views as part of its deliberations on the Bill and requested evidence from interested organisations and individuals, as well as from the Department of Justice. Written responses were received from 27 individuals and organisations, and the Committee took oral evidence from eight organisations. The written and oral evidence raised a number of issues and concerns, particularly in relation to human trafficking and the proposed new fingerprint and DNA retention framework.

I thank the members of the Committee for their contributions to the discussion on and consideration of the Bill at Committee Stage. The detail in the Committee report demonstrates that we scrutinised and considered all aspects of the Bill in a full and thorough manner. I also thank the witnesses, who provided useful written and oral evidence, and the departmental officials, who provided clarification and additional information to the Committee throughout the process.

I turn to amendment No 1. During Committee Stage, the Department advised the Committee of its intention to table the amendment, which will make it necessary for a sex offender to notify the police if he plans to be away from his home address for more than three days without leaving the United Kingdom. That provided us with an opportunity to consider it. The PSNI had drawn the attention of the Department to a perceived loophole in the current legislation, meaning that a sex offender who travelled within the UK could use a series of addresses for up to six days at a time without notifying the police. During evidence to the Committee, the Police Service explained that the issue had come to light when there had been difficulty

keeping track of an offender who had travelled around the UK but had not stayed at one address for long enough to have to notify the police under the current provisions. The Committee welcomes and fully supports the amendment, as it develops and strengthens the policy in relation to notification requirements and will provide greater public protection.

The Committee also welcomes the Department's intention to introduce secondary legislation that will require an offender to notify all travel outside of the UK and not just travel of three days or more, as is currently the case. The exception to that will be cross-border travel to the Republic of Ireland, which, for practical reasons, will remain unchanged at three days or longer.

While the Committee fully supports the amendment, the same cannot be said of clause 1 and schedule 1, which provide for a review mechanism to enable offenders who are subject to an indefinite period of notification to apply to have the requirements reviewed and discharged after a period of 15 years from the date of initial notification or, in the case of an offender under the age of 18, after eight years. Some members, including me, supported their inclusion in the Bill only on the basis that legislative change is required to ensure that Northern Ireland complies with the 2010 Supreme Court ruling in the case of R and Thompson v Secretary of State for the Home Department. As the Minister has already highlighted, a similar provision was opposed during the passage of the 2010 Justice Bill. Since then, a number of welcome changes have been made that are reflected in this Bill. They include an increase in the further review period from five years to eight years for offenders over the age of 18 and the inclusion in the list of criteria to be taken into account by the Chief Constable when considering an application of information relating to convictions for non-sexual offences, where behaviour since indicates a risk of sexual harm. Some of us also find reassurance in the fact that the review mechanism to be adopted in England and Wales now more closely mirrors the one in front of us today with regard to an application being made to a court for a further determination rather than by way of a judicial review, which was initially considered for that jurisdiction.

I move on to amendment Nos 2 to 11. At Second Stage, the Minister highlighted the fact that the Executive had made it clear that they could not support the introduction of the Bill unless he gave a commitment to table an amendment to clause 3 to allow for a single enhanced process for attaching notification to offenders with convictions from outside the United Kingdom, rather than just from another European Economic Area country, which is what the clause currently covers on the advice of the Attorney General, who was concerned that the Bill would not be compliant with ECHR obligations and would, therefore, be outside the competence of the Assembly if the statutory requirements were placed on offenders from all states outside the United Kingdom.

The Department provided the Committee with information on options to amend clause 3, together with the benefits and drawbacks of each approach. The amendments before us today represent an approach that addresses the concerns of the Executive and the Attorney General. It will place a statutory requirement on offenders with convictions from countries outside the United Kingdom to notify the police after being in residence in Northern Ireland for seven days but provide safeguards to enable offenders to seek to have the requirements discharged by the court if they believe that their conviction in the other country was obtained by abuse of convention rights or to deploy such a defence if charged with an offence of failing to comply with the notification requirements. The Committee is content that this twin approach addresses the issues that have been raised and supports the amendments.

I now turn to the amendments in this group that relate to the human trafficking provisions. Clauses 5 and 6, which cover human trafficking, attracted substantial responses from a number of organisations during Committee Stage. Although there was broad support for the two new human trafficking offences created by the clauses, other issues were raised in the evidence received by the Committee that are not covered in the Bill.

I will deal with one of the most important issues first, which is addressed by amendment Nos 12 and 13. At the outset, the Committee made it very clear to the Minister that it wanted to see the strongest possible legislation introduced in Northern Ireland in relation to human trafficking. The Committee expressed concerns to the Department about the possibility that, under the Bill as currently drafted, conviction of human trafficking offences would attract a sentence of less than six months or a fine. The Committee felt very strongly that this did not reflect the gravity of the offences. The Committee asked whether the Department had given any consideration to including a mandatory minimum custodial sentence in the legislation. In response, the Department advised that the Minister fully supported the Committee's strongly held view that Northern Ireland should

be seen as a hostile place for traffickers and noted that sentencing was one of the tools for tackling this crime. However, the Minister felt that sentencing in an individual case should be a matter for an independent judiciary and highlighted the fact that mandatory minimum sentences allowed no room for discretion and made no allowance for the exceptional case.

The Department subsequently indicated that, in response to the Committee's concerns, the Minister was considering whether there was a case to make the human trafficking offences indictable only, which would mean that offences would be heard in the Crown Court, where the maximum term of imprisonment is 14 years. As a result, the Minister has tabled amendment Nos 12 and 13, which will make the human trafficking offences in the Sexual Offences Act 2003 and the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 and the new offences created by this Bill triable on indictment only. The Committee is of the view that this more adequately reflects the seriousness of the crime and, therefore, supports the amendments.

In the evidence received by the Committee it was clear that a number of voluntary organisations felt that there was an opportunity to put additional human trafficking measures into legislation by way of the Bill, particularly in relation to protection, assistance and support for victims, including children, training and the availability of proper investigative tools, which they felt the Department had missed. In fact, one of the main criticisms of this area of the Bill was that the Department had adopted a minimalist approach in implementing the EU directive on human trafficking. The Department refutes that claim, indicating that further legislative provision is not required to implement the EU directive, except in the area of support for victims, where consideration is being given to subordinate legislation. It outlined other work that is being taken forward in a wide range of areas. The Committee, however, recognises the merit in making further legislative provision in the additional areas mentioned. It has agreed that it will give further consideration to the matter in the context of Lord Morrow's private Member's Bill on human trafficking, once it is introduced in the Assembly. The Committee will also closely scrutinise the secondary legislation to be brought by the Department to strengthen support for victims of human trafficking.

Another issue that arose during the Committee's scrutiny of this area of the Bill was the complex, piecemeal approach to human trafficking legislation. In particular, there was concern that that approach to legislative reform could lead to a complex and potentially weak legal framework that would make it more difficult for law enforcement officials and legal practitioners to combat human trafficking and to protect and support victims. The Committee understands that the proposals in the Bill seek to copy England and Wales in the substance of the changes to be introduced but achieves that through a different means with the outcome that more trafficking offences will be applicable in Northern Ireland than in England and Wales. Concerned that that might cause confusion for victims and create difficulties for law enforcement officials, the Committee raised the matter with the Department. In response, the Department highlighted that the clauses in the Criminal Justice Bill, although drafted in a different style, cover the same range of criminal activities as in England and Wales and mirror the additional provisions introduced in Scotland in relation to the extraterritorial jurisdiction. The Department also indicated that none of the law enforcement agencies that work with the legislative framework had experienced difficulties. It did, however, indicate that it may consider an exercise of consolidation of human trafficking legislation when other pressing areas of work have been completed. That will need to be kept under review, with further thought given to it if there is evidence of confusion.

The last issue that I want to cover relates to the establishment of a national rapporteur for human trafficking. Although the interdepartmental ministerial group, together with the UK Human Trafficking Centre, fulfils the UK obligations in relation to a national rapporteur, some concerns have been raised that the process is not independent of government. The evidence received suggested that countries that have created an independent overseer have seen real success in the quality of information available on human trafficking and the profile of trafficking in their Parliaments. The Committee agreed to raise the issue of an independent national rapporteur with the Minister and may wish to return to that issue during consideration of Lord Morrow's private Member's Bill.

Given our desire to see the strongest possible human trafficking legislation introduced in Northern Ireland, the Committee supports the amendments tabled by the Minister in response to its concerns regarding the sentencing framework for these offences and looks forward to considering the proposals in Lord Morrow's private Member's Bill.

Mr Lynch: Go raibh maith agat, a Cheann Comhairle. I want to speak specifically to the

sex offenders aspect of the Bill. The Sexual Offences Act featured in the last Justice Bill. It was not voted through as a result of a petition of concern. We now agree on the amendments to the Bill and are now satisfied that the Bill is ECHR-compliant. That is the proper basis on which the Bill should go forward.

Mr Elliott: I thank the Minister for bringing the Bill forward and progressing issues such as this within the Northern Ireland Assembly and our framework for making powers and legislation. We want to ensure that we, in Northern Ireland, are not seen to be soft on crime or criminals. I hope that the Bill will help us to achieve that. We must also ensure that we remain compliant with human rights legislation. However, it is important that all citizens and, indeed, visitors are given the maximum protection by law, irrespective of what that requires.

To stop human trafficking and sexual exploitation, we need legislation that will inhibit this scourge on our society. We must take every possible step to ensure that those involved in such criminal activity are stopped.

I am pleased that the amendments generally widen the powers of the authorities to deal with such cases. This is particularly relevant in the notification requirement when someone is absent, or will be absent, from a notified residence. Clearly, the amendments also deal with criminal activities outside the European Union. We discussed the National Crime Agency recently, and these are areas in which Northern Ireland would benefit from that agency. That is why I am so disappointed that Members on the opposite side of the House refused to support the proposal for the National Crime Agency to operate here. I cannot understand why they did that — maybe they will be prepared to tell us today — when we could have assistance on issues such as the ones addressed in the Bill —

11.00 am

Mr Speaker: I encourage the Member to stay within the Bill. We would certainly widen the debate if we went down the avenue that the Member has just gone down. Let us try, as far as possible, to deal with the Bill.

Mr Elliott: Thank you very much for that guidance, Mr Speaker. It is much appreciated.

The Bill will have very wide-ranging effects in Northern Ireland. I wonder whether the Minister is preparing to table any further amendments at Further Consideration Stage. We heard the Chair of the Committee talking about Lord Morrow's Bill and whether any other aspects could be incorporated into it. So I would be interested to hear from the Minister on that. The Ulster Unionist Party supports the Bill and the amendments in this group.

Mr A Maginness: It is important to note the work of the Committee, in conjunction with the Department and the Minister, on the Bill. There has been a very good rapport between the Committee and the Minister on the amendments, particularly those in group 1. That is a good example of working together and building consensus.

Clearly, there are concerns about sex offenders and their travels, both within this country and abroad. It is important that notification requirements are made stricter so that one can prevent offences being committed, particularly against children. All of us in the House are very concerned about the welfare of children. We in the SDLP welcome this aspect of the Bill. We believe that the improvements that have been made to the Bill, particularly those that emanated from the Committee, in association with outside groups who informed the Committee very well on the issues that arose, are a good example of working together.

I understand the concerns that people had about the Supreme Court decision in R and Thompson v Secretary of State, which dealt with the indefinite nature of sex offenders being on the sex offenders' register. I understand that people felt that, because of this case, there would be some relaxation in the notification requirements and in the maintenance of that register. However, the Bill has made reasonable and sensible changes: the periods are reasonable and sensible, and the proposed mechanism is a very sensible way of going forward. It provides the public with reassurance that we are not being light on sex offenders and that they will still have strenuous conditions to comply with. That is worthy of note, and we are doing useful business in translating the effects of R and Thompson into law in this jurisdiction.

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

I believe the human trafficking provisions to be sensible, and Members should be confident that that is the right approach. I think that there is a general satisfaction among members of the public and the police with what is proposed, and we are fulfilling our mandate from the public by providing them with protection and by being compliant with human rights. We have taken on board what the Human Rights Commission

said and what the Attorney General said about our international obligations, and we should be satisfied with the first group of amendments.

Lord Morrow: I am pleased to have the opportunity to contribute to the Consideration Stage of the Criminal Justice Bill.

My remarks will focus in particular on clauses 5 and 6 and the Minister's proposed amendments to them. Like many Members from all sides of the House, I am very much in favour of what is proposed under clauses 5 and 6. The two clauses will bring Northern Ireland into line with article 10 of the European directive on human trafficking and are undoubtedly a positive step forward in tackling that heinous crime in Northern Ireland.

I further welcome the Minister's decision to introduce amendment No 13, and the decision to put into statute a requirement for all human trafficking offences to be triable only on indictment will ensure that appropriate penalties are handed down for those who are convicted of such offences. Members from all sides of the House will agree with the introduction of that amendment, and I thank the Minister for bringing it forward.

I also want to put on record my thanks to the Minister for his decision to introduce an annual human trafficking action plan, which will be reviewed annually. I would prefer to see such a plan placed on a statutory footing, but I believe that it is a positive step forward that will improve the response of the Executive and law enforcement agencies to human trafficking in the Province. In the light of the Minister's decision, I will review whether to include clause 13 of my draft Bill in the final Bill, which will be brought to the Assembly in the very near future.

However, in spite of those positive steps, I must put on record my great disappointment with the minimalist approach that the Minister has taken in the Bill to ensuring compliance with the European directive on human trafficking. It is patently obvious that he has largely decided to follow the coalition Government at Westminster on the implementing measures to ensure that Northern Ireland is compliant with the EU directive. The Bill fails to ensure compliance with the directive in numerous areas, and I will outline only a few today.

The Bill does not set out in statute a list of aggravating factors that courts need to take into account in sentencing those found guilty of human trafficking and does not ensure in statute that special measures will be provided to victims of human trafficking as of right, as is suggested by GRETA and the European directive. The Bill does not ensure, as article 9.1 recommends, that proceedings should be dependent on the reporting or accusation by the victim and that proceedings should be able to continue if a victim withdraws his or her statement.

Furthermore, the Bill does not seek to introduce a legal advocate for children under the age of 18, which is recommended by articles 14.2 and 16.3 of the European directive and by the Group of Experts on Action against Trafficking in Human Beings (GRETA) report on this subject. Furthermore, the Bill does not seek to introduce an independent national rapporteur, as is set down by article 19 of the directive. The Minister continues to maintain that the interdepartmental ministerial group is sufficient for this task, but I do not see how it can be argued that Ministers who set policy in this area can be described in any way as independent.

I believe that we have been elected to this House to make real differences to the lives of the most vulnerable. It is apparent to Members from all sides of this House that victims of human trafficking and exploitation in this Province are some of the most vulnerable people on our shores. It is incumbent on us that we seek to ensure that the most effective measures are in place to protect them and support them. It is for this reason that I have put down my own human trafficking and exploitation Bill, which will be coming to the Assembly very shortly. I hope that the Assembly will back my Bill, which seeks to ensure that Northern Ireland is fully compliant with the EU directive on human trafficking.

I thank the Minister for introducing the measures that are outlined in clauses 5 and 6 of the Bill, for introducing amendment No 13 and for his decision to introduce an annual plan with regard to human trafficking. However, I strongly believe that further action is necessary, and I urge the Minister to consider further the measures that I have outlined in my Bill. I would be failing in my duties if I did not say that there are many gaps in this Bill, and, hopefully, my private Member’s Bill will seek to close those gaps.

Mr Dickson: I am delighted to speak on the Bill's Consideration Stage, because it has been and is an important piece of work. As the Chair and others said, the Committee has worked very well in the scrutiny phase of the Bill, working with the Minister, the Department and, most importantly, the stakeholders who have an interest in the areas that we have been dealing with in this group of amendments. I thank the

hard-working Committee staff for the work that they have done, and I thank all those who contributed to get the Bill to the point where we are today.

The Minister has gone through and explained the amendments that he has brought forward, but I will add the weight of my comments to a few of them. It is important to recognise that the provision for notification by sex offenders, which has been raised by every Member who has spoken thus far, will be unique to Northern Ireland, and it is encouraging that the Assembly is demonstrating its ability to provide legislation not only for people in this jurisdiction but to lead the way. It will be interesting to see whether other jurisdictions in the United Kingdom choose to take interest in what we are doing. It is encouraging that the police brought this to our attention and that the Department has acted on that information. It is encouraging that we are now sitting in this place legislating for that. As well as providing additional protection to the public and assistance to the police, it demonstrates the continued benefits of devolved policing and justice.

I also welcome the amendments to clause 3, which should offer the appropriate protection, while providing for people from states with poor human rights standards who may have been wrongly convicted. It provides a clear and real opportunity for those matters to be dealt with. The NSPCC in particular highlighted the importance of the provision requiring offenders to notify the police on entry to Northern Ireland, as the current arrangements placed unnecessary responsibility on the police to find those offenders and to get them to a register and apply a notification order. The Minister has very helpfully explained to the House that the existing provision is limited because of the concerns that were expressed by the Attorney General, but I thank the Minister and the Attorney General for working together and working out a resolution to this matter. They have worked out the difficulties and worked through this in the scrutiny process with us in the Committee.

I turn to amendment Nos 12 and 13 and welcome the proposals that all human trafficking offences will now be tried on indictment in the Crown Court. This sends out a very clear message that offenders can be sentenced for up to, generally, 14 years.

11.15 am

In recent years, the horrors of human trafficking have become more and more apparent, and society rightly calls, and has called for, a robust response. It is imperative that those crimes are treated seriously and that the sentences reflect the gravity of the offences. I welcome that those sentences will be included in the schedule of offences that can be referred to the Court of Appeal on the grounds that they may be considered unduly lenient. I think that that also sends out a very clear message when dealing with those matters.

It is vital that we make clear that we abhor at all times human trafficking and all that flows from it and that it will not be tolerated in Northern Ireland. Northern Ireland is sending out a very clear message today that we are closed to human traffickers. That is the objective and the core of amendment Nos 12 and 13.

I support the amendments, and I believe that they will strengthen the Bill. The Alliance Party will support this group of amendments.

Ms McCorley: Go raibh maith agat, a LeasCheann Comhairle. Ba mhaith liom tagairt a dhéanamh do na clásail a bhaineas le human trafficking.

I would like to refer to the clauses relating to human trafficking. Like others on the Committee, we share concerns about the rising incidence of human trafficking, and we wish to see what measures need to be taken to address it. Therefore, we welcome the recommended changes, and we would like to see the law strengthened in that regard.

Tacaímid leis na leasuithe. We support the amendments.

Mr D McIlveen: I support this part of the Bill.

I now chair the all-party group on human trafficking. The issues on the trading of human beings as objects has been well rehearsed in the Assembly, so I do not think that it is necessary to go down that road again. Obviously, I take heart in hearing from my colleague Lord Morrow, because I believe that some additional tightening-up is required for this whole issue and that Lord Morrow's Bill will seek to do that.

We have to acknowledge that considerable advances have been made. I support, in particular, the provision that states that:

> *"A person found guilty of an offence under this section is liable ... on conviction on indictment, to imprisonment for a term not exceeding 14 years."*

We have a position at the minute whereby someone who has been trafficking human beings can go before a magistrate and effectively be viewed in the same way as someone who has committed a speeding offence. We should bear in mind that article 4 of the European Convention on Human Rights states very clearly that the trading of human beings and forced labour are grotesque crimes. I think that it is essential that higher penalties are imposed and that this place is made as hostile for human traffickers as we can possibly have it.

Moving forward, we also need to look at how this whole business is promoted. I obviously support the fact that we are looking at a private Member's Bill that will effectively make it illegal for someone to pay for sexual services. However, I think that, at a later stage, we will need to look at how we can deal with the advertising of sexual services. I am thinking particularly about the idea of escorts. I think that there is a traditional view of an escort, who used to be a rather lovely person for somebody to spend an evening with. Obviously, the 21st century definition of the word "escort" has changed somewhat. We now have the word "escort" used as a euphemism to try to legitimately put forward services that also cover human trafficking. So, I think that we will have to look at that issue to see how the advertising of sexual services and of people who could be victims of trafficking may be looked into in the future.

We need to keep our finger on the pulse of the issues that are before us. I believe that the Bill implements a number of recommendations that have already been put forward, particularly from the GRETA report. We need better central data collection for this issue. This is still a problem. We need to look at how quickly victims are repatriated, and those are all bigger issues specifically around human trafficking that need to be addressed. Unfortunately, the facts in Northern Ireland speak for themselves. We have seen only two convictions for human trafficking. More has to be done, given the problem that we have here.

I believe that we have certainly come far in the few years that this has been put at the top of the agenda with the all-party group and now the private Member's Bill. However, we have to continue to make sure that we are not a gateway to the UK. We have been identified as a weak link when it comes to transporting victims of trafficking from other parts of the European Union into this part of the United Kingdom, and then on to England, Scotland and Wales. We have to recognise the unfortunately unique position that we find ourselves in geographically with having another European Union country with a land border here in Northern Ireland.

I support the Bill and the amendments, and commend them to the House. However, I hope that we will continue to deal with the grotesque issue of human trafficking and that support will be given, as Lord Morrow has said, for his Bill, which, I believe, will further tighten up the law around that issue.

Mr Allister: I generally welcome the Bill. In this group of amendments, I particularly welcome the moves being taken to deal more adequately with trafficking offences, the removal of those offences to the Crown Court, and the capacity to make those referable by the authorities in terms of the adequacy of sentences. Those are sensible, wise and necessary provisions.

In looking at the detail of amendment No 1, there are a couple of issues that I would like the Minister to address and to satisfy himself that the clause, as drafted, is exactly as intended and will not create unwarranted circumstances that could be avoidable. Amendment No 1, as I understand it, will, understandably, introduce the requirement for sex offenders to give notification of their travel and accommodation plans if they are travelling for more than three days. That will apply whether they are going to Suffolk, Portrush or anywhere in the United Kingdom. The requirement in amendment No 1, under what will be section 85A(2) of the Sexual Offences Act 2003, is that the relevant offender, not less than 12 hours before leaving his home address, must notify the police of the required information.

The circumstance that I want to address the Minister's mind to is this: what happens when someone is faced with an emergency requirement to travel? They are, in the terms of the legislation, a sex offender. I remind the House that the ambit of sex offender is huge under schedule 3 of the 2003 Act. It includes the person who has a conviction for unlawful carnal knowledge with a girl under the age of 17 at the time in Northern Ireland and who, himself, was over 20. That person attaches to himself the categorisation of sex offender. Some years may have passed, and they may be a much more settled individual. Yet if that person, in a family situation, has an emergency or is required, because of a family accident, to travel to Scotland or Fermanagh to be with someone who has been critically injured in an accident, they must go. However, they cannot go for 12 hours because they must let 12 hours

pass before they can notify. Is that really what the Minister intends?

I understand perfectly that the recidivist sex offender must and should be sat upon very severely by the law in terms of their movements. That is essential, necessary and right. But when we draft laws, we draft them for the wide ambit of people to whom they apply. They also apply to individuals at the margins, both in time and quality, of the offending. I ask the Minister whether it is necessary on that detail to have that restriction, that time limitation of not less than 12 hours before they can leave their home address to deal with what could be a family emergency. That is something that the Minister should look at.

Remember, too, that the penalty in some sex offending that puts you on the register can be a caution. That can be a consequence that makes you into a sex offender. So I am not dissenting from the wisdom and necessity of requiring sex offenders to give notification. I am questioning whether, in every circumstance and every case, a blanket application such as here is doing justice to the circumstances. I invite the Minister to respond and consider that.

I invite him also to tell the House: what is the parallel provision with the person faced with the need to travel within Northern Ireland, to which this new sanction will apply, and the person desiring to travel to, say, Donegal? If someone wants to go to Portrush for three days, they must notify. If they want to go to Donegal for three days, is it the same provision? Must they equally notify? Perhaps the Minister will clarify that, because it is important that there is some parity of approach on these matters.

You may have people who, at relatively short notice, are offered three days' work somewhere. They go, they stay, they work. Are they subject to the same provisions whether that job is across the border or in Northern Ireland? Have we got that parity of provision?

I stress that I very much support the general thrust of the Bill, particularly the provisions on trafficking. Apart from those few remarks, I am very happy to support the direction of travel of the Bill.

Mr Ford: I thank those Members who took part in this section of the debate. I also thank those who took part in the work of the Committee, and my staff who engaged with the Committee. As has been acknowledged by a number of Members around the House, there has been very positive and useful engagement between the Department and the Committee, which has produced a set of largely agreed amendments.

On the specific issue of the first group of amendments relating to sex offenders, I believe that we are showing in the Bill that our primary aim is to continue to offer the best possible protection for all the community in Northern Ireland from the risk posed by sex offenders.

The notification requirements of the Sexual Offences Act 2003 are important to realising that aim. I wish to acknowledge that, in his contribution, the Committee Chair noted that some members were not entirely enthusiastic about that provision, but have accepted that it is balanced and necessary, given our obligations. As other Members highlighted, notably Alban Maginness and Stewart Dickson, it is a matter of the balance of our obligations.

11.30 am

Specifically, the new clause on travel within the UK, which has just been referred to by Mr Allister, allows us to add to the effectiveness of the information that has to be given to the police and represents a balanced response to the current gap in the overall provisions. My understanding, as I am sure some Members will be pleased to regard, is that travel to the Republic of Ireland, including short distances across the border into Donegal, is already covered by provisions in legislation relating to international travel. This is about ensuring that we maintain similar provisions within the United Kingdom. So, there is already provision if somebody is going to Dunfanaghy. The issue now is to ensure that we have suitable provisions should they go to Downpatrick.

It has been recognised that extending the process to offenders coming from all jurisdictions outside the UK is a positive step forward; one which required considerable work by the Attorney General and the Committee. I am grateful for what has been done to ensure that we strengthen our arrangements, make them more effective and enhance the ability to protect people from risk.

We have an obligation, this morning, to acknowledge the good work done by a number of agencies, led principally by the probation service and the police within the public protection arrangements; organisations that will use and enforce the legislation. The new proposal will underpin the work that they do to make the difference in keeping society safe.

It is fair to say that there was more discussion on the general issue of human trafficking than on the sex offender notifications. There are clearly issues that Members see as going beyond proposed amendment Nos 12 and 13. However, there does seem to be a general welcome for those amendments, in particular to ensure that we regard the offence of human trafficking sufficiently seriously that it is triable only on indictment in the Crown Courts. Mr Elliott asked whether I am planning further amendments in that respect. The answer is no, I am not. I believe that the provisions we already have in statute and the provisions we are introducing in the Bill as amended reflect the seriousness of human trafficking offences in terms of the consequences for victims and send out the strong message that this abhorrent crime will not be tolerated in Northern Ireland.

Lord Morrow asked a series of questions, and Paul Givan, as Committee Chair, started off with a reference to the national rapporteur. I will deal briefly with some of those points, although I suspect that it is an issue that is likely to come before the House again in different guises.

The specific point of the directive for a national rapporteur is that it is for a national rapporteur, not a regional rapporteur. We do not have the ability to establish a national rapporteur. As a member of the Home Office-led interdepartmental ministerial group on human trafficking, I argued at the first meeting I went to for a wider involvement of NGOs in that work; specifically, as a minimum, the NGOs that provide direct services to the victims of trafficking. It was an argument made by some other Ministers. It was an argument that did not win favour with the Home Office, which provides the lead for the UK as a whole. We may wish to see greater provisions around the national rapporteur, but that is a matter that lies in the gift of the Westminster Parliament and the Home Office. It is not something that we can deal with here.
However, I reject the suggestion that what the Department of Justice is doing is a minimalist approach to legislation, simply mirroring that of the Government of England and Wales, which is, in that context, what the Home Office largely is. I do not believe that that is the case. In many ways, the provisions that we have put in the Bill and those that are already in place in Northern Ireland go significantly beyond the provisions for England and Wales. For example, we have implemented some of the discretionary issues referred to in the EU directive, not merely the mandatory ones, so that we extend the law to habitual residents of Northern Ireland and to bodies incorporated under the law of any part of the United Kingdom. That is going beyond a minimalist approach. The maximum penalty for human trafficking offences in Northern Ireland being set at 14 years and the guarantee that all offences will go to the Crown Court exceeds the mandatory requirement under the EU directive. Ensuring that trials are only on indictment will guarantee and underpin that that is how we see things there.

I have also said that I am looking at the option of secondary legislation for putting assistance and support for victims during the recovery and reflection period on a statutory basis, and my officials are examining how that would work. The administrative arrangements for support for victims, again, go beyond the minimum 30-day requirement that exists under the directive. These measures, and anything we propose, have to add to the existing position and not simply replicate what exists in other places.

Similarly, Lord Morrow raised the issue of a legal advocate for children. That is perfectly reasonable, but it is a matter for the Minister of Health, Social Services and Public Safety and not for the Minister of Justice. I understand entirely the motivation, but I cannot interfere with another Department on that.

Mr McIlveen raised the issue of there having been only two convictions for human trafficking in Northern Ireland. That, of course, is an operational issue for the relevant bodies, but there have been two prosecutions and both resulted in conviction. Other cases are in the system, and a landmark judgement has made it clear how seriously the courts take the matter. Potential victims in Northern Ireland have been rescued from trafficking. Of course, we also wish there to be prosecutions, where prosecutions are possible. I believe, however, that we are already showing, for example, in general legislation, that aggravating factors are taken into account in all criminal cases and do not need to be specified for trafficking. Special measures are available for all vulnerable victims and do not need to be added purely for victims of trafficking.

The issue of whether proceedings can continue, depending on whether a statement is withdrawn by a witness, comes within the existing prosecutorial test administered by the PPS.

All of those are key points in which matters are being dealt with, and adequately so, at present. I certainly do not wish Northern Ireland to be seen, in any way, as a friendly place for traffickers, but I do not believe that that is the case. I believe that our legislation, underpinned

by what we propose today, will ensure that that message is sent out. We will continue to keep operational matters under review, without necessarily needing to say that everything needs to be in statute. Indeed, I welcome Lord Morrow's acceptance that it is not necessarily beneficial for the annual plan to be in statute. What is important is that we have the annual plan and that we show that that is an important issue for all of us.

Finally, I return to the sex offender issue and the final point made by Jim Allister about emergency travel. It appears to me that Mr Allister quite reasonably points out that the provisions of the proposed new clause are reasonable, but that there may be certain circumstances, which, I suspect, even he will agree are fairly rare, in which somebody may, because of a family illness or bereavement, wish to travel in an emergency and not be able to give 12 hours' notice. If Mr Allister is prepared to accept that we should pass this new clause today, I will certainly undertake to look to use Further Consideration Stage in the way that it is intended to see whether it is possible to introduce a further subsection that would make it clear what needs to apply should emergency travel be needed for that kind of family emergency.

Mr Allister: Will the Minister give way?

Mr Ford: Certainly.

Mr Allister: Does the Minister accept that the matter could be rectified very straightforwardly by inserting a clause to the effect that there is a defence if there is reasonable excuse. If, for instance, without reasonable excuse, someone travels without giving the required notice, they have offended the law, but, if they can show reasonable excuse, they have not offended the law. I think that something along those lines would meet the situation.

Mr Ford: It is always good to have a lawyer behind me, as well as the lawyers who advise me elsewhere. We can discuss the precise details of that point. Mr Allister's suggestion may well be the best way of dealing with it, but I think that there is an acceptance around the House that what is proposed is appropriate but requires a little tweaking to deal with emergency situations. I am happy to give an undertaking that we will do that and return at Further Consideration Stage, if the House agrees the new clause today.

That, I believe, Mr Deputy Speaker, has summarised the key comments that were made in the debate. I am extremely grateful for the broad support from all sides of the House for this group of amendments.

Lord Morrow: Before the Minister sits down, will he give way? He mentioned the fact that I had welcomed —

Mr Deputy Speaker: Sorry, Lord Morrow. I believe that the Minister had already —

Lord Morrow: He had given way.

Mr Ford: Mr Deputy Speaker, if Lord Morrow wishes to intervene quickly, I am prepared to stand up again and continue with further thanks to Members.

Lord Morrow: I ask the Minister to give way. I suspect that he would. Thank you, Mr Deputy Speaker. Thanks, too, to the Minister. I just want to clarify a point. He is right as far as he goes. He said that I had welcomed the fact and had acknowledged the introduction of an annual human-trafficking action plan. However, the wee bit that he, conveniently, left out, which I did go on to say, was that I would like to have seen that put on a statutory basis. I ask the Minister to take cognisance of that.

Mr Ford: I thought that I had actually said that in my remarks. I certainly acknowledge that Lord Morrow believes that the annual plan should be statutory. My position is that if the Department is committed to publishing a plan annually in consultation with other elements of the justice system, it is not necessary to put it on a statutory basis. We are all agreed on the importance of a plan. We are all agreed on the importance of showing that the House and the justice system are united against those who would engage in the foul crime of trafficking. As for the precise method and whether the plan is statutory, Lord Morrow and I will have to continue to debate those issues.

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

New clause ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3 (Offences committed in an EEA State other than the United Kingdom)

Amendment No 2 made: In page 2, line 31, leave out "an EEA State other than" and insert "a country outside". — *[Mr Ford (The Minister of Justice).]*

Amendment No 3 made: In page 2, line 32, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

Amendment No 4 made: In page 2, line 35, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

Amendment No 5 made: In page 3, line 14, leave out "State" and insert "country". *— [Mr Ford (The Minister of Justice).]*

Amendment No 6 made: In page 3, line 24, leave out

"to the modifications set out below"

and insert

"—

(a) in all cases, to the modifications set out below; and

(b) in a case where the first condition mentioned in subsection (2) is met by reason of a conviction, finding or caution in a country which is not a member of the Council of Europe, to the further provisions in section 96AA." — [Mr Ford (The Minister of Justice).]

Amendment No 7 made: In page 4, line 18, leave out "State" and insert "country". *— [Mr Ford (The Minister of Justice).]*

Amendment No 8 made: In page 4, line 24, leave out "an EEA State other than" and insert "a country outside". *— [Mr Ford (The Minister of Justice).]*

Amendment No 9 made: In page 4, line 25, at end insert

*"**Convictions, etc. in a country which is not a member of the Council of Europe***

96AA.—(1) The further provisions referred to in section 96A(5)(b) are as follows.

(2) Where P is charged with an offence under section 91(1)(a), it is a defence for P to prove that the relevant conviction, finding or caution falls within subsection (4).

(3) P shall cease to be subject to the notification requirements of this Part by virtue of section 96A if the High Court, on an application made by P in accordance with rules of court, so orders; but the High Court shall not make such an order unless it is satisfied that the relevant conviction, finding or caution falls within subsection (4).

(4) A conviction, finding or caution falls within this subsection if the relevant court is satisfied—

(a) that any investigations or proceedings leading to it were conducted in a way which contravened any of the Convention rights which P would have had if those investigations or proceedings had taken place in the United Kingdom; and

(b) that contravention was such that, in the opinion of the court, the conviction, finding or caution cannot safely be relied on for the purposes of meeting the condition in section 96A(2).

(5) In this section—

"the relevant conviction, finding or caution" means the conviction, finding or caution by reason of which P is subject, by virtue of section 96A, to the notification requirements of this Part;

"the relevant court" means—

(a) in a case to which subsection (2) applies, the court before which P is charged;

(b) in a case to which subsection (3) applies, the High Court." — [Mr Ford (The Minister of Justice).]

11.45 am

Mr Deputy Speaker: Amendment Nos 10 and 11 have already been debated and are consequential to a number of earlier amendments to clause 3. I propose, therefore, by leave of the Assembly to group these amendments for the question.

Amendment No 10 made: In page 4, line 26, leave out from beginning to "section 97" in line 29 and insert

"(3) Omit sections 97 to 101 (notification orders).

(4) Subsection (3) (and the related repeals in Part 1 of Schedule 4) do not affect the validity or effect of any order made under section 97 or 100". — [Mr Ford (The Minister of Justice).]

Amendment No 11 made: In page 4, leave out line 33 and insert "for "98" substitute "96A(6)" ". *— [Mr Ford (The Minister of Justice).]*

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5 (Trafficking people for sexual exploitation)

Amendment No 12 made: In page 6, line 2, leave out paragraph (a). *— [Mr Ford (The Minister of Justice).]*

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

New Clause

Mr Deputy Speaker: Amendment No 13 has already been debated and is consequential to amendment No 12.

Amendment No 13 made: After clause 6 insert

"Trafficking offences to be triable only on indictment

6A.*—(1) In section 57(2) of the Sexual Offences Act 2003 (trafficking into the UK for sexual exploitation) omit paragraph (a).*

(2) In section 58(2) of that Act (trafficking within the UK for sexual exploitation) omit paragraph (a).

(3) In section 59(2) of that Act (trafficking out of the UK for sexual exploitation) omit paragraph (a).

(4) In section 4(5) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking people for exploitation) omit paragraph (b).

(5) This section does not apply in relation to an offence committed before this section comes into operation." — [Mr Ford (The Minister of Justice).]

New clause ordered to stand part of the Bill.

Clause 7 ordered to stand part of the Bill.

Mr Deputy Speaker: We now come to the second group of amendments for debate. With amendment No 14, it will be convenient to debate amendment Nos 15 to 17 and Nos 38 to 41. Those amendments deal with the release on licence of children convicted of serious crime, the examination of a defendant through a registered intermediary and the abolition of the offence of scandalising the judiciary.

I call the Minister of Justice to move amendment No 14 and to address the other amendments in the group.

New Clause

Mr Ford: I beg to move amendment No 14: After clause 7 insert

"*Release on licence of child convicted of serious offence*

Release on licence of child convicted of serious offence

7A.*—(1) In Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (child convicted of serious offence) for "notwithstanding any other provisions of this Order" substitute "subject to Articles 46 to 46B".*

(2) In Article 45 of that Order after paragraph (2) insert—

"(2A) Where a court passes a sentence under paragraph (2), the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence).".

(3) For Article 46 of that Order substitute—

"Release on licence

46.—(1) In this Article—

(a) "P" means a person detained under Article 45(2);

(b) "the Commissioners" means the Parole Commissioners for Northern Ireland;

(c) "the Department" means the Department of Justice; and

(d) references to the relevant part of P's sentence are references to the part of P's sentence specified as such under Article 45(2A).

(2) As soon as—

(a) P has served the relevant part of P's sentence, and

(b) the Commissioners have directed P's release under this Article,

the Department shall release P on licence.

(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—

(a) the Department has referred P's case to the Commissioners; and

(b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(4) P may require the Department to refer P's case to the Commissioners at any time—

(a) after P has served the relevant part of P's sentence; and

(b) where there has been a previous reference of P's case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.

(5) In determining for the purposes of this Article whether P has served the relevant part of P's sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Department otherwise directs.

(6) The Department may at any time release P on licence if it is satisfied that exceptional circumstances exist which justify P's release on compassionate grounds.

(7) Before releasing P under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.

Duration and conditions of licences under Article 46

46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—

(a) include a condition in a licence on release,

(b) subsequently insert a condition in a licence, or

(c) vary or cancel any condition in a licence.

Recall of licensees

46B.—(1) In this Article—

"P" means a person who has been released on licence under Article 46;

"the Commissioners" and "the Department" have the meanings given in Article 46(1).

(2) The Department may revoke P's licence and recall P to detention—

(a) if recommended to do so by the Commissioners, or

(b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

(a) shall, on P's return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and

(b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer P's case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct P's immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(7) On the revocation of P's licence, P shall be liable to be detained in pursuance of P's sentence and, if at large, shall be treated as being unlawfully at large.".

(4) In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 (functions of Parole Commissioners for Northern Ireland) at the end add "or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 1998."

(5) Where—

(a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order, and

(b) the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate,

Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person's sentence for the purposes of that Article were the part specified in the certificate.

(6) But subsection (5) does not apply (and subsection (7) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.

(7) Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.

(8) Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order (as substituted).

(9) In this section—

"commencement" means the date on which this section comes into operation;

"existing licensee" means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement;

"the 1998 Order" means the Criminal Justice (Children) (Northern Ireland) Order 1998."

The following amendments stood on the Marshalled List:

No 15: After clause 7 insert

"Examination of accused through intermediary

Examination of accused through intermediary

***7B**.—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.*

(2) At the beginning of paragraph (2) insert "Subject to paragraph (2A),".

(3) After paragraph (2) insert—

"(2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn."." — [Mr Ford (The Minister of Justice).]

No 16: After clause 7 insert

"Abolition of scandalising the judiciary as form of contempt of court

***7C.**—(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law.*

(2) That abolition does not prevent proceedings for contempt of court being brought against a person for conduct that immediately before that abolition would have constituted both scandalising the judiciary and some other form of contempt of court." — [Mr Givan (The Chairperson of the Committee for Justice).]

No 17: In clause 9, page 8, line 2, leave out subsections (1) and (2) and insert

"(1) Except as provided by subsection (2), this Act comes into operation on the day after Royal Assent.

(2) The following provisions of this Act come into operation on such day or days as the Department may by order appoint—

(a) section 1 and Schedule 1;

(b) section (Notification requirements: absence from notified address);

(c) sections 3 and 4;

(d) section 7 and Schedules 2 and 3;

(e) Parts 1 and 3 of Schedule 4 and section 8 so far as relating thereto." — [Mr Ford (The Minister of Justice).]

No 38: In the long title, leave out "and to" and insert "; to". *— [Mr Ford (The Minister of Justice).]*

No 39: In the long title, at end insert

"; to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998". — [Mr Ford (The Minister of Justice).]

No 40: In the long title, at end insert

"; and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999".— [Mr Ford (The Minister of Justice).]

No 41: In the long title, at end insert

"and to abolish the common law offence of scandalising the judiciary". — [Mr Givan (The Chairperson of the Committee for Justice).]

Mr Ford: We all know that, every so often, children commit and are convicted of grave offences. In law, that is defined as an offence for which an adult could receive a custodial sentence of 14 years or more. Typically, it will involve a very serious sexual or physical assault. In those circumstances, the standard juvenile justice centre order, with its maximum duration of two years, is not always adequate.

Courts, therefore, have at their disposal determinate detention orders under article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998, which allows them to pass sentences that properly reflect the gravity of the crime. There have been only four or five such orders in the past 10 years, and none has been made since 2008.

Under existing provisions, it is entirely a matter for the Minister of Justice to determine when or if during the sentence a child should be released on licence, the conditions of that licence and matters of breach of licence and recall to custody. As currently framed, the Minister's power is completely unfettered.

Following a recent legal challenge, article 45(2) detention orders and associated article 46 licences have been declared non-compliant with articles 5 and 6 of the European Convention on Human Rights in that they make no provision for the required inclusion in the process of an independent judicial element to determine matters of release, licence conditions and recall to custody. The amendment remedies the matter by removing the Minister of Justice from the process, requiring the court to specify a point at which release on licence should be considered and introducing the Parole Commissioners for Northern Ireland as the appropriate independent judicial element for determining matters of release, licence conditions and recall to custody.

This not only makes the provisions ECHR compliant but brings them fully into line with all other similar custodial sentences that involve release on licence, such as the extended and indeterminate custodial orders used for public protection. We are, in effect, doing no more than replicating the arrangements that already exist for those other orders.

Amending the provisions in this way maintains an important sentencing option for the courts, meets our convention obligations, links the detention orders to established provisions for other similar orders and strengthens the processes for establishing risk and protecting the public. Crucially, it will also allow us to place the management of the small number of existing cases on a rational and compliant footing.

I now turn to amendment No 15, which inserts a new clause 7B, which involves a minor technical amendment to article 21BA of the Criminal Evidence (Northern Ireland) Order 1999. That order deals with the examination of an accused person through a registered intermediary. Intermediaries are communication specialists who assist victims, witnesses and defendants with significant communication deficits to communicate their answers more effectively during interview and when giving evidence at trial.

The registered intermediary scheme will be piloted at the Crown Court sitting in Belfast for certain types of offences following commencement of this provision. The new clause inserts a requirement that a statutory notice must be given to a court by the Department before that court may give a direction permitting the examination of an

accused through an intermediary. It also provides that the notice can be withdrawn by the Department, and the power of the court to give an intermediary direction, therefore, ceases to exist. The amendment is technical in that it ensures that there is legislative consistency in this respect between the provisions dealing with the accused, and victims and witnesses.

The amendment standing in the name of the Committee Chair relates to the repeal of the common law offence of scandalising the court. I thank the Committee for the work that it has undertaken in bringing forward this amendment. The amendment to insert a new clause 7C equates to that which has been brought forward for England and Wales in the Crime and Courts Bill [HL].

As Members will know, I declined an offer to include Northern Ireland in that Bill because I believe that this is the appropriate place for legislation to be shaped for Northern Ireland — in this Assembly. Before bringing forward an amendment to repeal the offence, England and Wales had the benefit of a Law Commission consultation to gauge views. My preference would have allowed for an opportunity to consult similarly in Northern Ireland at an appropriate time, and to find out whether there were other changes that might be needed to protect the courts. The Committee, however, has chosen, as is its right, to bring forward this amendment, which it is able to do with less of a consultation process than the Department would have been obliged to carry out. I am entirely content that the House decide the issue today.

Finally in this group of amendments is the issue of amendment No 17, which amends the Bill's commencement arrangements. As was the case at introduction, the provision on sex offenders, except those relating to obsolete offences, and on DNA and fingerprints will be commenced by order at a date or dates to be determined. All the other provisions now in the Bill, however, will come into operation immediately after Royal Assent. Amendment Nos 38 to 41 similarly augment the long title to reflect the addition of the new provisions.

I recommend the amendments standing in my name to the House. I am certainly interested to hear the comments from around the House on the Committee Chair's amendment.

Mr Givan: First, I wish to speak on amendment No 16, which the Committee for Justice has brought to the Assembly and which seeks to abolish the offence of scandalising the judiciary as a form of contempt of court under common law, and amendment No 41, which is a consequential amendment that is needed to the long title as a result of our proposed amendment.

I am very pleased to bring amendment No 16 to the House today. The rationale for such an offence derived from the need to uphold public confidence in the administration of justice. However, the last recorded successful prosecutions in England and Wales were in the 1930s. The offence has recently been described as "virtually obsolete." The offence is archaic and should be consigned to the history books.

Members will be well aware that, in March 2012, the Attorney General for Northern Ireland brought a prosecution against Peter Hain MP for the common-law offence of scandalising the court for statements that he made in his book 'Outside In', in which he criticised a judge. The court was invited to make no order after Mr Hain clarified the intention behind his remarks. The prosecution attracted significant media and political interest at the time, with questions being raised about the right to freedom of expression and such criticism being regarded as political speech, and, therefore, under the European Convention on Human Rights, subject to the highest degree of protection, although absolute, and whether the offence was obsolete. Indeed, it was raised by the former Home Secretary, Mr David Blunkett, during Prime Minister's Questions, when he asked:

> *"Should not respect for the ... judiciary be balanced with the rights of individuals to fair comment on that judiciary?"*

The Prime Minister replied:

> *"let me just say this: there are occasions, as we all know, when judges make critical remarks about politicians; and there are occasions when politicians make critical remarks about judges. To me, that is part of life in a modern democracy, and we ought to keep these things, as far as possible, out of the courtroom."*

The prosecution prompted an amendment to be laid by Lord Pannick QC in the House of Lords in relation to the Crime and Courts Bill, proposing the repeal without replacement of the offence of scandalising the court for England, Wales and Northern Ireland. In bringing forward the amendment, Lord Pannick argued:

> *"There is simply no justification today for maintaining a criminal offence of being rude about the judiciary-scandalising the judges or, as the Scots call it, murmuring judges. We do not protect other public officials in this way. Judges, like all other public servants, must be open to criticism because, in this context as in others, freedom of expression helps to expose error and injustice. It promotes debate on issues of public importance. A criminal offence of scandalising the judiciary may inhibit others from speaking out on perceived judicial errors."*

When referring to the case taken by the Attorney General for Northern Ireland against Peter Hain, Lord Pannick stated:

> *"This bizarre episode has damaged the reputation of the legal system in Northern Ireland".*

The amendment was withdrawn at Committee Stage to allow the Government time to consider the matter.

The Minister of Justice subsequently wrote to the Committee, informing it that the Minister of State, Lord McNally, had advised that, having considered and consulted on the issue, the Government were minded to support the amendment and wished to know whether Northern Ireland wanted to be included in it. The Minister indicated his preference for local legislation, and stated that he considered that it would be more appropriate for the matter to be looked at separately in a Northern Ireland context.

He, therefore, advised Lord McNally that Northern Ireland should not be included in the Crime and Courts Bill, and asked his officials to take forward work to seek views on this in Northern Ireland. When asked by the Committee for the timescale for completion of that work, the Minister indicated that, subject to any other competing priorities, he planned to take forward a consultation on the issue in the new year.

The Committee considered the matter, and was of the view that the Criminal Justice Bill could provide an appropriate vehicle in which to take forward the repeal of that offence now. The Committee, therefore, agreed that an amendment should be drafted on that basis, and sought advice on whether such an amendment would fall within the scope of the Bill. The Committee also agreed to seek the views of the Attorney General for Northern Ireland, given his interest in the matter, and noted the results of the consultation that was undertaken by the Law Commission in England and Wales, in which there was general support for abolition of the offence in those jurisdictions.

The Attorney General responded by outlining that the Criminal Justice Bill might provide an opportunity to recast scandalising contempt in statutory form rather than repealing the offence. The Committee, however, disagreed, and stated that it wished to see the offence of scandalising the court abolished in Northern Ireland and was content to take forward an appropriate amendment.

Subsequently, during the debate in the House of Lords on 10 December to ratify the amendment in the Crime and Courts Bill, Lord Carswell, a former Lord Chief Justice of Northern Ireland, indicated his support for the amendment.

He stated:

> *"I have to say, and I hope that they will take this into account, that I cannot see any reason why judges in Northern Ireland should have any different protection from judges in England and Wales against scandalising. I think the same considerations apply, and having been a judge there for 20 years, I would certainly not wish to see any differentiation."*

When he said "they", he was referring to the authorities in Northern Ireland.

Following confirmation that the amendment was admissible, the Committee finalised its wording, which is in front of Members today. On the basis that I have outlined, the right thing to do is to abolish the offence in Northern Ireland. The Committee seeks the support of the Assembly for amendment Nos 16 and 41.

12.00 noon

Before I proceed, I also want to speak about this in my capacity as an individual Member. I want to cover a number of areas for the benefit of Members.

First, I want to put on record my appreciation to Lord Justice Girvan and the Attorney General for taking the actions they did. As a result of their actions, this amendment is before us, and the House can ensure that public confidence is not damaged any further than it was by the action taken against Peter Hain. If Members have not reflected on the commentary on this issue in the House of Lords, where there has

been considerable debate, there are a number of quotes that, I think, they would benefit from hearing. With Members' indulgence, I plan to go through some of them.

Obviously, Members are aware of Peter Hain's book. Lord Pannick quoted from it in the House of Lords, for Members' benefit, when he said:

> *"Mr Hain had described the judge and his conduct as 'high-handed and idiosyncratic' and he added that he thought the judge 'off his rocker'."*

Lord Pannick went on to say:

> *"Whatever the merits or lack of — I take no position on this — in Mr Hain's critical comments, surely a former Secretary of State, or indeed any citizen, should be able to express his views about a judge without being threatened with a prison sentence."*

I share that view. Lord Pannick also said:

> *"The irony is that public confidence in the judiciary is undermined far more by legal proceedings that suggest that the judiciary is a delicate flower that will wilt and die without protection from criticism than by a hostile book or newspaper comment that would otherwise have been ignored."*

I share entirely the sentiments expressed by Lord Pannick.

This place has the duty — above the judiciary — to ensure that the public have confidence in and support for the functions exercised by the judiciary. That is why the amendment is before Members today. It is there so that we can undo the damage caused by the ridicule and embarrassment that resulted from the case that was taken against Peter Hain.

It is unfair for Members to lay the blame for this solely at the feet of the Attorney General. I disagree with his actions in taking that case, but he made it clear to the Justice Committee that he had received correspondence from Lord Justice Girvan on the issue. So, we had a judge corresponding with the Attorney General on the matter: that is inappropriate. It is not just the Attorney General who we are having to deal with through the amendment. We are also having to ensure that public confidence in our judiciary and the way it operates is not further damaged. Indeed, by passing the amendment today, we can restore public confidence in the way in which the judiciary operates.

The case was withdrawn, and it is important to acknowledge that the Attorney General did not, ultimately, proceed. However, it is important for Members to put the reason why the case did not proceed into context. It did not proceed because Peter Hain provided clarification that it was not his intention to undermine judicial independence in any way. That is why the case did not proceed. It was not necessarily because of the public furore that surrounded it, including the Prime Minister getting involved at Question Time; it was because Peter Hain clarified that that was not his intention, Interestingly, that was touched on in the House of Lords by Lord Bew:

> *"The Attorney-General made it clear that he would not have set aside the proceedings until the receipt of the letter from the former Secretary of State for Northern Ireland, Mr Hain. In that letter, Mr Hain effectively argued that it had not been his intention in any way to challenge the independence and fairness of the judiciary in Northern Ireland. This is an important point, because I think it quite likely that the Attorney-General for Northern Ireland had in mind the dictum of Lord Russell of Killowen, perhaps the greatest of all the Northern Irish judges of the last century. In 1900, as Chief Justice of England, he offered a dictum in this sort of case that intention was crucial and that there had to be a calculated and clearly deliberate attempt to challenge the independence of the judiciary. By his letter, the former Secretary of State for Northern Ireland, Mr Hain, put himself on the right side of that dictum by saying that he had no intention in any way to challenge the independence of the judiciary in Northern Ireland.*
>
> *What this reveals is that the Attorney-General and Sir Declan Morgan, the Lord Chief Justice, as far as I can understand from the remarks that he made at the time that this was a public matter, believe that there was in principle a case in law here, and a legal case that could be taken. That is why we have proposed this amendment. If there is any possibility that there could be such a case brought, which I think would widely be regarded as absurd, we must do what we can to eliminate that possibility."*

That, in my view, puts into context why the case did not proceed. That is why I agree with Lord Bew that, if there is any prospect of this case being taken forward, on whatever grounds, it does not merit being treated as a criminal offence. Therefore, I trust that amendment No 16 will be supported by all Members.

It is also important for Members to note that Lord —

Mr A Maginness: I thank the Member for giving way. I note that he emphasised that there should be no criminal proceedings in this or similar cases. I agree with the Member on that. However, does the Member not agree that, given the gravity of the allegations made against Lord Justice Girvan, some alternative civil proceedings could and should have been taken to protect his reputation and standing or, indeed, the reputation and standing of any other judicial figure in a similar situation? Mr Hain's written comments went beyond mere criticism and offence. They tended to verge on challenging the integrity of Lord Justice Girvan, for whom many in the legal profession have a great regard. I think that his standing among his peers is second to none.

Mr Givan: The Member's contribution is important, and I will come to that point. In no way should Members regard the amendment as an opportunity for open season on the judiciary. I agree with comments that elected representatives need to demonstrate self-restraint. There is a role for us to uphold the independence of the judiciary. However, there is a balance to all that.

The Member, quite rightly, pointed out that there may have been another vehicle for bringing a challenge, if somebody is offended by a statement made about them. I share that view. Lord Justice Sedley, for example, is the most recent judge to sue for libel. His case against 'The Daily Telegraph' was an example of a Lord Justice clearly feeling that criticism had gone beyond what was reasonable, and he was able to sue for libel. I disagree, however, with attaching a criminal offence to criticism of the judiciary. That is inappropriate. It is inappropriate for a taxpayer-funded Attorney General to be able to take cases of that nature against ordinary citizens, Members of the Assembly or, indeed, for that matter, the former Secretary of State, Peter Hain, with whom I have many disagreements about politics. I am not doing this because I have any particular liking for Peter Hain, but it is the principle that I wish to comment on.

It is important to note that, during the debate in the House of Lords, Lord Goldsmith also commented on the issue. He said:

> *"I was the Attorney-General for Northern Ireland for six years and I was never asked to, nor did I, consider that offence in Northern Ireland-or, indeed, in England and Wales, of which I was also Attorney-General. There does not seem to be any need for the offence and I never saw any need for it at the time."*

It is useful to have those statements from a previous Attorney General and someone of such standing as Lord Goldsmith. Lord Carswell, whom I quoted earlier, is a former Chief Justice for Northern Ireland, so I think Members should take on board his comments on the issue. I will quote from Lord Carswell, because these eminent individuals are much more capable than I of articulating what I am trying to convey, and they carry much more weight than I do, certainly within the environs in which they operate in the legal system. Lord Carswell said:

> *"I did not consider for a moment instigating a prosecution or suggesting to the Attorney-General — who was not the noble and learned Lord, Lord Goldsmith, but a predecessor — that a prosecution should be bought. There were deeply scandalous assertions in a certain newspaper that I had come to the conclusions I had reached in criminal trials on the instructions of the Government, more or less, without saying it, as their cat's paw. I was deeply offended and I deeply resented it. I was scandalised, but not for one moment would I have considered asking the Attorney-General whether he would consider bringing contempt proceedings — or, rather, a scandalising prosecution ... it is not necessary in modern conditions; not necessary for a sophisticated society; and not necessary for judges who have to have the hardihood to put up with comments which sometimes may be unfair, badly based and just plain vulgar rudeness. However, that is part of what they have to do: they have to shrug their shoulders and get on with it. It is for that reason that, although I was very cross at the time about it, I certainly did not invoke the criminal law."*

Lord Carswell's opinion of how the case to do with Peter Hain was handled by the Attorney General and the judiciary in Northern Ireland is pretty devastating.

I will pick up on some other quotes. During the debate, Lord Pannick and a number of Members intimated their unease that Northern Ireland was not moving on the issue. Lord Pannick made the point that he was disappointed that Northern Ireland was not going to move on it — I think it was in the debate of 10 December — and he made the following commentary on that:

> *"It is ironic that the impetus for this amendment came from the Peter Hain case in Northern Ireland, and now the anachronistic law that led to that case is to be abolished in England and Wales but not in Northern Ireland."*

He makes a valid point. How absurd would it be, given that the case emanated from Northern Ireland, if they abolished the offence in England and Wales but it is retained in Northern Ireland? That would be simply absurd, and it is therefore important that we move to deal with this amendment.

Lord Lester of Herne Hill said:

> *"Even though the amendment springs from a problem that arose in Northern Ireland, I am doubtful as to whether the Northern Ireland Government will agree to bring their common law into line with what we are doing in England and Wales."*

Maybe he was right in that respect — that the Executive had not been looking at the issue and the Minister had not brought it to the Executive's attention — but the Justice Committee of this place has decided to take action in respect of that. So, in response to Lord Pannick and Lord Lester of Herne Hill, I say that I appreciate their interest in the affairs of Northern Ireland and they can be assured that this Assembly has decided to ensure that Northern Ireland is not left in the dark ages when it comes to this offence.

12.15 pm

It is important that Members recognise that the actions that resulted from this case have a chilling effect on the citizen's ability to pass comment on judicial decisions. I certainly recognise that. I know that many in this place are certainly no shrinking violets when it comes to expressing their opinions, and I would not for one moment think that Members of this place would shirk their responsibilities, where criticism is merited, to pass judgement on judicial decisions. Indeed, I have done so. I was critical of the sentence awarded to one of the killers of Constable Carroll, a sentence handed down by Lord Justice Girvan. That sentence has now been referred, and I trust that that matter will be dealt with, as the Director of Public Prosecutions now deals with that case.

Devolution of justice is new to Northern Ireland, and Members are seeking to tread carefully on this issue. We are seeking to build relationships. In that respect, I commend the Lord Chief Justice, Sir Declan Morgan, in all this. I have found him always to be amenable. He has offered to come to the Committee for Justice, which will be the first occasion on which a Lord Chief Justice has been prepared to engage with this place on judicial matters beyond his scope as chairman of the Northern Ireland Judicial Appointments Commission. We will be able to engage with him on judicial matters, which is a very welcome development. I want to encourage Sir Declan Morgan to continue to bring the judiciary forward with him. It is important that that work continues.

The Lord Chief Justice, in a speech to the Law Society of Ireland in Dublin on 10 May 2012, commented on this issue. He gave a lecture on the impact of the Human Rights Act 1998 and on how it has given the judiciary a greater role in the interchange with the legislatures. He said:

> *"The principal purpose of this lecture is to demonstrate that in my jurisdiction the incorporation of significant elements of the European Convention on Human Rights into domestic law has caused a change in the relationship between the judiciary, the executive and the legislature."*

He went on to say:

> *"In carrying out the task of securing equilibrium we must all remember that our principal objective is to secure public confidence in the administration of justice."*

He continued:

> *"It also means that an independent judiciary is entitled to expect its position to be respected and secured by Ministers and legislators, but must itself show proper respect for the role which others play in our justice system."*

I support that comment. The independent judiciary has the right to require that legislators and the executive uphold the right to judicial independence. However, let me make it very clear: this place has primacy. We set the law, and we make the law. Judges make their decisions within the legal framework that we set as the elected representatives, as the people ask us to do. We will uphold the right of the judiciary to take those decisions within the legal framework that is established by this place, which has primacy in all this. It is important that we show respect in the way in which we conduct ourselves with the judiciary. I agree with that.

I will conclude this part of my speech on this group of amendments by bringing Members' attention once again to the Lord Chief Justice's speech. He said:

> *"The judiciary, as I often say, is independent, but it is not isolated. We participate and we listen willingly to the other voices in the conversation. For my part, I will do all that I can to ensure that the difficult issues we face as we establish our devolved justice institutions are determined in an atmosphere of mutual respect. At the end of the day, we are all working towards the same goal of ensuring our justice system has the full and deserved confidence of the public."*

I agree with that quote from the Lord Chief Justice. Let me conclude on this point by quoting Lord Pannick as he concluded his speech in the debate in the House of Lords:

> *"As Justice Albie Sachs said on this subject in a judgment in the Constitutional Court of South Africa in 2001, respect for the courts will be all the stronger, 'to the degree that it is earned, rather than to the extent that it is commanded'."*

I urge Members to support the Committee on the amendment. We tabled it to deal with this issue effectively and conclusively.

In my capacity as Chairman of the Committee, I turn to amendment Nos 14 and 15, both of which were brought to the Committee by the Department at Committee Stage. The Committee received information in relation to the new clause created by amendment No 14 only a few days before the Committee Stage was completed, which provided virtually no time for the Committee to consider the proposed clause properly. Noting that a legal challenge in an existing case has exposed that the current legislation concerning licence arrangements relating to the release of young offenders convicted of certain serious crimes is unlikely to be compliant with the European Convention on Human Rights, the Committee briefly considered the Department's proposed provision. Given that the principal test under the new arrangements will be the protection of the public, the Committee is content to support that amendment.

As the Minister has outlined, amendment No 15 is required to address an omission with regard to the planned registered intermediary scheme and the issuing and withdrawal of statutory notices in relation to the examination of vulnerable defendants through an intermediary. The Committee noted that the Department considers it unlikely that the power to suspend the scheme will need to be exercised but it is prudent to have the safeguard in place. The Committee is content to support the inclusion of the new clause through amendment No 15.

Mr McCartney: Go raibh maith agat, a LeasCheann Comhairle. I support the amendments tabled by the Minister and those on scandalising the court tabled by the Committee Chair. I want to say a few words on scandalising the court. The Minister has said that he spurned the opportunity to allow Westminster to legislate on the matter. That is a very good principle and perhaps one that we will follow in future. The Chair said, in relation to the Assembly, that:

> *"We set the law, and we make the law."*

It is interesting that, not so long ago, we were criticised for not supporting a legislative consent motion on the National Crime Agency (NCA). Perhaps if we all —

Mr Ford: Will the Member give way?

Mr McCartney: I will give way, certainly.

Mr Ford: While the Member definitely makes a good political point, he needs to acknowledge that there is a difference between Westminster legislation that deals with UK-wide matters that impinge on Northern Ireland and an issue that lies solely with this House. The issue of scandalising the court is the latter, and that is why I was so determined that we would not consider Westminster legislating for us.

Mr McCartney: I will quote the Chair again:

> *"We set the law, and we make the law."*

Let that be our guiding principle.

The Chair said that he did not often find himself agreeing with Peter Hain. I want to be very careful here. Peter Hain said that a judge was "off his rocker". At that, I will — what would they say in court, Alban? — rest my case. I do not want to make any further comment on that. The reason why we support the repeal of this legislation is that we believe that there is already sufficient legislative protection in place for anybody in public office who feels that their integrity or the role that they play in the judiciary or another public office is being attacked.

I followed the commentary on the issue, and it was interesting that a lot of people at

Westminster, in particular, seemed to get very upset about this. However, they missed an aspect of it in some regards. The Attorney General addressed that at the Committee and in some of his public commentary. Peter Hain did not just say that a particular judge was off his rocker; he went on to say something else in his role as British Secretary of State. Indeed, the reason why he said that the judge was off his rocker is that he lost a case against him. It is some criterion if you are part of a process to appoint somebody to the higher levels of the judiciary and, having lost a case against them and said that they are off their rocker, you can then say, "I will not let you become a High Court judge". There might be many people working in the judicial process who are saying today, "I hope that Members of the Assembly are never put in a position where they can do that". That was the essence of the case, as well. That needed to be there, because Peter Hain should not have said that. He could have said the judge was off his rocker or stupid in the decision he made, but he should not have alluded to the fact that, if he had had his way, he would have prevented somebody going into public office simply because he lost a case against him. That is not a standard that we should allow to prevail.

The Chair spoke about this, and Albie Sachs is an exemplary person to set the standard. Whatever respect people have for the judicial process, it should be earned and not commanded. I agree with that. In Committee, we said, particularly when the Minister came around that time, that independence is one thing as a principle but it does not free any person, be it a judge or anybody else, from criticism of what they do. As I said in Committee, people have raised their voice against judicial decisions — they may not have described people who then became Lord Chief Justice in another jurisdiction as "off their rocker", but what they said was that they were wrong — and they were proved, eventually, to be right. When we had this discussion before, Tom Elliott, I think, accused us of not supporting the rule of law because we might question a judicial system or a police decision. As I pointed out to him then, the rule of law is not absolute either. It does not stand apart from the right of people to say that it is wrong. If you do not say that it is wrong, you end up with injustice being heaped upon injustice.

So, although we agree that this legislation is archaic and out of date, the Attorney General said clearly that Peter Hain corrected what he had said and, in essence, changed the sense of what he had said. He may still think that Lord Chief Justice Girvan is off his rocker — he may think all those things — but I think he accepted that, when you are in high office, you cannot hold against a judicial figure the fact that you lost a case and use it as an impediment to him or her progressing their career. That was the core of the message, and it was missed by all the great and the good in Westminster. Sometimes, having "Lord" or "Lord Chief Justice" in front of your name does not make you impeccable. There are many Lord Chief Justices who were in charge of tribunals and judges in charge of cases in England who became the Lord Chief Justice about whom many, many people said that they were rewarded by people like the British Prime Minister. So, the British Prime Minister may have got a laugh or two in Westminster when Mr Hain made his comments, but British Prime Ministers are not beyond reproach either.

Mr Deputy Speaker: The Business Committee has arranged to meet immediately after the lunchtime suspension. I propose, therefore, by leave of the Assembly, to suspend the sitting until 2.00 pm. The first item of business when we return will be Question Time.

The debate stood suspended.

The sitting was suspended at 12.28 pm.

On resuming (Mr Speaker in the Chair) —

2.00 pm

Oral Answers to Questions

Mr Speaker: Yesterday, I raised the issue of Members not being in their place during Question Time, especially Members who have their name on the Order Paper for a question. One Member, Caitríona Ruane, has come through my door to apologise. Thus far, I have had nobody else. We know which Members were not in their place yesterday, and there is still time for Members either to come to this House and apologise or come through my office door and apologise. I will take confessions, wherever they may be.

Mr A Maginness: Especially during Lent.

Mr Speaker: Yes, during any time, whether in my office or here in the Chamber.

Let us move on to questions to the Education Minister. Question 4 has been withdrawn.

Education

Woodlands Language Unit

1. **Mr Eastwood** asked the Minister of Education to outline the rationale for the proposed relocation of Woodlands speech and language unit to three separate primary schools. (AQO 3427/11-15)

Mr O'Dowd (The Minister of Education): Article 7 of the Education Order 1996 provides that children with special educational needs will be educated in mainstream schools. That also applies to children who have statements of special educational needs, unless that is incompatible with a parent's wishes or with the provision of efficient education for other children.

All education and library boards and schools have a duty to comply with that legislation. The Western Education and Library Board has, therefore, developed a policy that requires such facilities to be located at mainstream schools. In line with its policy, the Western Education and Library Board had been in discussions with the board of governors of Belmont House Special School about the relocation and extension of the current provision.

The proposal is to relocate and increase the four speech and language classes to six units at three mainstream primary school locations in both the controlled and maintained sectors. Following consultation with parents and other directly affected parties, the board and the Council for Catholic Maintained Schools have now brought forward development proposals to support that intent. Copies of the proposal can be viewed on the Western Board's website. Those development proposals were published in the week beginning 21 January 2013 and are, therefore, in the statutory two-month period during which any interested party may make their views known to the Department.
I have accepted an invitation to visit the unit during the consultation period. Once the consultation has ended, I will take account of all the issues and then make a decision on the proposals based on what I believe is in the best educational interests of the children concerned.

Mr Eastwood: I thank the Minister for his answer. We have been told by parents and staff that this will be an extremely traumatic move for many pupils, many of whom have a high level of need. Can the Minister outline the perceived benefit for those kids if they are moved into three separate primary schools, given that so many relationships and so much experience has been built up in that one unit?

Mr O'Dowd: I thank the Member for his supplementary. I am in a somewhat difficult position when answering questions on this matter at this time, because I am the adjudicator in the case. I am involved in a statutory process, and I have to adhere to all the legislation. I am involved in a consultation process and have not come to any conclusions on the matter.

I will visit the school in a number of weeks to talk to the parents, teachers and pupils directly and to listen to their experiences. When I have gathered all the other consultation responses, I will make an informed decision. I understand that the Member has the right to raise the matter during Question Time, but, as a Minister, I am in a somewhat difficult position in giving detailed answers to questions posed at this time.

Mr Storey: I appreciate what the Minister says about being able to answer specific questions on this case. Special needs provision that historically has been in the controlled sector is being divided up into other sectors, and that is setting a bad precedent. Will he give this House an assurance that, if we move towards any new structures under the Education and

Skills Authority (ESA), the special needs provision that has been in the controlled sector will still be provided in the controlled sector?

Mr O'Dowd: Again, the Member invites me to respond to specifics on the issue, and I cannot do that. I will take into consideration all the matters pertinent to the case before I make a decision. Part of that decision-making process will be not only about whether the school should close but where the children will be dispersed to and what the mechanisms and management types of those schools will be should dispersion take place. I will take into account all of those matters.

Ms Boyle: Go raibh maith agat, a Cheann Comhairle. I do not want the Minister to repeat himself, as he has gone some way to answer my supplementary. Given the significant concerns among the parents and, indeed, the pupils, will the Minister, when he has considered all of the concerns, come back and inform the House of the outcome?

Mr O'Dowd: I assure the Member that I will take into consideration the issues raised with me by all respondents to the consultation, particularly the parents and pupils affected. The usual process for an announcement on a development proposal is not to make a statement to the House but to make a written proclamation of what has been decided. First to receive that will be the school, parents and pupils, and it will then be made public.

Rural Primary Schools

2. **Mr G Robinson** asked the Minister of Education how small rural primary schools will be protected in light of the review of the common funding formula recommended by Sir Robert Salisbury. (AQO 3428/11-15)

Mr O'Dowd: Last summer, I appointed Sir Robert Salisbury to carry out a completely independent review of the common funding scheme. I received his report last month, and I am now considering its findings and recommendations in depth.

The review has raised concerns that small schools support is currently provided to all small schools, irrespective of circumstances or location. In the current financial year, £29 million was distributed via the small schools support factor in the current common funding formula. The small schools support factor allocates a tapered lump sum to all primary schools with fewer than 300 pupils and post-primary schools with fewer than 550 pupils.

The Salisbury report recommends the development of a small schools policy, whereby strategically necessary small schools, most likely to be small rural primary schools, would be funded outside the formula to ensure that they have sufficient funds to meet their needs. I will assess the impact of this recommendation, along with the others in the report, very carefully to inform my proposals for change, which I intend to submit later in the year. These will, of course, be subject to public consultation.

I reiterate that schools will not be closed simply because they fall below a threshold. Where it can be demonstrated that a small school is needed and can provide the appropriate quality of education, it should be retained and supported.

Mr G Robinson: Will the Minister tell us whether he still accepts the criterion set out by the Bain report that 105 is the appropriate number of pupils for a sustainable rural primary school?

Mr O'Dowd: I have always said that it is not a numbers game on either side of the argument, whether the numbers meet the sustainable schools criteria or fall below them. There are six factors to be taken into account when assessing whether a school is viable into the future, and all of those will be taken into account in making any decisions on small schools.

The Salisbury report calls on my Department to bring forward a policy on funding for small schools and the identification of small schools. The Member will note that the current funding formula does not match the sustainable schools funding formula. For instance, all primary schools with fewer than 300 pupils receive a small schools grant, and all post-primary schools with fewer than 550 pupils receive that grant. Those figures do not match those in the sustainable schools policy. However, I emphasise again that it is not a numbers game.

Mr Lynch: Go raibh maith agat, a Cheann Comhairle. Gabhaimm buíochas leis an Aire as a fhreagra. Will the Minister outline the ways in which the revised common funding formula will help to tackle educational disadvantage in all communities, whether rural or urban?

Mr O'Dowd: One of the main drivers behind my commissioning of the Salisbury review was to ensure that we are targeting social need, and that was stated in the review's terms of reference. All the evidence shows, as the Audit Office report showed again this morning, that

educational underattainment exists largely in communities that suffer social deprivation. Therefore, I want to ensure that the Department directs its finances to the schools that service the communities that suffer most from socio-economic deprivation.

The Salisbury report has made a number of recommendations on how we can do that. I am considering those along with all of the other recommendations because I want to ensure that my Department's budget is used to create a world-class education system and tackle educational underachievement. If we are to do that, we have to back up our policies with our finances.

Mr Kinahan: I thank the Minister for his answers so far. Parents of primary-school children are very concerned, especially after the Bain report on school numbers and now the Salisbury report on funding. Has the Minister looked at what the timing will be when he comes back with his proposals on area planning so that we can stop frightening parents and produce something solid at the end?

Mr O'Dowd: I do not accept this terminology of frightened parents, etc. Of course, I am glad to say that parents take a keen interest in their children's education and in the schools estate. However, I am of the view that the majority of people realise that we have an unsustainable schools estate and that, if we are to use our limited resources properly, we should use them for sustainable schools that are properly planned and able to provide a modern education system for children. So, I do not accept some of the Member's terminology.

I hope to be in a position to make a statement to the Assembly next week on post-primary area plans. As a part of that statement, I will outline my way forward for primary-school area plans.

Education and Skills Authority

3. **Mr Cree** asked the Minister of Education to outline the projected annual budget of the proposed Education and Skills Authority. (AQO 3429/11-15)

Mr O'Dowd: It is expected that the projected annual budget for the Education and Skills Authority (ESA) will largely be the sum of the budgets of the existing eight arm's-length bodies that will transfer to ESA. Those are: the five education and library boards; the Council for Catholic Maintained Schools (CCMS); the staff commission; and the Youth Council. The budget in 2012-13 for those eight bodies was £1·476 billion resource and £58 million capital.

In addition, the Department currently carries out the role of funding authority for voluntary grammar and grant-maintained integrated schools. That function and some other operational duties that the Department carries out, such as capital funding for the voluntary maintained schools, will also transfer to ESA, along with any associated resources.

Work is ongoing to establish the level of funding for ESA, but, at this stage, a high-level estimate of the annual budget is somewhere in the region of £1·8 billion resource and £0·2 billion capital. That is based on the budget that is currently available for education in 2014-15.

Mr Cree: I thank the Minister for that response. ESA is meant to be about saving money and being more efficient, but it will effectively become possibly the largest quango in Europe. Will the Minister detail exactly when he will bring the business case for ESA to the Department of Finance and Personnel so that the true scale of the cost will be known?

Mr O'Dowd: I do not accept the Member's description of ESA, and I note his party's stated opposition to it, although I am not absolutely clear what that opposition is based on. I suspect that it is more political than educational. If it is political, as I suspect, his party could be in danger of damaging our society's educational potential. I have yet to hear a rational argument why his party is opposed to ESA.

It will not be the largest quango in Europe or anywhere near that size. In fact, I question whether ESA meets the definition of a quango, considering that it is democratically accountable to my Department and the Executive.

On the question of when the business case will come forward, my Department is currently working on it and it will be presented in due course.

Mr Campbell: The Minister previously outlined a number of administrative savings that are ongoing and that have been ongoing in recent years. Does he envisage further savings if and when ESA is established?

Mr O'Dowd: Continued savings will be a matter for the ESA board and will also depend on what the education budget looks like at that time. However, it is expected that the establishment of ESA will initially save around £25 million a year on professional support for schools, as we

will have an amalgamated service. The rationalisation of education administration under ESA will help to deliver £15 million of savings made a year from the administration and management costs of the Department of Education's arm's-length bodies.

The savings issue is vital, but the main driver behind ESA is to ensure that we have an educational body that will deliver a modern, fit-for-purpose education service for the communities that it serves. The education boards are outdated. That in no way undermines the good work that their officers and board members carried out, but our current management system is outdated. ESA's function is to modernise that and deliver an effective, efficient education service to the people it serves.

2.15 pm

Mr Dallat: I have listened very carefully to the Minister's replies so far. I am sure that he is aware that there was another publication from the Audit Office on literacy and numeracy today. Will the Minister assure the House that, once and for all, ESA will put an end to the affront of 9,000 children a year leaving school without the ability to read and write?

Mr O'Dowd: The report does not state that 9,000 children are leaving school without the ability to read and write. It states that there are 9,000 children whose numeracy and literacy skills are not what they should be.

Will the Member, as a member of the Public Accounts Committee, assure me that he will give the report a fair hearing? I note from reading the papers today that he has already made judgement on it without even a hearing at the Public Accounts Committee. As Minister, I expect that the Public Accounts Committee will give the Audit Office report a fair hearing. I welcome the Audit Office report; however, it does not tell us anything that we did not already know. No Member of the House should be surprised by the findings of the Audit Office report.

My party has been shouting from the hilltops for years about the fact that we do not have a world-class education system, while others were shouting back that we had, and telling us, "If it's not broke, don't fix it." We were saying that it desperately needs to be fixed. The Audit Office report highlights the fact that policies are in place that will fix it, but that will take time and further resources. However, I await the Public Accounts Committee's hearing in relation to the Audit Office report, and I will study the recommendations very carefully.

Mr Speaker: Question 4 has been withdrawn.

St Columbanus' College, Bangor

5. **Dr McDonnell** asked the Minister of Education for an update on the newbuild proposals for St Columbanus' College, Bangor, which were agreed by his Department in 2006. (AQO 3431/11-15)

Mr O'Dowd: In my statement to the Assembly in the autumn of 2011 entitled 'Putting Pupils First: Shaping Our Future', I set out the challenges associated with the schools estate. One of the major challenges is the need to balance limited capital resources with the large-scale investment needed across the estate. Using the strategic work on area planning, I have moved to ensure that capital investment is targeted to ensure the delivery of modern, fit-for-purpose schools that will be sustainable in the future.

In June 2012, I set out my Department's capital investment plans to invest over £133 million in 18 newbuild projects. On 22 January, I made a further statement to the Assembly, indicating that I proposed to advance in planning 22 school building projects as part of a £220 million investment.

I understand that St Columba's will be disappointed not to be included in my announcement. However, I must stress that this in no way implies that the newbuild proposal at the school will not be considered at a later stage. The reality is that the need for investment across the estate far exceeds the funds available to me through the remainder of this spending review period. I will continue to examine the case for capital investment, including the proposals for schools such as St Columba's, which will be considered alongside other priorities as part of any future capital announcement.

Dr McDonnell: I thank the Minister for his answer. Does he agree that that school meets the criteria as an effective school and as an outstanding example of shared education in practice? Will he tell us what the governors of the school must do to ensure that St Columbanus is part of the next newbuild round?

Mr O'Dowd: I apologise: it is St Columbanus; I referred to St Columba's during my response.

The reports from the school are all very good. Many schools out there were not included in my capital builds announcement. That is in no way a reflection on the school, its management or the quality of education there. It is a reflection of the fact that we have a very limited capital budget to work with, and I have to have some form of criteria to match my need for builds against the budget.

I have published the criteria that I used on the Department's website. St Columbanus went through that criteria but it did not score as high as other schools. I intend to continue to work with my Executive colleagues to see whether we can secure capital funding. I am looking at my own budget to see whether further capital funding can be secured, and I want to be in a position to make further announcements in the future.

The chapter is not closed in relation to St Columbanus, or many other schools out there. I assure the Member that I continue to examine all possible ways forward to secure future builds.

Mr Agnew: I thank the Minister for his answers. I am still unclear, though, after his response to Mr McDonnell, whether he accepts that St Columbanus' requires a newbuild and, if it was not a case of limited finances, would he be in a position to say that that school requires a newbuild should finances become available?

Mr O'Dowd: I accept that St Columbanus requires a newbuild. I also realise that I do not have enough funds to rebuild all the schools that are out there. I require continued work on area planning in that constituency, however, and there has to be work carried out between that education and library board and the Belfast board on the number of pupils leaving Bangor and going back and forth to Belfast, etc. However, I accept here today that St Columbanus is on a lengthy list of other schools that require a newbuild. I also accept that we have to try to secure further funding to build them.

Education Bill: Voluntary Grammar Schools

6. **Mrs Cochrane** asked the Minister of Education what meetings he has held in 2013 with representatives of the voluntary grammar schools concerning the Education Bill. (AQO 3432/11-15)

Mr O'Dowd: I have not met representatives of any voluntary grammar school this year specifically concerning the Education Bill; nor were any requests received by my office to do so. The Education Bill is being considered by the Education Committee. I understand that voluntary grammar schools have made representations to the Committee and I await the Committee's report.

Mrs Cochrane: I thank the Minister for his answer. What steps could the Minister take to allay concerns about potential departmental interference in employment arrangements in that sector?

Mr O'Dowd: Departmental interference in employment arrangements in that sector? May I remind the Member that the Department, on behalf of the people, funds that sector to the tune of hundreds of millions of pounds. So, it is not interference; it is called public accountability with regard to employment and funding matters.

The voluntary principle is somewhat of a misnomer in the sense that if schools wanted to go voluntary and fund themselves, I would agree that the Department, the Assembly or anyone else should not interfere in their business. However, as long as any sector is funded from the public purse, in my opinion the Department has a duty to be involved in those schools, although not on a day-to-day basis, a weekly basis or even a monthly basis.

The ESA Bill as set out clause by clause is loyal to the heads of agreement, which allows voluntary grammar schools to continue to be voluntary grammar schools. It does not interfere with the voluntary principle in any way and allows those schools to continue unhindered as they were before.

In relation to employment matters, I think it is important that ESA becomes the single employer. I ask Members to cast their minds back to the dispute over classroom assistants at the start of the last mandate. All Members and parties quite rightly supported classroom assistants in achieving a pay rise. All were very vocal and supportive about that, and a settlement was eventually reached. A number of classroom assistants in voluntary grammar schools have still not received that award.

I use that as an example. However, if we had a single employing authority, that matter would not arise. Everyone would be entitled to the minimum standards of employment and wage control, and that is to the benefit of the employer. We should also be looking to the benefits for the employee in these matters, because every worker in the education sector should be treated the same.

Mr Lunn: I thank the Minister for his answers so far. I think I heard him say that it is desirable that ESA should be the ultimate employer for all staff. I know that I am jumping ahead to what is in question 8, but how does he reconcile that with 10(c) of the heads of agreement, which says the opposite?

Mr O'Dowd: I do not believe that there is a contradiction between 10(c) and ESA as the employing authority — 10(c) is there to offer reassurances to the voluntary sector in this matter. I believe that the Bill reflects the heads of agreement quite loyally. ESA is the employing authority. The day-to-day employment schemes of a school are the responsibility of the school. For the want of a better phrase, the hiring and firing of staff remains the responsibility of the school. That is in legislation.

The original question asked whether I could offer reassurances. The question is, do people want to be reassured or is their opposition really to ESA? I cannot reassure someone who does not want to be reassured.

Mr I McCrea: The Minister stated that he did not receive any request from or, indeed, met the voluntary grammar sector. Will he confirm whether he has or has not met with the Catholic maintained sector, either the governing body or trustees?

Mr O'Dowd: I can confirm it, because I have had a request to meet them, and I accepted that request. Does the Member want me to write to all the bodies and ask whether they want to meet me? That is not how it works. Representative bodies write to me. They ask the Minister for a meeting.

In my term as Minister, I have met representatives of the voluntary grammar sector on several occasions. I have spoken at conferences where there has been a large representation from the voluntary grammar sector. I have engaged in debate with the sector, and will continue to, around the matter. I have no problem meeting the voluntary grammar sector on this or any other subject. My response clearly states that I have not been asked for a meeting on this matter.

The Education Committee is dealing with the Bill. I am keeping abreast of developments in Committee. There have been several representations, as there should have been, from the voluntary grammar sector to the Education Committee. I await the Education Committee's report. If the voluntary sector wishes to meet me on the subject, my door is open.

Mr McGimpsey: Is the Minister prepared to accept amendments to the Bill to ensure fair representation for the voluntary grammar sector, the integrated sector and other sectors?

Mr O'Dowd: I find it amazing that, on the day on which the Audit Office report is published — a report that highlights in particular the need in working-class communities for equitable access to education — the only question that I am asked in the Chamber on the ESA Bill is on the needs of the voluntary grammar sector. Is any Member on the opposite Benches ever going to get around to asking this question: how does ESA meet the needs of the working-class Protestant communities? Will any Member on the opposite Benches ever get around to asking that question? I have been debating ESA in the Chamber for several years, even before I was Minister. I have yet to hear a Member from the opposite Benches ask this question: how does ESA meet the needs of Protestant working-class communities?

Mr Allister: Having avoided the question from Mr McGimpsey, will the Minister tell me why it is that the voluntary sector, which educates almost one third of children in the post-primary education field, is denied in his Bill representation in the composition of the board and funding for that sectoral representation and body? Why is that, if he has not got an innate bias towards the sector?

Mr O'Dowd: When the Member is standing at his next flag protest, whipping up the concerns of the Protestant working class, perhaps he can talk to them about educational underachievement. Perhaps he can talk to them about the Audit Office report. Perhaps he can tell them — *[Interruption.]*

Mr Speaker: Order. The Minister must be heard.

Mr O'Dowd: Perhaps he can tell them how he is so concerned about the needs of the Protestant working-class community that he has joined the opposite Benches, in that he has not asked a single question about it in his two years in office.

Mr Allister: Answer the question.

Mr O'Dowd: I will answer the question — *[Interruption.]*

Mr Speaker: Order.

Mr O'Dowd: I will answer the question for the Member, because he has never put a question to me yet that I could not answer. *[Interruption.]*

Mr Speaker: Order.

Mr O'Dowd: The answer is quite simple. The Member is aware of the heads of agreement document from the First Minister and the deputy First Minister. I was tasked, as Minister of Education, to faithfully produce legislation that matched the heads of agreement. I have faithfully produced legislation that matches the heads of agreement.

Autism: Home Education

7. **Mr A Maginness** asked the Minister of Education what opportunities exist for parents of autistic children who wish to implement specific home-based education. (AQO 3433/11-15)

Mr O'Dowd: Parents of children of compulsory school age, including parents of children with special educational needs such as autism, may choose to educate their child at home. The parent has a statutory duty to ensure that the education provided is suited to the child's age, ability, aptitude and any special educational needs that the child may have.

The education and library boards are required to ensure that children in their area are receiving efficient, full-time education that is appropriate to the child's age, ability, aptitude and any special educational needs. In discharging that duty, the boards ensure that special educational needs provision is matched to the individual needs of each child. That is the case whether it is provided in special schools, in special units attached to mainstream schools, in mainstream schools themselves, at hospital or through home education.

Support provided by the boards may include advice and guidance to the parent on suitable learning materials, training or examination options. The level of training and advisory support will relate to the age and developmental profile of the child or young person. The board will monitor the educational provision in place to ensure that it is effective and that the needs of the child continue to be met.

2.30 pm

Mr A Maginness: I thank the Minister for his answer. Can he indicate whether he is prepared to ensure that there is no variance from board to board in supporting home-based education?

Mr O'Dowd: That relates to the debate on the previous question. One of the reasons behind ESA was to bring in equality of provision across all areas of the North to ensure that there was not a postcode lottery, particularly with regard to special educational needs. The Member will be aware that we have gone through the SEN review. My Department is drawing up legislation regarding that matter to ensure that there is equality of provision with regard to special educational needs throughout the North.

Enterprise, Trade and Investment

Mr Speaker: Question 5 has been withdrawn and transferred to DFP.

Trade Missions

1. **Mr McDevitt** asked the Minister of Enterprise, Trade and Investment to outline any planned trade missions involving her Department during 2013. (AQO 3442/11-15)

Mrs Foster (The Minister of Enterprise, Trade and Investment): Invest Northern Ireland's annual programme of trade exhibitions and missions offers opportunities for companies to visit markets of potential. The January 2013 to March 2014 programme includes over 85 exhibitions and missions to more than 35 countries or regions, including China, Europe, India, Kurdistan, the Middle East, New Zealand, North America, Russia, South Africa and South America.

Mr McDevitt: Thank you, indeed, Mr Speaker. I join the Minister in acknowledging the very good work that Invest Northern Ireland does on behalf of our region. Of course, another component of international trade development is the development of our tourism market. Can the Minister confirm to the House that her Department supports the global greening initiative, which, this year, will see world landmarks including the pyramids in Egypt and the Christ the Redeemer statue in Rio de Janeiro turn green? Can she confirm that the First Minister and deputy First Minister will be able to support, in person, the Rio de Janeiro initiative, when they soon visit Brazil?

Mrs Foster: I thank the Member for his question. Of course, the greening initiative is

Tourism Ireland's initiative, and it has been going on for a considerable time. I think that it has got the leaning tower of Pisa and Sydney Opera House involved in the past, and I think they are looking for new and innovative ways of doing it. So, Tourism Ireland will continue to look to that. I am interested in how Tourism Ireland will give standout to Northern Ireland in respect of what it does across the world, particularly in relation to Belfast and the difficulties that have been ongoing. I am interested in how it will address those issues — *[Interruption.]* Sorry?

Mr Speaker: Order. The Minister is speaking.

Mrs Foster: — particularly in the Great Britain market. I know that Members would like us all to go to Brazil to see the Christ the Redeemer statue, but I am looking at the Great Britain market to see how we can deal with those issues there. That is where my main focus is. Mr Speaker, I think Mr McDevitt would like another question.

Mr I McCrea: Will the Minister update the House on the Gulfood event that is planned? What does she hope to achieve out of it?

Mrs Foster: The Gulfood event takes place next week, and I am very much looking forward to being part of that trade mission and exhibition. We are taking companies out with us to underline the message about good food coming from Northern Ireland, not only for people in Northern Ireland — goodness knows, that message needs to be reinforced during these days — but in relation to exports across the world. It is an event that is held annually in Dubai, and it is billed as the world's biggest annual food and hospitality show. It covers food, beverages, ingredients, food service and hospitality. It has been running for over 25 years and attracts potential buyers across the Middle East, Africa and south Asia, so we very much look forward to that exhibition and hope that our companies get good feedback from that — if you will pardon the pun.

Mr Kinahan: Can the Minister clarify how successful she has been in getting Northern Ireland representation on to trade missions facilitated by UK Trade and Investment?

Mrs Foster: We are working more closely than ever with UK Trade and Investment, and we very much welcome the support that we now receive from our embassies across the world when we go out there. Now, they are more focused on how they can help businesses in the UK than on matters of diplomacy, as they were, primarily, in the past. We very much welcome that because they can help us with meeting people when we are out in the market and with giving us that little bit of extra knowledge, particularly in relation to culture and customs. So, we very much use the embassy network right across the world. Often, in that embassy network, UKTI sits side by side. We work closely with UKTI, and I would like to see more and more of our companies going on UKTI missions. Obviously, we have our own mission agenda, which I laid out in my substantive answer, but I very much want to encourage companies to be part of UKTI trade missions as well.

Economic Productivity

2. **Mr Elliott** asked the Minister of Enterprise, Trade and Investment to outline her Department's target in reducing the productivity gap with the rest of the United Kingdom. (AQO 3443/11-15)

Mrs Foster: My Department does not have any explicit target relating to reducing the productivity gap with the rest of the UK.

Mr Elliott: Obviously, the Minister will be aware that there was a target for the productivity gap in the PFG for 2008-2011. How will she monitor the ongoing productivity gap between Northern Ireland and the rest of the UK in the current financial period?

Mrs Foster: I thank the Member for his question. Of course, he is correct to say that we had a target in the previous Programme for Government. We moved away from that because the independent review of economic policy felt that we really needed to look at export-related growth and to prioritise exports as a key driver of economic growth at regional level.

We will monitor very closely, for our own purposes and, indeed, for those of the economic strategy, the productivity gap between Northern Ireland and the rest of the UK. The Member probably recalls that the target in the Programme for Government 2008-2011 was to halve the private sector productivity gap with the UK average, excluding the greater south-east, by 2015. Of course, we will continue to monitor that.

Mr G Robinson: Can the Minister give an update on recent investment success delivered by Invest Northern Ireland?

Mrs Foster: We were very pleased to see the announcement last week by Caterpillar of the 200 new jobs that it is creating at Springvale in west Belfast. We are very pleased indeed because that came as a result of interventions that we made after the devastating announcement in September last year of the loss of manufacturing jobs at FG Wilson, now Caterpillar. Sometimes, we have to say to companies, "You may have decided to move these jobs to another area, but is there something else that Northern Ireland can help you with?". We ask them what else we can help them to achieve from their company's point of view. In that respect, we have been able to bring those jobs to Northern Ireland and Belfast. They are shared services jobs. We are facilitating the Caterpillar group right across Europe, the Middle East and Africa. I understand that those jobs will service around 28,000 people in human resources, accountancy and all those issues. We should be proud that we have been able to bring those jobs here to Belfast.

Mr Flanagan: Go raibh maith agat, a Cheann Comhairle. Does the Minister agree that moves to increase productivity here could really be enhanced if we had access to complete and accurate public accounts and a stronger suite of economic indicators specific to this region?

Mrs Foster: That is why the independent review of economic policy asked us to get those indicators. The Member will know — at least, I hope that he knows — that those indicators came out about two weeks ago. They will continue to inform us moving forward.

Mr Rogers: Does the Minister agree that the skills gap that employers find when hiring is a serious problem in dealing with low productivity and that a strategy between our schools, colleges and industry is essential if we are really to address that?

Mrs Foster: I suppose that the answer to that question really depends on the sector that the Member is talking about. There are some sectors where, I think, we are meeting employers' skills needs. However, in certain sectors where we have seen quite rapid growth over the past number of years — I am pleased to see that rapid growth — we need to do more on skills. Sometimes, when parents want their children and young people to move into professions such as law or accountancy or, indeed, to become a doctor, I ask them where the jobs will be for our young people. Certainly, in IT, a wide range of jobs is available to young people. Indeed, there seem to be a number of jobs in anything that has a science, technology, engineering and maths background.

I agree with the Member. I have been working closely with the Minister for Employment and Learning on skills, We have looked at skills in the area of renewable energy and heavy manufacturing, and we are looking at the IT sector. However, he is right to say that it goes back to the education sector as well. We need to start looking at younger people much earlier so that we can get the appropriate skills for the economy.

Tourism: Protests and Violence

3. **Mr Dallat** asked the Minister of Enterprise, Trade and Investment what changes are being made to the tourism strategy to deal with any impact on visitor numbers caused by the images of violence and protests in recent weeks that have been shown on news around the world. (AQO 3444/11-15)

Mrs Foster: On 23 January 2013, I announced that, following a meeting with representatives of traders, my Department, through the Northern Ireland Tourist Board (NITB), had agreed to provide financial support to help with the promotion of Belfast city centre. DETI, NITB, Belfast City Council and Belfast Visitor and Convention Bureau are working together on a recovery plan for Belfast. The broad elements of the package will include a contribution to the Backin' Belfast marketing campaign, an animation programme for Belfast and broader tourism messaging in the Republic of Ireland and Great Britain markets, which will include some co-operative marketing with carriers.

Mr Dallat: I welcome the Minister's answer. Does she agree that the damage done by the recent protests was not confined to Belfast and that action is necessary to counteract the awful damage done right across Northern Ireland and, indeed, beyond?

Mrs Foster: Last year was, of course, a tremendously successful one. The 2012 campaign worked on a number of levels by bringing Northern Ireland to prominence in people's minds for a number of reasons. We had some very successful campaigns, and I was pleased to see the civic pride that people took in Northern Ireland throughout last year. There is no doubt that damage was caused towards the end of last year, and we can all revisit why that was the case. I could stand here and talk about why Belfast City Council felt that it was necessary to proceed with that vote, I could talk about flag protests, but I want to

concentrate on 2013 and how we can get back into the market and get that positive civic pride back in Northern Ireland.

Although we have contributed money to Backin' Belfast, which, anecdotally, I understand is working and proving successful, we will, of course, continue to market the whole of Northern Ireland overseas. We are pushing ahead with travel, trade and consumer holiday shows. In our biggest market — GB — we had 40 days of news coverage about Northern Ireland, so we really need to get the message out that Northern Ireland has the lowest crime level in Europe, which I think we should be very proud of. We need to say to people that, if you come to Belfast or anywhere else in Northern Ireland, you will get a very warm welcome, good food and good hospitality. Those are the key messages to get out. So I make this appeal to Members right across the House: please look forward, and, when you talk to potential visitors, say right across the piece that we need them to come to Northern Ireland because it is a good place to work, study, visit and, indeed, do business in.

Mr Boylan: Go raibh maith agat, a Cheann Comhairle. The Minister talked about promoting the North. Maybe she should consider using "The Gathering" as a promotional tool for that.

When will the final figures for overseas visitors and tourist spend for 2012 be published?

Mrs Foster: I am still waiting for the Republic of Ireland figures. I am not clear in my mind when those will come out, but I think that it will be within the next two months. We will then have a clearer vision of what happened in 2012 all round.

Mr McQuillan: Does the Minister agree that, when we as public representatives make statements to the press, it is important that we do not say things that will further harm the tourist product and pump up tensions?

Mrs Foster: We can sometimes be drawn into situations in which we think that we are speaking only to our constituency and our people here in Northern Ireland. What really brought that home to me was when I spoke to one of our investors from the United States, who had a better knowledge of what was going on on the streets than I did. They pore over all the press cuttings and all the video footage on the internet. So, people need to realise that, when they say anything in here or outside, it will be reported across the world, which, of course, has an impact on Northern Ireland.

2.45 pm

Mr McCarthy: The Minister referred to activities last year. I refer to activities last weekend and the disgraceful scenes when an ordinary, simple football match had to be cancelled because of the activities of some clowns on the street. The Police and Fire Games are just around the corner. With those scenes from last weekend, which were not the fault of footballers or the IFA but other people, is there any — *[Interruption.]*

Mr Speaker: Let the Member finish.

Mr McCarthy: — indication that the sportspeople who are due to come here will still come?

Mrs Foster: I made a plea that we watch our language, and then the Member gets up and calls some people "clowns". I do not think that it is helpful at all to refer to people as "clowns".

We had a very successful launch, which the CAL Minister and I attended along with the Mayor of Belfast. The figure for accommodation for the World Police and Fire Games has passed the £2 million mark, which I very much welcome. Some competitors from the previous games were over, and, frankly, they had a very good time across Northern Ireland. They visited Fermanagh, the Mountains of Mourne, the north coast, and, of course, they were in Belfast. They were singing the praises of this place as a destination. So, that is the sort of positive message that we want to send out. I hope to welcome, along with the rest of the Assembly, World Police and Fire Games members when they come here in August. I know that they will have a great time and a great games as well.

City of Culture 2013: Marketing Fund

4. **Mr Eastwood** asked the Minister of Enterprise, Trade and Investment for an update on the marketing fund being supplied to aid Derry/Londonderry UK City of Culture 2013. (AQO 3445/11-15)

Mrs Foster: The Northern Ireland Tourist Board and Tourism Ireland are liaising closely with Derry City Council and the Culture Company to develop aligned marketing and communications plans going forward. The Northern Ireland Tourist Board's spring marketing campaign

promoting short breaks in the Northern Ireland and Republic of Ireland markets launched on Monday 28 January 2013, and the 30-second TV advert has a strong focus on Londonderry as the UK City of Culture 2013. A bespoke Londonderry 10-second edit has been airing from Monday 4 February 2013. Tourism Ireland is implementing a comprehensive programme of promotional activity to highlight Londonderry as the UK City of Culture 2013 in Great Britain and overseas.

Mr Eastwood: I thank the Minister for her answer and for all her Department's work to date in this regard. We fully support the Backin' Belfast campaign, but, given that Derry City Council has had a business case in for the past number of months looking for help and support with marketing for the City of Culture, will her Department engage fully with Derry City Council to try to ensure that we have the biggest available marketing budget for what is the biggest event in 2013?

Mrs Foster: I thank the Member for his question. The Member will, of course, know that it is not just about my Department. We have been working very closely with the city council and the Culture Company on the marketing and communications plan. Under the new Executive advertising guidelines, I have to obtain permission for any marketing and communications campaigns in Northern Ireland and the Republic of Ireland market. There is a proposal for a bespoke marketing campaign for the UK City of Culture, and OFMDFM is considering that, so I am hopeful that a decision will be taken in the very near future.

Ms Maeve McLaughlin: I thank the Minister for that update. I am aware that a meeting is due to take place with her Department next week about the issue. Will she give us a timeline for the release of the £1·3 million that was bid for in the iON marketing plan? Go raibh maith agat.

Mrs Foster: I hope to be in a position to have a decision on the money connected with my Department — I understand that it is £400,000 — by the end of this week.

Mr Campbell: The Minister may be aware of the series of meetings and discussions that have taken place with senior officials at the Culture Company and officials of the city council to ensure that there is a broad balance in the UK City of Culture events to which people of all communities and none can come. Does she support that drive and objective, and will she ensure, in so far as her Department's input can be ascertained, that that continues to be the case?

Mrs Foster: Certainly, that is my hope. Officials are fully aware of that. I have been saying right across the piece since we started to look at this tremendous initiative, which will bring much added value to the region — not just this year; it will leave a long-term legacy, not least because it is the first UK City of Culture — that it is an opportunity for the city to really provide a benchmark for everything that comes after it. Given that this is Northern Ireland, there needs to be buy-in from all sectors. I was pleased to be in Londonderry on Friday, and I met some of the residents of Nelson Drive estate. They are holding a celebration in July, and they had their launch on Saturday evening. I wish them well, and I hope that all the communities get involved in what will be a tremendous year for the city.

Mr Speaker: Question 5 has been withdrawn.

Food Prices

6. **Mr Copeland** asked the Minister of Enterprise, Trade and Investment what action she is taking to address rising food costs as outlined in a recent report by the Consumer Council. (AQO 3447/11-15)

Mrs Foster: Northern Ireland is part of a highly complex and integrated global food supply chain. We are not unique in that the food prices charged in our shops are influenced by a wide range of factors beyond our control. Food bills are increasing at a time when the spending ability of households in Northern Ireland is coming under increasing pressure. The 50% drop in farm incomes in the past year is a clear indication of the pressures being placed on household budgets. However, there are factors that we can seek to influence when it comes to food prices. The major retailers have an important role to play in that regard because they occupy a crucial position at the top of the food supply chain in Northern Ireland. I encourage them to engage proactively and positively about pricing with producers and processors.

Mr Copeland: I thank the Minister for her answer. She indicated that she is aware that the cost of grocery shopping is a major concern. She may also be aware of the Consumer Council's proposed recommendations on food prices, pricing policies and the balance of special offers. Will the Minister indicate any level of work that she

feels she will be able to undertake to implement specific recommendations?

Mrs Foster: I know that the Member has read the Consumer Council's report on the rising cost of food, but perhaps it is not a good time to talk about the issue. One of the difficulties for many of our food producers in Northern Ireland is the fact that they have been heavily pressurised by retailers to produce cheaper food. The farmers are not getting the benefit of that; the people who get the benefit are the retailers. That is why I say very clearly that there is a need for us to engage — I intend to do that after things have settled and the current difficulties have passed — so that we can have a real conversation about the price of food. Many food processors feel that they are coming under increasing pressure to deliver cheap food, as a result of which we have had some difficulties in the immediate past.

I take the Member's point, particularly the fact that consumers have less money now than perhaps a number of years ago. However, Northern Ireland food is very good for you. It is traceable. We should encourage retailers to make sure that they stock good, traceable food so that we know its heritage and history. I take the point about the cost of food, but there is no such thing as cheap food.

Mr Storey: I thank the Minister for her reply. In some respects, she has answered the question that I was going to ask. Although the issue of rising food costs is very pertinent to many families, the issue of food contamination is causing grave concern. In light of the comments that she has made, will she assure the House that her Department and others that have responsibility for this issue will continue to ensure that we promote Northern Ireland home-grown produce, which is —

Mr Speaker: Will the Member finish?

Mr Storey: — safe to eat, and that she will support every effort to ensure that that continues to be the case?

Mrs Foster: I will support every effort to continue to make sure that that is the case. Actually, this morning, I spent some time with the Flavour of Tyrone Good Food Circle in Dungannon, where they were promoting good food. I have to say that some of the good food was a little too good at 10.00 am.

The horse meat contamination story has not been a good one. Large retailers have a crucial role to play in restoring consumer confidence. When consumers buy a meat product, they expect to get the meat product that was advertised. We need to engage in a meaningful way with the retailers and make sure that we get that message across.

Mr McMullan: Go raibh maith agat, a Cheann Comhairle. I thank the Minister for her answers so far. How will the Department work with the EU to bring forward its consumer agenda 2014-2020 to the North of Ireland?

Mrs Foster: I am sorry; I am not aware of that policy at all.

Mr A Maginness: I thank the Minister for her previous answers. Has the Minister already met the Consumer Council in relation to its report on the cost of food? If she has not, has she any plans to do so in the immediate future?

Mrs Foster: No, I have not met the Consumer Council yet. Indeed, I am not sure whether there is a request in to meet me. If there is, it will be dealt with in the usual fashion. However, I have not had the opportunity to speak with the Consumer Council as yet.

Programme for Government: Renewable Energy

7. **Mr G Kelly** asked the Minister of Enterprise, Trade and Investment what progress has been made in meeting the Programme for Government targets for renewable electricity and heat. (AQO 3448/11-15)

Mrs Foster: The 12% by 2012 target for electricity generation from renewable sources has been exceeded. At the end of January 2013, the rolling average for the financial year to date was actually 13·6%. The target for renewable heat is 4% by 2015, from a baseline of 1·7%. Good progress has been made towards encouraging renewable heat through the introduction of the Northern Ireland renewable heat incentive for non-domestic installations in November 2012 and the premium payment scheme for domestic installations in May 2012.

Mr G Kelly: Gabhaim buíochas leis an Aire as ucht a freagra. I thank the Minister for her answer. Is the Minister aware of Kirklees Council's warm zone scheme? The flip side of what she has talked about in terms of renewable energy, of course, is saving energy and heat. That council carried out a project over a three-year period that involved 165,000 homes, and it has been evaluated as an

excellent project for saving electricity and heat. If she knows about that scheme, will she support it —

Mr Speaker: Time.

Mr G Kelly: — and, with other Ministers, bring it to the Executive?

Mrs Foster: I am sorry; I did not quite catch the name of the area.

Mr G Kelly: Kirklees Council.

Mrs Foster: Yes, I am aware of Kirklees. We had the debate yesterday about sustainable energy and, as well as renewable energy, one of the key elements of sustainability is energy efficiency. Therefore, I welcome any move to help with energy efficiency. Indeed, the Energy Bill that will come to the Floor of the House will introduce an energy efficiency obligation to deal with such matters. One of the key issues for us is to use energy in the most efficient manner.

Invest NI: Vacant Land

8. **Mr Girvan** asked the Minister of Enterprise, Trade and Investment what action she is taking to utilise vacant land held by Invest NI in South Antrim. (AQO 3449/11-15)

Mrs Foster: In the South Antrim constituency, Invest Northern Ireland owns 394 acres of land. The majority of this land is occupied. However, 106 acres remain available at Global Point business park, Hightown industrial estate and Antrim technology park. Invest Northern Ireland land is held in support of economic development, and the agency is currently working with several businesses to develop interests in acquiring land in the area.

Invest Northern Ireland's property is proactively marketed to foreign and indigenous investors. The final decision on location rests solely with investors. It is important to be aware that Invest Northern Ireland operates in the area of property as a result of market failure. As a result, its primary remit is not to maximise occupancy, rental or profit. Instead, it employs a long-term strategy in respect of its property holdings.

Mr Girvan: I thank the Minister for her answer. In relation to the 106 acres at the Global Point site, I was wondering if there had been any communications between the Department for Regional Development and the Department of Enterprise, Trade and Investment with reference to an extension or the inclusion of park-and-ride facilities at this location?

Mrs Foster: There are not 106 acres at Global Point. The 106 acres figure includes land at Hightown and Antrim. Only 91 acres are at Global Point.

3.00 pm

On the Member's point about DRD, I understand that there are discussions between Invest Northern Ireland and the Members for South Antrim, who are understandably keen to have Global Point dealt with. Indeed, I recall the MP for the area, Mr William McCrea, lobbying me on the matter some time ago. Therefore, it is something that Invest Northern Ireland has at the front of its mind in relation to its property portfolio. I am sure that its chief executive would welcome any meeting with Members for the constituency.

Mr Speaker: That concludes Question Time. I ask the House to take its ease as we return to the Criminal Justice Bill.

Mr Storey: On a point of order, Mr Speaker. During Question Time, the Education Minister asserted that, during his time as Minister, he has heard no representation from this side of the House about working-class Protestants. I put it clearly on the record that the Education Minister has heard about the controlled sector repeatedly from my party, and that is why the controlled sector body has been proposed.

Mr Speaker, will you also ensure that an inaccuracy about working-class boys not attending grammar schools — *[Interruption.]*

Mr Speaker: Order. I have given the Member some leeway. He will know that, as Speaker, I do not get involved in how Ministers answer questions, but the Member now has his comments on the record.

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

Executive Committee Business

Criminal Justice Bill: Consideration Stage

Debate resumed on amendment Nos 14 to 17 and 38 to 41, which amendments were:

New Clause

No 14: After clause 7 insert

"*Release on licence of child convicted of serious offence*

Release on licence of child convicted of serious offence

7A.*—(1) In Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 (child convicted of serious offence) for "notwithstanding any other provisions of this Order" substitute "subject to Articles 46 to 46B".*

(2) In Article 45 of that Order after paragraph (2) insert—

"(2A) Where a court passes a sentence under paragraph (2), the court shall specify such part of the sentence as the court considers appropriate as the relevant part of the sentence for the purposes of Article 46 (release on licence).".

(3) For Article 46 of that Order substitute—

"Release on licence

46.—(1) In this Article—

(a) "P" means a person detained under Article 45(2);

(b) "the Commissioners" means the Parole Commissioners for Northern Ireland;

(c) "the Department" means the Department of Justice; and

(d) references to the relevant part of P's sentence are references to the part of P's sentence specified as such under Article 45(2A).

(2) As soon as—

(a) P has served the relevant part of P's sentence, and

(b) the Commissioners have directed P's release under this Article,

the Department shall release P on licence.

(3) The Commissioners shall not give a direction under paragraph (2) with respect to P unless—

(a) the Department has referred P's case to the Commissioners; and

(b) the Commissioners are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(4) P may require the Department to refer P's case to the Commissioners at any time—

(a) after P has served the relevant part of P's sentence; and

(b) where there has been a previous reference of P's case to the Commissioners under paragraph (3) or Article 46B(4), after the end of the period of 12 months beginning with the disposal of that reference.

(5) In determining for the purposes of this Article whether P has served the relevant part of P's sentence, no account shall be taken of any time during which P was unlawfully at large, unless the Department otherwise directs.

(6) The Department may at any time release P on licence if it is satisfied that exceptional circumstances exist which justify P's release on compassionate grounds.

(7) Before releasing P under paragraph (6), the Department shall consult the Commissioners, unless the circumstances are such as to render such consultation impracticable.

(8) Nothing in this Article requires the Department to release a person in respect of a sentence under Article 45(2) at any time when that person is liable to be detained in respect of any other sentence.

Duration and conditions of licences under Article 46

46A.—(1) Where a person is released on licence under Article 46, the licence shall, unless previously revoked under Article 46B, remain in force until the expiry of the period for which the person was sentenced to be detained.

(2) A person released on licence under Article 46 shall comply with such conditions as may for the time being be specified in the licence (which may include on release conditions as to supervision by a probation officer).

(3) The Department of Justice shall not, except in accordance with recommendations of the Parole Commissioners for Northern Ireland—

(a) include a condition in a licence on release,

(b) subsequently insert a condition in a licence, or

(c) vary or cancel any condition in a licence.

Recall of licensees

46B.—(1) In this Article—

"P" means a person who has been released on licence under Article 46;

"the Commissioners" and "the Department" have the meanings given in Article 46(1).

(2) The Department may revoke P's licence and recall P to detention—

(a) if recommended to do so by the Commissioners, or

(b) without such a recommendation, if it appears to the Department that it is expedient in the public interest to recall P before such a recommendation is practicable.

(3) P—

(a) shall, on P's return to detention, be informed of the reasons for the recall and of the right conferred by sub-paragraph (b); and

(b) may make representations in writing to the Department with respect to the recall.

(4) The Department shall refer P's case to the Commissioners.

(5) Where on a reference under paragraph (4) the Commissioners direct P's immediate release on licence under Article 46, the Department shall give effect to the direction.

(6) The Commissioners shall not give a direction under paragraph (5) unless they are satisfied that it is no longer necessary for the protection of the public from serious harm that P should be detained.

(7) On the revocation of P's licence, P shall be liable to be detained in pursuance of P's sentence and, if at large, shall be treated as being unlawfully at large.".

(4) In Article 46(3) of the Criminal Justice (Northern Ireland) Order 2008 (functions of Parole Commissioners for Northern Ireland) at the end add "or Articles 46 to 46B of the Criminal Justice (Children) (Northern Ireland) Order 1998."

(5) Where—

(a) on commencement a person is detained in pursuance of a sentence under Article 45(2) of the 1998 Order, and

(b) the Department, after consultation with the Lord Chief Justice and the trial judge if available, certifies its opinion that, if the amendments made by this section had been in operation at the time when that person was sentenced, the court by which that person was sentenced would have specified as the relevant part of the sentence such part as is specified in the certificate,

Article 46 of the 1998 Order (as substituted) shall apply as if the relevant part of that person's sentence for the purposes of that Article were the part specified in the certificate.

(6) But subsection (5) does not apply (and subsection (7) applies instead) where that person is a person whose licence has been revoked under Article 46(2) of the 1998 Order.

(7) Where this subsection applies, paragraphs (3) to (6) of Article 46B of the 1998 Order have effect as if that person had been recalled to prison under paragraph (2) of that Article on commencement.

(8) Articles 46A and 46B of the 1998 Order apply to an existing licensee as they apply to a person who is released on licence under Article 46 of that Order (as substituted).

(9) In this section—

"commencement" means the date on which this section comes into operation;

"existing licensee" means a person who, before commencement, has been discharged on licence under Article 46 of the 1998 Order and whose licence is in force on commencement;

"the 1998 Order" means the Criminal Justice (Children) (Northern Ireland) Order 1998."

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

No 15: After clause 7 insert

"Examination of accused through intermediary

Examination of accused through intermediary

***7B**.—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.*

(2) At the beginning of paragraph (2) insert "Subject to paragraph (2A),".

(3) After paragraph (2) insert—

"(2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn."." — [Mr Ford (The Minister of Justice).]

No 16: After clause 7 insert

"Abolition of scandalising the judiciary as form of contempt of court

***7C.**—(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law.*

(2) That abolition does not prevent proceedings for contempt of court being brought against a person for conduct that immediately before that abolition would have constituted both scandalising the judiciary and some other form of contempt of court." — [Mr Givan (The Chairperson of the Committee for Justice).]

No 17: In clause 9, page 8, line 2, leave out subsections (1) and (2) and insert

"(1) Except as provided by subsection (2), this Act comes into operation on the day after Royal Assent.

(2) The following provisions of this Act come into operation on such day or days as the Department may by order appoint—

(a) section 1 and Schedule 1;

(b) section (Notification requirements: absence from notified address);

(c) sections 3 and 4;

(d) section 7 and Schedules 2 and 3;

(e) Parts 1 and 3 of Schedule 4 and section 8 so far as relating thereto." — [Mr Ford (The Minister of Justice).]

No 17: In clause 9, page 8, line 2, leave out subsections (1) and (2) and insert

"(1) Except as provided by subsection (2), this Act comes into operation on the day after Royal Assent.

(2) The following provisions of this Act come into operation on such day or days as the Department may by order appoint—

(a) section 1 and Schedule 1;

(b) section (Notification requirements: absence from notified address);

(c) sections 3 and 4;

(d) section 7 and Schedules 2 and 3;

(e) Parts 1 and 3 of Schedule 4 and section 8 so far as relating thereto." — [Mr Ford (The Minister of Justice).]

No 38: In the long title, leave out "and to" and insert "; to". *— [Mr Ford (The Minister of Justice).]*

No 39: In the long title, at end insert

"; to provide for the release on licence of persons detained under Article 45(2) of the Criminal Justice (Children) (Northern Ireland) Order 1998". — [Mr Ford (The Minister of Justice).]

No 40: In the long title, at end insert

"; and to amend Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999".

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

No 41: In the long title, at end insert

"and to abolish the common law offence of scandalising the judiciary". — [Mr Givan (The Chairperson of the Committee for Justice).]

Mr Elliott: I will speak briefly to the second group of amendments. Amendment No 14 puts what I would call boundaries into place for the releasing on licence of a child convicted of a serious offence. I assume that the proposed new clause to some extent takes powers away from the Minister, powers that he appears quite willing to give up. I believe that it puts in place a better basis for that decision-making process, so I am content with the amendment.

Amendment No 15 concerns the "Examination of accused through intermediary". The detail is quite limited in the Bill, but we got a significant briefing in Committee, and we are again content to accept the amendment.

Amendment No 16 was tabled by the Committee in the name of its Chair. It is important that there be public confidence in the courts and the judicial system. There needs to be an opportunity for the judiciary to come under close scrutiny from everyone: members of the public; elected representatives; and other bodies. That scrutiny could often be a challenge to the courts, the judiciary in general or, in some cases, individual judges, in the same way in which a referee comes under scrutiny from spectators at a football match. That is right and proper, which is not to say that judges get every decision right or wrong.

I do not know how individual judges view the amendment to abolish the law of scandalising the court. However, I would be very surprised if they were opposed to its removal. I hope that judges would not want any personalised protection from comments that may be made about them above and beyond what other members of the public and those in public life are entitled to.

It is vital that judges and the judiciary have an independence that is required for their roles and responsibilities, without being totally protected by criminal legislation. I think that this is putting the judiciary and individual judges on a level footing with the rest of the community and those of us in public life. It allows people the opportunity to openly and freely have their say on what they think about judges and their decisions.

I listened to Mr McCartney, in his earlier contribution, referring to me and what I thought about what his party had said about some aspects. On occasions, I am sure that Mr McCartney and his party have said quite a lot about judges, the judiciary and the law that I would not agree with. Indeed, I am sure that, on occasion, some Sinn Féin members would not have been afraid to even go outside that law to say what they thought.

Mr A Maginness: The SDLP supports the second set of amendments. I will comment as briefly as I can on the matter raised by the Committee about the abolition of the offence of scandalising the court. The Committee has again shown itself to be exercising its functions and its power in an innovative way in the Assembly. I pay tribute to the Chair for leading the Committee in that regard on that particular provision. That is to the credit of the Committee, and it is perhaps to the deficit of the Executive at large for not grasping the issue themselves. We are performing a good service on this matter.

The remarks by Mr Hain in his book, which I happen to have here in the Chamber, and which I might refer to, gave rise to this issue. The remarks that he made were very unfortunate, and they were beyond simple criticism of a judge's judgement. We have to take that into consideration, but I think it was wrong to challenge Mr Hain in the manner in which it was proposed through that archaic legislation or law — I am not even quite sure whether it is actual legislation.

To use a criminal sanction was quite definitely wrong, but that does not mean to say that there was no merit in the reaction of the Attorney General, or, indeed, the reaction of the Lord Chief Justice. I will briefly refer to what the Lord Chief Justice said about Mr Hain and his remarks in his book. Sir Declan Morgan said that Mr Hain had made "unwarranted and wholly inappropriate remarks" about a decision made by a Belfast judge. Remember, Mr Hain's comments were not about the judge per se, but about his decision-making. It is very important to take that into consideration.

The fact that Lord Justice Girvan ruled against Mr Hain was very important. That point was raised by Mr McCartney earlier in this debate. Mr Hain seems to have overreacted to the way in which Lord Justice Girvan dealt with the case. He claimed that the decision had been "idiosyncratic" and "high-handed".

The Lord Chief Justice described the comments as having the potential to amount to:

> *"an assault on the wider independence of the judiciary".*

He also said:

"There is a statutory obligation on those in ministerial office to uphold judicial independence."

He went on to conclude:

"In this instance however, it is difficult to regard the remarks as anything other than undermining and unhelpful to the administration of justice in Northern Ireland."

Those are pretty damning remarks by the Lord Chief Justice. Of course, it is a rare thing for the Lord Chief Justice to make public comment, but he did so on this occasion. That showed the extent to which he felt that the administration of justice had, in fact, been compromised.

Of course, Mr Hain was not in office when he wrote that particular book. Nonetheless, it reflected what he thought while he was in office, and to say that he was just making some criticisms of the judge was an underestimate of the damage that Mr Hain caused to the wider administration of justice.

It would be helpful to remind ourselves of what Mr Hain actually said. Remember, this was in the aftermath of an application to judicially review the Secretary of State for the appointment of a victims' commissioner. Mr Hain felt that this political decision should not have been brought before the court whatsoever. In his book, on page 333, Mr Hain said:

"The Appeal Court was similarly dismissive of his charges except on a procedural technicality. Having had run-ins with judges during my time as an anti-apartheid protestor, I did wonder whether some history explained the eccentricity of the judge or even whether in common with other high earners he had been unhappy about my reforms of the property tax system which raised rates for larger houses."

That, I have to say, borders not just on contempt but on undermining the integrity of the judge in that situation.

Mr Hain goes on to say:

"It certainly was, when I was invited to confirm the promotion of the said Justice Girvan to become the Right Honourable Lord Girvan in Northern Ireland's Appeal Court."

He goes on, saying that there was a document that he had to sign:

"Pondering the document in my red box at Hillsborough on Christmas Eve, could I in all honesty agree to this when the Lord Justice's legal capabilities seemed so flawed? It was a momentary rather than a serious thought."

Then he goes on to say:

"I knew full well that that would provoke an even greater fuss, and just to be sure, called Charlie Falconer"

— who was then the Lord Chancellor and was actually on holiday in the Caribbean —

"I agree with you, not a wise thing to do, he said, amused. Nevertheless, promoting someone who was going out of his way legally to damage me seemed a novel obligation."

3.15 pm

That is a very serious statement. If it is not contempt, it certainly borders on contempt. It certainly impinges on the independence of the judiciary. He had it within his gift to promote this judge but decided that he perhaps should not. That is a very serious thing for Mr Hain to admit to. The fact that he did not do it is merciful. Nonetheless, he had it in his mind to do so. If he had not been able to contact Charlie Falconer, who was on holiday in the Caribbean, he might have stopped the promotion. That would have been extremely unfair. Here would have been a politician actively interfering in the appointment of a judge from one division to another, from the High Court to the Court of Appeal. So this is not a small thing. It is not just simply a matter of a level playing field, in my view. Judges have been —

Mr Elliott: I thank the Member for giving way. He makes quite an interesting point. However, I assume that a judge who has been treated unfairly in any appointment process has a due process that he can go through in the same way as anybody else who is not appointed or given a promotion, where applicable. I do not see what relevance that has to this amendment.

Mr A Maginness: It is relevant in so far as the amendment arises from a consideration of this situation. The amendment would not arise if this situation had not arisen in the aftermath of the judicial review, which failed to satisfy the

Secretary of State at that time. That is the important thing.

Mr Allister: Will the Member give way?

Mr A Maginness: Yes.

Mr Allister: Surely Mr Elliott is quite wrong. The appointment of someone from the High Court to the Court of Appeal is surely a prerogative appointment that would not be subject to the normal reviews and restraints of any other job and promotion therein. Is that not the case?

Mr A Maginness: I am grateful to my learned colleague for his intervention. I think that that is true. It would not be subject to the same rigours as —

Mr Elliott: I thank the Member for giving way again. The point that I was trying to make is that having this point in law is not actually helping that case if a criminal charge of scandalising the court can be brought.

Mr A Maginness: I accept your point that this was the wrong way of doing it and that the Attorney General went down the wrong route. The opinion on that is almost unanimous, although I do not think that the Attorney General would agree.

Nonetheless, this matter was very serious. It was dismissed at Westminster by the House of Lords and House of Commons, and the Prime Minister's reaction was dismissive. That was quite wrong. If something similar had happened in England, there probably would have been a much greater reaction on the part of the Prime Minister in dealing with the situation. I do not think that he would have dealt with it in such a dismissive fashion. We were another jurisdiction, and I think that the Prime Minister was able to deal with the situation in such a dismissive fashion because of that. It did not immediately affect the judiciary in England or Wales, so there was an under-reaction in Britain.

I am not certain that everybody read Mr Hain's comments. If they had, I think that they would have been outraged by them. The Lord Chief Justice in this jurisdiction was outraged by them. I was, and I know that other people were, although they did not get the publicity or media coverage that those who criticised the Attorney General got.

Going back to Mr Allister's point, the remarks were not subject to some form of scrutiny. Therefore, what was the judge to do if something was not done by the Attorney General? I think that the only alternative that the learned judge had was to bring an action for libel. I am not so certain that a judge can freely take an action for libel. First of all, my understanding is that he needs the Lord Chief Justice's permission. Secondly, he opens himself up to all sorts of public scrutiny and so forth, which is inappropriate for a judge, because after the trial is over, he has to go on and carry out his public duty. So, it is a bit unfair to expect a judge to simply take the initiative with a libel action. Therefore, there may well be need for some other process to deal with a similar situation.

In conclusion, this was a serious situation. It has brought about the very reasonable amendment that the Committee tabled. I support that, as does my party, but it may well be that we need to look at some mechanism to deal with similar situations in the future. I am not sure how we would deal with it, but it was a serious situation that those at Westminster diminished. I think that we should take a very serious look at it.

Mr Dickson: In this group of amendments, we are looking at the issue of releasing of children who have been convicted of serious offences. Although every criminal offence is regrettable, we are very fortunate that the number of detention orders under article 45(2) of the Criminal Justice (Children) Order is very low. However, as the Minister explained, when the orders are issued, it is entirely a matter for him to determine whether a child is released on licence. It is quite clear that that does not comply with the ECHR, and the independent judicial element is essential. For that reason, we are happy to support the amendment.

I listened to the Chair of the Committee and to Mr Maginness in particular, who described the issue of scandalising the court and the particular case that was raised. First of all, I am pleased that the Minister is happy for the House to make a determination on the matter, as that allows me to support the Committee. In those circumstances, we are going to make the right decision on the matter.

Mr Givan: I thank the Member for giving way. Mr Dickson was enthusiastic at the Committee in his support for this. I trust that, in being given a free vote, he has been able to try to put some of that enthusiasm into the Minister so that the Minister can join with the House in abolishing the offence today.

Mr Dickson: I am sure that the Minister will join me in the Lobby should that be necessary.

Mr Maginness made some very important points, as did the Chair of the Committee, in describing the circumstances in which we find ourselves. Mr Maginness ended on a particularly important point, which, in layperson's terms, is that this should not send out the signal that it is open season on judges. That is probably the most important thing that needs to be said about this. While we may be removing particularly arcane legislation, we are, nevertheless, making it very clear that this House and Northern Ireland has high respect and regard for its judges.

Should our judges not be in a position to protect themselves from public comment that is unwarranted, unreasonable or breaches the law in any way, the matter can be referred back to this House, and we can consider the potential for legislation. While people might find comments offensive, as Mr Maginness has described, or quite funny, it is, nevertheless, inappropriate to take a poke at our judges in that way, and a very clear signal needs to go out from this House that we do not in any way condone that type of comment about the judiciary. Our judges in Northern Ireland have to take clear and proper independent decisions on very complex areas of the law and matters that are put in front of them. They must and do have the confidence of this House and the public in Northern Ireland.

Mr Poots: It is an interesting debate and interesting legislation, and I welcome and support the amendments.

Scandalising the court is an archaic law that most people did not realise existed until Peter Hain's book came out. Mr Maginness quoted from it quite liberally, but I think that Peter Hain deliberately set out to develop some sensational comments in his book to try to sell it. Using the terminology "off his rocker" to describe one of our most senior judges is wholly inappropriate, but, nonetheless, through his response, the noble lord fell hook, line and sinker for what Mr Hain wanted, which was to create publicity for his book to ensure that as many people as possible were aware of its existence. I have absolutely no doubt that he achieved that goal through that piece of sensationalism.

The Lord Chief Justice initially responded to it, and many people thought that that was where it would rest, because the Lord Chief Justice was very clear in that response. However, the Attorney General was clearly prompted by Lord Chief Justice Girvan to take it somewhat further, and that caused huge controversy, not just here but at Westminster. That brought us to our knowledge of this law and has perhaps drawn to our attention that it is no longer necessary for Northern Ireland.

The Lord Chief Justice made it very clear that it is important that Ministers recognise the independence of judges, and I will come to that in a moment. However, it was somewhat bizarre this afternoon when Mr McCartney, a former hunger striker, placed a shield around Lord Chief Justice Girvan and offered him protection from the evil Peter Hain, who did not really want to appoint him as a judge but was left with no choice.

I can assure Mr McCartney that he does not actually need to offer any of the noble judges protection in this instance, because his party will have no role in appointing judges. Nor, indeed, will any other politician in Northern Ireland. The judges will be appointing the judges, and, as part of the devolution of justice, we as a party saw it as considerably the lesser of two evils: having judges appointing themselves, as opposed to the deputy First Minister having a role in their appointment .

3.30 pm

To that extent, judges in Northern Ireland have a greater degree of independence than in any other part of the UK, and that brings with it a huge, significant and grave responsibility, because the same checks and balances are not in place. Where judges are perceived not to have been paying as much attention to public policy and the legislature as they should, when promotions become available, politicians have absolutely no role in the judge being promoted.

Therefore, judges need to pay a considerable amount of attention and respect to the legislature, and Chief Justice Sir Declan Morgan has recognised that. In fact, in Dublin last year, he talked at length about the importance of equilibrium. He said:

> *"In carrying out the task of securing equilibrium, we must remember that our principal objective is to secure public confidence in the administration of justice. We are all committed to the rule of law ... It also means that the independent judiciary is entitled to expect its position to be respected and secured by Ministers and legislators but must itself show proper respect for the role which others play in our justice system."*

We are playing a role in the justice system today in this House. We are legislating, and due respect should be given to the legislative body — which is this Assembly — by our noble judges in what they do.

It was somewhat striking that, at the weekend, it became apparent that legislation was going to have to be done for a second time at Westminster relating to the deportation of individuals — deportation of criminals — from the United Kingdom. Legislation was passed, and the intent of Parliament was clear, but some judges decided that certain elements of human rights law would actually supersede what was passed at Westminster, and therefore did not give the judgements that the legislature would have expected. In that instance, Parliament is going to have to go and legislate again. Clearly, the equilibrium balance has fallen the wrong way in that instance, because Parliament should not have to go a second time to legislate for something that was very clear was the wishes of the public the first time around.

Very often, we hear judges playing out the human rights arguments and making decisions based upon human rights. Very often, the decisions that are made to ensure the human rights of one party actually deny the human rights of another party. A very clear example is the recent European judgement where a couple who own a guest house —

Mr Deputy Speaker: I remind the Member to talk on the amendments in this grouping. The discussion should be relevant to it.

Mr Poots: Thank you, Mr Deputy Speaker. I will respect your indications. I am talking about the right to criticise judges and their decisions without actually scandalising them. It is not breaking the law. I will follow your guidance on this.

In truth, the judiciary have far greater independence here than elsewhere, and, therefore, that needs to be respected. At the same time, as politicians, we need to show due respect for the judiciary, and we need to be receptive of their judgements and decisions. However, this legislature needs to have the opportunity to pass its legislation and not get to a point at which it is critical of court outcomes.

A huge number of decisions will be taken on social policy, for example. Northern Ireland passes legislation, and it is the Assembly that passes it. I sometimes hear people say, "The noble Lord has said this, and we should therefore follow that." This legislature makes those decisions. Judges do not make legislation. This House makes legislation, and I think that we have to have due respect for that.

Therefore, on scandalising the court, I want to make it absolutely clear that we have to get to the point at which there is the equilibrium that the Lord Chief Justice has identified. He referred to a conversation that needed to take place. That was back in May 2012. I am not aware of that conversation having taken place. It may have taken place, but I am not aware of the conversation that has taken place to identify where that equilibrium lies. It is absolutely critical that we have that balance, and that that respect is shown to the courts. We should not hold the courts in contempt, because that would be wrong. We should not scandalise them, because that would also be wrong. However, the courts should have the same degree of respect for the decisions made by this House, when those decisions are made in good faith and on behalf of the public.

It is absolutely essential that all of us recognise that, whether you are in the Royal Courts of Justice or, indeed, in this Assembly, subject to Her Majesty, we are all subject to the will of the people. We are here as servants of the people, and courts are servants of the people. The first element of any democracy is justice, and, therefore, the role that courts play is absolutely critical in that.

I want to see and ensure that, although we remove this provision today, we show our courts due courtesy. However, I also want to see that our courts show due respect for this House, and, indeed, for other Houses that pass legislation and that the will of the people is something that is granted and not superseded. When we come to these fine definitions, where one person's human rights are considerably different from those of another, judges need to give a wider view based on the wider view held by the public and ensure that they respect everyone's human rights, not just those of one individual.

Mr Allister: I want to focus on amendment No 16, which has arisen from quite a deep-seated controversy that broke last year over the action of the Attorney General. The Attorney General came in for a lot of criticism about his course of action. Just like a judge, he is not and should not be above criticism, but I think that he is as entitled as any of us to have that criticism be balanced and considered, rather than suffer knee-jerk and imbalanced criticism.

I will approach the matter in this way. If some right-wing extremist had said something

extraordinarily offensive about a judge, attacked his personal, judicial and professional integrity, and the Attorney General had acted against that far-right — British National Party or whatever — individual, would the Prime Minister have risen at the Dispatch Box to condemn the Attorney General? Would politicians have been falling over themselves to condemn the Attorney General, or was it simply because it was the well-connected Peter Hain who was drawing the wrath of the Attorney General that we saw that reaction? That is a point worth pondering.

The Attorney General's position was this: he did not evolve the common law; he was put in that position by politicians, effectively, where he had to deal with the situation whereby the common law said that it was a contempt offence to scandalise a judge. Was he to ignore that, turn his back on it and pretend that it did not exist, or was he to address it? This House today will relieve him of that responsibility, because this House today will abrogate the provision in the common law whereby it is a contempt offence to scandalise a judge.

However, that was not the situation this time last year. That was not the situation when this book hit the book stands. The Attorney General was in a position where the law provided — not legislative law but common law and of equal strength in circumstances where there is no legislation — that it was a contempt offence to scandalise a judge. So, he had a judgement to make. He read, as, I suspect most in this House have or should have read, that Mr Peter Hain — it could only come from someone as supercilious and arrogant as Mr Hain — took great offence at being rebuked by the courts of this land and that he took it personally that what was a politically agreed appointment of an Interim Victims' Commissioner was questioned and challenged in the courts, for he — the mighty Mr Hain — is above all that. It is quite clear from the content and tenor of his book that he is not to be challenged. How dare anyone challenge the mighty Mr Hain, who was doing it all in the name of peace? He was serving that greatest of causes, and yet some jumped-up judge dared to take seriously a challenge to his actions and dared to question what the mighty Mr Hain had done. So, when Mr Hain came to write what he calls his memoirs, he had a score or two to settle. Yes, he had some other interesting things to tell us, because when you pick up this book, all sorts of interesting facts come out of it. He had interesting things to tell us about how he bought the DUP by flattery and by threatening to close the Assembly and stop their salaries. There are all sorts of interesting things, but I will not be sidetracked, because you would pull me up, Mr Deputy Speaker, I am sure.

He certainly had a score to settle with Lord Justice Girvan, and so he gets himself right down into the gutter. That is where he went: right down into the gutter. He said — he inferred — that what motivated Lord Justice Girvan was some personal issue with the fact that Hain had reformed property tax, and that people who lived in big houses did not like it. The shame is on Mr Hain for daring to think and express that.

3.45 pm

I have had run-ins with many judges in court. I know Lord Justice Girvan and there is no more independent-minded man sitting on the bench in Northern Ireland. I have had issues with him, disagreed with judgements and been on the wrong side of his wrath — all of that. However, I can recognise from it that there is no more independent-minded man on the bench than Lord Justice Girvan.

It was shameful and scurrilous to suggest that he may be motivated by something as base as the fact that a politician in the form of Mr Hain had interfered and pushed up his rates — a scandalous suggestion. Then to go on, as Mr Maginness drew to our attention today, to ponder, when it came to the justified promotion of the Lord Justice, that his legal capabilities seemed so flawed. Not satisfied with attacking his personal integrity by suggesting that he would be influenced by something such as a hike in his rates, he was now prepared to attack his professional capability and integrity.

I come back to my first point: if someone on the raving loony right — or left, where Mr Hain used to be — had said that of a judge, and the Attorney General had acted, would he have borne any criticism? I suspect not.

Mr Poots: I appreciate the Member's line of argument. However, if I was to describe the Member in some of the ways that Mr Hain chose to describe Lord Justice Girvan, the Member may choose to take a case against me for doing so. In that respect, why would we be in a position where we give judges greater protection than other members of the public or, indeed, Members of this House or Government Ministers? Should we put some special blanket of protection around retired Ministers or, indeed, current Ministers? Why should we have that scandalisation just for judges? I take it that the Member is arguing that we do not change this today. In that respect, why would

Lord Justice Girvan not be in a similar position as myself or the Member to take someone to court if they slandered or libelled him?

Mr Allister: The Member raises a fair point, although he makes a wrong assumption about my position on this amendment. Just to crystallise that, I think that it is right that we make this amendment but wrong that we leave a vacuum having made the amendment.

Let me expound on that, if I may, and to do it in the context of how the Member raised the point: could not Lord Justice Girvan or any other judge so scandalised simply sue for libel? Yes and no is the answer. Yes, in theory; in practice, very difficult. Who hears his case? One of the other dozen judges who sit with him in the High Court? A judge is in a very delicate, difficult position where he cannot really defend himself in the manner that you, I or anyone else can defend themselves without impinging, I perceive, on the performance of his duties on the bench. A judge sues today for libel, and a colleague hears the case. You can already imagine —

Mr McCartney: Will the Member give way?

Mr Allister: Just let me finish the point.

You can imagine the innuendo that would arise. The judge succeeds in his case, and it is a nudge, nudge, wink, wink situation. Of course, he was always going to succeed. Was one of his colleagues not hearing the case? If the judge fails, where does he then stand as a judge coming into court to preside over the next libel trial? Whether the judge wins or loses, where does he stand as a judge coming into court to preside over the next libel trial? He stands in a very invidious position. That is why I think it too trite to say that he has the same rights as all the rest of us. He might in theory; in practice, it is a very different matter.
That is why I think that there is a bit of a gap, which now needs to be filled. If we are taking away the common law provision, we need to have some hedge of protection to avoid it being open season. Remember this: libel is a useful protection only if you have someone worth suing. If some vagabond worth nothing says something about you, there is no point in suing — no point whatsoever — so it is not just as easy as saying, "Let him sue." The House has to address whether any safety protection is required to stop it being open season through scurrilous remarks of the ilk of those made by Mr Hain.

Mr McCartney: Who would hear the case under current legislation? Would the same points not apply?

Mr Allister: Yes, and that is one of the problems of a small jurisdiction. In Northern Ireland, obviously, the judges and practitioners all know one another. That is one of the consequences of a small jurisdiction. In England and Wales, you could well have judges who have never met and know nothing about one other, and so you might have more obvious scope for the freedom of litigation without the inhibitions that I am talking about. If proceedings had been brought, they would have been, at least initially, determined here, and, quite potentially, could have gone ultimately to the Supreme Court, where at least there would be a degree of remoteness. However, there are certain constraints to a small jurisdiction, and the Member identifies one of them.

Mr Poots: Will the Member give way?

Mr Allister: Yes.

Mr Poots: I appreciate where the Member's comments are coming from. My understanding is that Lord Justice Sedley successfully took a case against 'The Daily Telegraph', so this is not something that has not happened before.

I caution that the import of the Member's remarks, if not the intent, is that a judge may be only a little impartial if one of his colleagues brought a case before him. I have no doubt that the judiciary would have acted with total impartiality had Lord Justice Girvan taken a case against Peter Hain and brought it before the courts.

Lord Morrow: Will the Member give way?

Mr Allister: Yes, if I may deal with this intervention first.

I agree, and my expectation is that the judiciary would have acted impartially. However, that would not stop the proverbial man in the street, whatever way the case turned out, saying that it was a fix. That is ready-made territory for someone to say that.

Yes, a High Court judge in England did successfully sue for libel, but this comes back to the point that Mr McCartney made. That judge sued in a very much larger jurisdiction, where there was not the personal interface between the litigant and the decider, or someone key to the decision-making. So it is a

problem and a difficulty. Although the House has been well persuaded that the common law should be abrogated, I think that the House is now leaving a gap. The House needs to think about that.

Lord Morrow: I thank the Member for giving way. Earlier, he said that you would not sue a vagabond, because he is a man of no substance. I want to hear him on this. I understood that the whole reason why you would sue is to restore your good name, not to get a bank of money. Although we are not talking about Judge Girvan here, I suspect that judges maybe have enough of that already. I would have thought that the real exercise is to restore their integrity and their good name, not to get a couple of hundred thousand pounds. Is that not right, Mr Allister?

Mr Allister: I am sure that restoring their integrity is the primary goal, but if you sue somebody who has no money, you might get a judgement against them, which you will never enforce, so you do not get any money. However, you are left with your legal bills, which are very substantial. So, in fact, you have to be prepared to say, "I am going to throw x tens of thousands of pounds at this to establish my good name." How many Members would readily do that? Some might; I do not know. It is the realities of that, which, I think, cause us to think that we should be looking at this in terms of, "Yes, we are going to pass amendment No 16". What then, however? Do we simply walk away and forget about it?

Mr Givan (The Chairperson of the Committee for Justice): I thank the Member for giving way. On that point, where would you make the differentiation between this jurisdiction and England and Wales, when they are not making any redefinition of it or any hedge around about it? We are following what the other jurisdiction is doing in England and Wales. Indeed, a former Lord Chief Justice, Lord Carswell, has made it clear that he would not want any difference to be made between how judges are treated here and how they are treated in England and Wales. So, how would we make that difference?

Mr Allister: It is a bit of role reversal, because I am usually the one who is more enthusiastic about following what England and Wales want, and the honourable Member is more of an enthusiast for proving the virility of devolution. I think that it is something that the House of Commons should also be addressing. I think that it has an added poignancy in Northern Ireland, because of the very small jurisdiction that we have, but I would like to see it addressed nationally by England and Wales as well. If they do not, I still think that it is something that the House needs to think about and apply some attention to.

Mr Deputy Speaker, thank you for the opportunity to give voice to those views. In those circumstances, and with those caveats, I am happy to support amendment No 16 today.

Mr Ford (The Minister of Justice): I shall perhaps not dwell on quite where the bulk of the most recent contributions have, but I want to look at the other three amendments in the group.

In my opening remarks, I explained that determinate detention orders under article 45(2), although not often used, provide an important and necessary custodial option for courts that are dealing with those children who commit the most serious offences. The revised provisions, as set out in clause 7A, which replicate the provisions for other similar orders, will ensure that the processes that are used to determine matters of release, licence requirements and recall will be subject to the required level of independent decision-making through the courts and the Parole Commissioners. Importantly, that will mean that the provisions will not only comply with our international treaty obligations but will bring the release, licensing and release processes that are associated with those detention orders fully into the mainstream arrangements for dealing with the management of serious offenders as they move from custody to the community. I believe that that in itself is a worthwhile step forward.

Although I am very grateful for the sort of hint that almost came from Tom Elliott, when he said that perhaps the Minister did not need to talk about this because he was so good, the reality is that, on human rights grounds, it is absolutely necessary that we deal with the current outstanding issue and that we move away from ministerial discretion in this specific area.

I do not know that anyone who contributed to the debate on this group of amendments spoke on proposed new clause 7B, which is a technical amendment on registered intermediary schemes. It is important that we ensure that we have legislative consistency between the provisions that deal with the accused and those that deal with victims and witnesses and ensure that that gives full compliance in order to ensure that there is a proper balance. I welcome the fact that I can

assume that Members, by not referring to the issue, are content with the proposal before us. I am grateful for that level of support or, at least, the lack of dissent on the proposals that I have put forward.

4.00 pm

I want to speak briefly — significantly more briefly than others — on amendment No 16. It is clear that there is support in the House for the amendment, which removes the criminal issue of scandalising the court. It was also noticeable that many of the remarks that have been made around the Chamber focused on the difficulties that we are in and the potential need to look at certain other ways to deal with the potential problems that have been highlighted by the Hain case and other issues. On a personal note, when Mr Maginness quoted elements of the book, which got as far as the former Secretary of State consulting Lord Falconer on whether he should go ahead with making a judicial appointment, it highlighted two things: first, the importance of the fact that, as Mr Poots said, politicians in the Assembly are no longer responsible for appointing judges in Northern Ireland, which, I believe, is a good thing; and, secondly, it reminded me of the point last year when I was responsible for appointing a number of new QCs. That was a prerogative decision that lay with me. A number of the names on the list belonged to those who had fought the campaign against the cuts in criminal legal aid, which, as those who were Members of the previous Assembly will remember, were included in the first Justice Bill.

Mr McCartney: Will the Minister give way?

Mr Ford: Give me a second. The irony struck me as I was faced with opening my rather cheaper black ministerial box — not an expensive red ministerial box — at home that night. I smiled to myself, and I then complied with my duty. I did not ring Lord Falconer. I did not ring John Larkin either. I will give way.

Mr McCartney: The Minister makes a very interesting point. Did he note that no one seemed to raise an eyebrow when a British Secretary of State, as he was then, phoned the Lord Chancellor to interfere in the judicial process as if it was commonplace?

Mr Ford: I certainly raised an eyebrow when I read the extracts from the book. Unlike Mr Maginness, I have not bothered to get it from the Library.

There are fundamental concerns, which highlight that there is an issue. Although we are content today to remove the criminal offence, there is an issue that needs to be addressed.

I must take slight issue with Mr Maginness. He praised the role of the Committee almost as enthusiastically as the Committee Chairperson. However, he said that the Executive at large were lacking in having failed to act on the issue. I have already been praised by the Deputy Chair of the Committee, so I thank him again and note that I made it clear that we did not want a legislative consent motion for Westminster on this issue and this was the right place to legislate. That was entirely the correct decision. It is also a simple fact that, if Departments legislate, a serious, lengthy consultation period is required. In the face of all of the other issues before the Department, I did not see it as a priority within the timescale in which the Committee was able to act. I did not think that it was legitimate to prioritise that against other issues that we are dealing with, which, frankly, are more likely to come back to us than the potential of scandalising the court arising again, perhaps in another 50 or 60 years. It is one of the quirks of our legislative process that, while Departments are obliged to go through that lengthy consultation process, Committees can act on a whim, as indeed can private Members. Whether we think that that is the right balance in the way things are done is an issue for another day.

I also noted that Mr Allister referred specifically to the fact that, in dealing with the Hain book, the Attorney General acted in line with his defined role in common law as it stands. We are seeking to remedy that by removing that common law position. Jim Allister and Alban Maginness have highlighted areas where there are issues that we will need to look at again and where we will need to have proper consultation to see whether alternative mechanisms are required in this jurisdiction. We cannot simply leave a vacuum, by removing the legal issue in a criminal prosecution but not deal with the potential that this problem may arise again in the future.

That said, I am content to go with amendment No 16 as proposed by the Committee, but I believe that the Committee and I will have further work to do on that in the future. I welcome the support which has been expressed for the amendments that I proposed.

Question, That amendment No 14 be made, put and agreed to.

New clause ordered to stand part of the Bill.

Amendment No 15 made: After clause 7 insert

"Examination of accused through intermediary

Examination of accused through intermediary

***7B**.—(1) In section 12(1) of the Justice Act (Northern Ireland) 2011 (which at the passing of this Act is not in operation), the inserted Article 21BA of the Criminal Evidence (Northern Ireland) Order 1999 is amended as follows.*

(2) At the beginning of paragraph (2) insert "Subject to paragraph (2A),".

(3) After paragraph (2) insert—

"(2A) A court may not give a direction under paragraph (3) unless—

(a) the court has been notified by the Department of Justice that arrangements for implementing such a direction have been made in relation to that court; and

(b) the notice has not been withdrawn.

(2B) The withdrawal of a notice given to a court under paragraph (2A) does not affect the operation of any direction under paragraph (3) given by that court before the notice is withdrawn."." — [Mr Ford (The Minister of Justice).]

New clause ordered to stand part of the Bill.

Amendment No 16 made: After clause 7 insert

"Abolition of scandalising the judiciary as form of contempt of court

***7C.**—(1) Scandalising the judiciary (also referred to as scandalising the court or scandalising judges) is abolished as a form of contempt of court under the common law.*

(2) That abolition does not prevent proceedings for contempt of court being brought against a person for conduct that immediately before that abolition would have constituted both scandalising the judiciary and some other form of contempt of court." — [Mr Givan (The Chairperson of the Committee for Justice).]

New clause ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill.

Clause 9 (Commencement and transitional, etc. provisions)

Amendment No 17 made: In page 8, line 2, leave out subsections (1) and (2) and insert

"(1) Except as provided by subsection (2), this Act comes into operation on the day after Royal Assent.

(2) The following provisions of this Act come into operation on such day or days as the Department may by order appoint—

(a) section 1 and Schedule 1;

(b) section (Notification requirements: absence from notified address);

(c) sections 3 and 4;

(d) section 7 and Schedules 2 and 3;

(e) Parts 1 and 3 of Schedule 4 and section 8 so far as relating thereto." — [Mr Ford (The Minister of Justice).]

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10 ordered to stand part of the Bill.

Schedule 1 agreed to.

Schedule 2 (Articles 63B to 63O of the Police and Criminal Evidence (Northern Ireland) Order 1989, as inserted)

Mr Deputy Speaker: Turning to the third group of amendments, I remind Members that a petition of concern was tabled this morning to amendment Nos 21, 24 and 26 to the Criminal Justice Bill. Today's proceedings on the Bill will, therefore, stop at the Question on amendment No 20, and the Questions on the remainder of the Bill will be put on the next sitting day.

With amendment No 18, it will be convenient to debate amendment Nos 19 to 34.

Mr A Maginness: Mr Deputy Speaker, are you indicating that there will be no vote whatsoever today? It is just that I am uncertain as to —

Mr Deputy Speaker: For clarity, we will deal with the legislation in front of us until the first amendment that has been actioned by a petition of concern, so we will stop after amendment No 20.

As I said, with amendment No 18, it will be convenient to debate amendment Nos 19 to 34. The amendments deal with the rules for the retention of DNA, fingerprints and photographic material. Members should note that amendment No 21 is mutually exclusive with amendment No 22 and that amendment No 24 is mutually exclusive with amendment No 25.

Mr McCartney: I beg to move amendment No 18: In page 14, line 26, at end insert

"*(c) a photograph taken as mentioned in sub-paragraph (a)(i) or (ii)*".

The following amendments stood on the Marshalled List:

No 19: In page 14, line 27, after "Fingerprints" insert ", photographs". — *[Mr McCartney.]*

No 20: In page 15, line 14, leave out from "the conclusion" to end of line 17 and insert

"the Chief Constable determines that the material is of no evidential value in relation to—

(a) the investigation of the offence; or

(b) proceedings against any person for the offence." — [Mr Ford (The Minister of Justice).]

No 21: In page 15, line 41, leave out from beginning to end of line 3 on page 16 and insert

"and

(c) the Northern Ireland Commissioner for the Retention of Biometric Material has consented under Article 63DA to the retention of the material." — [Mr Ford (The Minister of Justice).]

No 22: In page 16, line 1, leave out paragraph (d) and insert

"(d) the District Judge (Magistrates' Court) has made an order under paragraph (13) for the retention of the material."— [Mr McCartney.]

No 23: In page 16, line 26, leave out paragraphs (11) and (12). — *[Mr McCartney.]*

No 24: In page 16, line 37, leave out paragraph (13). — *[Mr Ford (The Minister of Justice).]*

No 25: In page 16, line 37, leave out "Commissioner" and insert "District Judge (Magistrates' Court)". — *[Mr McCartney.]*

No 26: In page 17, leave out lines 12 and 13 and insert

"Retention of Article 63B material by virtue of Article 63D(5): consent of Commissioner

63DA.—(1) The Chief Constable may apply under paragraph (2) or (3) to the Commissioner appointed under Article 63D(11) for consent to the retention of Article 63B material which falls within Article 63D(5)(a) and (b).

(2) The Chief Constable may make an application under this paragraph if the Chief Constable considers that the material was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of an offence where any alleged victim of the offence was, at the time of the offence—

(a) under the age of 18,

(b) a vulnerable adult, or

(c) associated with the person to whom the material relates.

(3) The Chief Constable may make an application under this paragraph if the Chief Constable considers that—

(a) the material is not material to which paragraph (2) relates, but

(b) the retention of the material is necessary in the interests of public protection.

(4) The Department of Justice may by order amend paragraph (2) or (3).

(5) The Commissioner may, on an application under this Article, consent to the retention of material to which the application relates if the Commissioner considers that it is appropriate to retain the material.

(6) But where notice is given under paragraph (7) in relation to the application, the Commissioner must, before deciding whether or not to give consent, consider any representations by the person to whom the material relates which are made within the period of 28 days beginning with the day on which the notice is given.

(7) The Chief Constable must give to the person to whom the material relates notice of—

(a) an application under this Article, and

(b) the right to make representations.

(8) Without prejudice to section 24 of the Interpretation Act (Northern Ireland) 1954

(service of documents), a notice under paragraph (7) may, in particular, be given to a person by sending it to the person by email or other electronic means.

(9) The requirement in paragraph (7) does not apply if the whereabouts of the person to whom the material relates is not known and cannot, after reasonable inquiry, be ascertained by the Chief Constable.

(10) An application or notice under this Article must be in writing.

(11) In this Article—

"victim" includes intended victim,

"vulnerable adult" means a person aged 18 or over whose ability to protect himself or herself from violence, abuse or neglect is significantly impaired through physical or mental disability or illness, through old age or otherwise,

and the reference in paragraph (2)(c) to a person being associated with another person is to be read in accordance with Article 3(3) to (6) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998."

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

No 27: In page 19, line 14, at end insert

"Retention of Article 63B material: persons completing diversionary youth conference

63HB.—(1) This Article applies to Article 63B material which—

(a) relates to a person who has completed the diversionary youth conference process with respect to a recordable offence; and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) The material may be retained until—

(a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and

(b) in the case of a DNA profile, the end of the period of 5 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken.

(3) For the purposes of this Article, a person completes the diversionary youth conference process with respect to an offence if (and only if)—

(a) a diversionary youth conference under Part 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998 has been completed with respect to that person and that offence, and

(b) the Director of Public Prosecutions, having considered the report of the youth conference co-ordinator, has determined not to institute proceedings against the person in respect of the offence or, as the case may be, not to continue proceedings already instituted against the person in respect of the offence." — [Mr Ford (The Minister of Justice).]

No 28: In page 19, line 14, at end insert

*"**Retention of Article 63B material: persons given a penalty notice***

63HC.—(1) This Article applies to Article 63B material which—

(a) relates to a person who is given a penalty notice under section 60 of the Justice Act (Northern Ireland) 2011 and in respect of whom no proceedings are brought for the offence to which the notice relates, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) from the person in connection with the investigation of the offence to which the notice relates.

(2) The material may be retained—

(a) in the case of fingerprints, for a period of 2 years beginning with the date on which the fingerprints were taken,

(b) in the case of a DNA profile, for a period of 2 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken." — [Mr Ford (The Minister of Justice).]

No 29: In page 19, line 14, at end insert

"Retention of Article 63B material: persons under 18 given a caution

63HA.—(1) This Article applies to Article 63B material which—

(a) relates to a person who—

(i) is given a caution in respect of a recordable offence which, at the time of the caution, the person admitted; and

(ii) is aged under 18 at the time of the offence, and

(b) was taken (or, in the case of a DNA profile, derived from a sample taken) in connection with the investigation of the offence.

(2) The material may be retained until—

(a) in the case of fingerprints, the end of the period of 5 years beginning with the date on which the fingerprints were taken, and

(b) in the case of a DNA profile, the end of the period of 5 years beginning with—

(i) the date on which the DNA sample from which the profile was derived was taken, or

(ii) if the profile was derived from more than one DNA sample, the date on which the first of those samples was taken."
— [Mr A Maginness.]

No 30: In page 22, line 32, leave out "do not". *— [Mr McCartney.]*

No 31: In schedule 3, page 23, line 9, after "fingerprints" insert ", photographs". *— [Mr McCartney.]*

No 32: In schedule 3, page 23, line 12, leave out from "that has come" to the end of line 13 and insert

"*which—*

(a) has been taken by the police from a person—

(i) under a power conferred by Article 62 or 63; or

(ii) with the consent of that person, in connection with the investigation of an offence by the police;

(b) consists of or includes human cells; and

(c) was taken for the purpose of deriving a DNA profile from it;". — [Mr Ford (The Minister of Justice).]

No 33: In schedule 3, page 23, line 29, leave out "which" and insert

"—

(i) which was committed when that person was aged 18 or over, and

(ii) which". — [Mr A Maginness.]

No 34: In schedule 3, page 24, line 6, leave out from beginning to “18(8)(b)” in line 9 and insert

"5. In Article 89 (orders and regulations) after paragraph (2) insert—

“(2A) An order under Article 63DA(4) shall not be made unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.”.”

The Counter-Terrorism Act 2008 (c. 28)

6. In section 18(8)(c)".

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

Mr McCartney: Thank you very much, Mr Deputy Speaker, for your clarity. As I understand it, there will be a number of votes until amendment No 20.

I will speak to the amendments tabled in my name and in the names of Seán Lynch and Rosie McCorley. For the record, they are amendment Nos 18, 19, 22, 23, 25, and 31. I will not move amendment No 30. We will oppose some of the amendments tabled by the Minister. Those are amendment Nos 20, 21, 24 and 26.

Mr Ford: I can assure the Member that, in the context of the petition of concern, I do not intend to move amendment Nos 21, 24 and 26.

I am grateful to the Member for giving way. If he will allow me to, I have something further to say. Mr Deputy Speaker, I understand the ruling that you have made that business will be suspended after the vote on amendment No 20. There seems to be something lacking in Standing Orders if, when the amendments subject to a petition of concern are not to be moved, we cannot proceed. I ask you to refer that issue to the Speaker or possibly the Committee on Procedures.

Mr Deputy Speaker: I assure the Minister that the Speaker has looked at this issue carefully, and he came to the judgement that he has passed on to me as Deputy Speaker. The Minister raises an interesting and valid point on procedure. Consideration has been given to the issue. For clarity on today's order of business, proceedings will stop after the Question on amendment No 20 has been put. However, the debate on this group of amendments will happen now, so the debate is about all the amendments standing on the Marshalled List in the third group, but voting will stop after amendment No 20. The Business Committee has agreed that the Consideration Stage of the Bill will be scheduled again for Monday 25 February, when the remaining Questions will be put.

Mr McCartney: Thank you, Mr Deputy Speaker. In the first instance, I thank the Minister for not moving amendment Nos 21, 24 and 26. We look forward to a discussion with him and his officials on the appointment of a biometric commissioner. I know that the subject was discussed at today's Business Committee, and I concur with the Minister's well-made point about whether all amendments, apart from the three that were subject to a petition of concern, could have been voted on. I am sure that the Speaker will address that.

We will also support the amendments tabled in the name of Alban Maginness, which are amendment Nos 29 and 33. We will support the Minister's amendment Nos 27, 28, 32 and 34.

I will now provide a broad outline of the approach that we took on the formulation of the amendments and our opposition to some of the Minister's amendments. These points were made at every opportunity throughout Committee Stage during deliberations on the Bill. I acknowledge the role of the Committee staff, the departmental officials and those who provided evidence, because they helped us — they certainly helped me — deal with complex legislation.

It is worth recalling and putting in context the backdrop to and the need for, reason for and purpose of the provisions that are now in the Bill and why it had to be framed in a particular way. I refer to the Marper case, which was taken to the European Court of Human Rights. The court unanimously struck down the legislation that provided for the retention of fingerprints and DNA samples. The Assembly is now tasked with providing a legal remedy that should, in our opinion — we have made this known throughout — be human rights-compliant. Indeed, we want to extend the supervision of it to include the retention of photographs.

4.15 pm

We were guided and the Assembly should be guided by the principle of presumption of innocence. We cannot afford to legislate in a way that ignores the presumption of innocence, because, in many ways, you would create a defect immediately. Many people say that, if it is not human rights-compliant, it is nearly like soliciting another person having to take the matter to the European Court of Human Rights. We do not want to come back to revisit this in the future. I will major on the presumption of innocence because there is a provision in the Bill for the indefinite retention of DNA and fingerprints in cases in which a person is not charged as a result of an arrest, in which a person is not even subject to a prosecution, and, indeed, where no conviction comes about. That totally and absolutely undermines the principle of innocence. If a person is not convicted or even charged — if there is no prosecution — or if the person is released unconditionally, there is provision in the Bill for the retention of their DNA, fingerprints and photograph. That is not the task of the Assembly. The Assembly should always come down on the side of the presumption of innocence. Our approach and amendments protect that. We had a bit of a discussion earlier about the role of Assembly. It is to frame law, set law and protect citizens.

Mr Wells: Will the Member give way?

Mr McCartney: Yes.

Mr Wells: The role of the Assembly is not only to do that but to protect our citizens against criminals who, in many cases, are torturing their local community. The Member has to face the fact that there are many examples, with the technology that we now have, of people who have committed the most vile crimes being detected, convicted and imprisoned entirely on the basis of DNA profiling. He will, no doubt, try to avoid saying that the PSNI made it very clear to the Committee that the retention of that material was absolutely essential in pursuing those criminals.

The Member knows — I said this in Committee — that my DNA was taken after a minor traffic accident in 2001. I could have gone, if I had wanted to, to the police and asked them to destroy it, but I did not. The reason is simple: I have absolutely nothing to fear. If I keep my

nose clean and do not get myself involved in any crime, I have absolutely nothing to worry about in the retention of that material. Will he deny the PSNI the right to have access to the most modern technology to detect criminals, or will he force it to destroy material that, he knows, in the future could well solve a horrible crime? The worst examples in GB have been of serial rapists who have terrorised women in their community and, on some occasions, murdered those women and have been caught as a direct result of the retention of their DNA. Will he deny the Police Service of Northern Ireland the opportunity to capture those individuals by demanding the destruction of that material?

Mr McCartney: There are a number of things. You should not presume that every person who is arrested is a criminal. That is the type of principle that we are trying to protect. When the PSNI was in, I noted that it made that observation. However, when it was asked about statistics and the number of cases that were solved because of that retention, it was not very forthcoming with the answers. There does not seem to be a direct correlation. As part of the deliberations, we also heard that the database controlled by the British Home Office is 50 times bigger than the database in France. Yet, we were not told that the detection rate for any crime committed in Britain —

Mr Ford: Will the Member give way?

Mr McCartney: I will indeed.

Mr Ford: Will the Member take it from me that the figures I have show that the database in England and Wales is something like six times the size of the one in France and that the proposals we are looking at would mean that our database would be somewhat smaller than the one in England and Wales? When I get to my speech, I will be able to give exact figures.

Mr McCartney: I appreciate that, but the figure I gave was presented to the Committee as coming from a piece of research. We were also told that the British database is five times greater than the European average and 10 times greater than the United States average. The point that I am making relates to what the PSNI and others who presented to the Committee said. Many of us in the Committee feel that we were in the car when you had that accident, because we have heard about it so many times. When you made the same observation to the human rights commissioner, he rightly made the point — you were there when he said it — that people's DNA is their personal property. Many of us would expect that, in certain circumstances, our house would be raided. He said that that does not mean that there is an open door so that the PSNI or any investigative authority can enter your house whenever they want. It does not mean that they can just say that they are there to prevent crime and ask why they cannot enter at any time if you have nothing to hide in your house. That is the point that was made. This is all about balance. If you have it at the core that a person is presumed innocent until proven guilty, how do you protect that?

There was a recent case — we can all quote cases to put one argument against the other — in which the person won libel damages because he should never have been arrested in the first place. Under this Bill, that person's DNA would be retained. So, you can prove that you should not have been arrested and that you were libelled by people who suggested that you were a criminal and that, in the broad sweep of things, we should be protected against criminals, yet the legislation says that you have no right to say that your DNA should not be retained.

Mr Givan: Will the Member give way?

Mr McCartney: Yes, I will.

Mr Givan: I appreciate the Member giving way. Does the Member not agree that it is a flawed position that the retention of DNA equates to guilt? That is what the Member is articulating. He is saying that if you retain someone's DNA it means they are guilty. That is not what the Bill or the amendments are about. It is about finding the balance between the European Court's judgements and making sure that the public are protected. Is he not in that flawed position of equating the retention of DNA to guilt?

Mr McCartney: Many of those who presented to the Committee said that, in essence, that is what it was.

As regards some of the material that we received, the Home Office consultation document had this strapline:

> *"Keeping the Right People on the DNA Database."*

That was nearly saying that there is a category of person who is found guilty, but there is another category who we nearly profile as criminals, and, therefore, we want their —

Mr Wells: Will the Member give way?

Mr McCartney: Yes, I will indeed.

Mr Wells: Frankly, I do not care whether we have six times or 10 times the level of retention of France. As the Member for Lagan Valley has made clear, the retention does not lead to a conviction. The point made by several witnesses to the Committee was that very seldom is a conviction made on the basis of DNA alone. DNA evidence may help in the arrest of an individual, but it often requires other corroborative evidence to achieve a conviction. I keep asking the same question: if 10 times as many people in this part of the United Kingdom have their DNA retained as in France and that data is used correctly, what is there to fear?

I will give the Member another example. I carry a passport. It is a British passport, as I am sure you would expect. In order to get that passport, I have to have a photograph taken, and that is retained by the Border Agency. Why is that done? To ensure that, as I travel around the world, I can be identified if I am up to anything wrong. I do not object to that. No doubt he carries an Irish passport, but he does not object to his photograph being retained. There are 600,000 or 700,000 people in Northern Ireland who have one type of passport or another. So why is it wrong for the PSNI to retain photographs, DNA, fingerprints etc? Why is it wrong for the PSNI to retain that but all right for the Border Agency or the Irish passport authority to retain similar material?

Mr McCartney: The latter part of your point makes mine for me: the information is already there. There is photographic identification and documentation to show who we are and where we are, but what is framed here denies a person who is not proven guilty of any offence the right not to be held on a database. In essence, that says that you are part criminal, and we need to retain your DNA because it is part of what they would call a criminal investigation. Therefore, I do not think that you are comparing like with like.

Mr Givan: Will the Member give way?

Mr McCartney: I will indeed.

Mr Givan: Does the Member not accept that some people may be happy to have their DNA retained because it would eliminate them from the investigative process and thus prove them innocent?

Mr McCartney: There may be and have been instances of voluntary processes, in which people are asked to volunteer their DNA. People come in, and conditions are set for the retention of DNA for an investigation, much in the same way as there is a provision in the Bill, which we support, for DNA found on a victim of assault or a sexual offence to be retained until the investigation is concluded. So this is not a case of saying that there should not be DNA retention or that investigators should not be given the scope and power to do what they need to do to make an investigation successful. We are saying that there has to be a point at which a citizen is protected and can say, "I do not want my DNA to be retained. I have been arrested improperly and incorrectly, and there is no evidence against me, nor is any prosecution presented". Even should people go to court and be found not guilty, holding on to their DNA supports the view that they are nearly not guilty. People have to be protected against that type of perception. That is what legislation is about. That is the counter to Jim Wells's position that there should be an amendment to create a compulsory process of collecting DNA and fingerprints and you should have no rights about your house because, let us face it, if you have nothing to hide there, why should the PSNI not knock at your door whenever it feels like it and come in to look round? Even Jim Wells would object to that. I do not think that we can do that.

This afternoon, I have heard people being described as having right-wing views, and that is what taking that approach is about. You must keep it in mind that this went to the European Court of Human Rights and was struck down, so the people we task with protecting us through legislation ruled against it. The Minister can respond to this. There is a suspicion, feeling, sense or even a concern that this, as presented, does not comply with that ruling. In essence, we are saying that we think that we have made a mistake that we are now correcting to a degree, but, in the long term, if someone takes a case, we will find ourselves back here. We have the opportunity to do the right thing, and, by doing the right thing, the presumption of innocence should be at the core.

Mr Givan (The Chairperson of the Committee for Justice): If Members will bear with me, I want to run through the Committee's position on all the amendments in the group, albeit that we will not vote on most of them until Monday. I will make some general comments about the clauses and schedules that bring in a new framework for the retention of fingerprints

and DNA profiles, before turning to the specific amendments tabled for consideration today.

From the first time that the Department produced policy proposals for a new framework to govern the retention and destruction of fingerprints, DNA samples and profiles, it has been clear that there was unlikely to be a meeting of minds among all Committee members. The Committee agreed to support clause 7 and schedules 2 and 3, which insert PACE NI, the new framework governing the retention and destruction of fingerprints and DNA samples. However, there was a clear divergence of views on this. Some Committee members acknowledged the requirement for changes, given the 2008 judgement of the ECHR in the case of S and Marper v the United Kingdom that the indefinite retention of DNA and fingerprints from unconvicted individuals violated article 8 — the right to privacy — and expressed the view that the proposals in the Bill were proportionate and would continue to assist in the detection and prevention of crime, which is in the interest of public protection, although at least one member indicated a preference to retain the existing framework.

Other members, however, expressed strong reservations about whether the proposals for the retention of material are proportionate and necessary, particularly for those who have been arrested or charged but not convicted of a qualifying offence in relation to the policy of indefinite retention in a substantial category of offences and in relation to children and young people.

4.30 pm

They were also concerned with the inclusion of cautions, penalty notices and diversionary youth conferences in the retention framework. Those members indicated that they had serious concerns about whether the framework as proposed is compatible with human rights standards, and they were therefore not content with clause 7 and schedules 2 and 3. They indicated their intention to table a number of amendments relating to that part of the Bill at Consideration Stage, and the members from Sinn Féin and the SDLP have obviously done that.

A particular issue that the Committee discussed at length relates to the retention of material for persons convicted of a recordable offence. Article 63F provides for the retention of material indefinitely from all adults convicted or cautioned for any recordable offence and all young persons convicted or cautioned for more than one recordable offence. Given the very wide range of offences covered by the use of recordable offences, questions were raised about whether that approach is necessary and proportionate.

Some Committee members were content with the retention proposals, noting that a recent High Court judgement found that the policy of indefinite retention of data of convicted offenders in a substantial category of offences is not disproportionate, is lawful and is, indeed, rational. Other Committee members, however, expressed concerns about whether the approach is proportionate and necessary and whether it complies with the ECHR ruling in the S and Marper case. They indicated that they would not support that aspect of the retention framework.

I will endeavour to provide some further insight into the Committee's deliberations on the issues as they relate to amendment Nos 18, 19 and 31, which Mr McCartney tabled. The introduction of a legislative framework for the retention of photographs by the PSNI was raised in the evidence that was submitted to the Committee on that part of the Bill. The Department had previously highlighted that the ECHR judgement that has brought about the need to change the retention framework imposes no obligation in the retention of photographs. The Department was, however, of the view that it was likely that, if the current practice of indefinitely retaining photographs of persons taken on arrest were to remain unchanged, the police would face legal challenge at some point.

During the Committee Stage, the Department indicated that, following a case against the Commissioner of Police of the Metropolis, the Association of Chief Police Officers has set up a working group, on which the PSNI is represented, to bring the management of police information guidelines into compliance with the ECHR. The retention of photographs falls under those guidelines, and the PSNI will implement agreed best practice. The Department stated that it was satisfied with that approach and therefore did not intend to bring photographs within the retention framework. The Committee noted the position on the photographs. My party will certainly support that position and will therefore oppose the Sinn Féin amendment.

Amendment No 20 will amend article 63C, which enables article 63B material that is taken from a person in connection with the investigation of an offence to be retained until the conclusion of the investigation by the police,

or, where legal proceedings are instituted against a person, until the conclusion of those proceedings. The Committee sought clarification on the point at which the conclusion of an investigation is deemed to have occurred, and it raised concerns that that article did not adequately reflect the intention of the provision.

The Department confirmed that the policy intention of the provision was that the material should not be retained once it had been established that it is of no evidential value to the investigation. However, the Attorney General had asked that the original drafting be revised to permit the retention of material if it were likely to be probative against, for example, a co-defendant, rather than solely against the individual from whom it was taken. With that qualification, the Department agreed to consider further the wording of the provision.

The subsequent amendment, which is being considered today, aims to clarify the provision by linking retention to the perceived utility of the material, rather than to the conclusion of the investigation. The Committee is content to support the amendment, given that it addresses the concerns that were raised.

Amendment Nos 21, 24 and 26 relate to the prescribed circumstances. A number of organisations raised concerns with the Committee that the prescribed circumstances referred to in article 63D are not set out in the Bill but would be left to subordinate legislation. The prescribed circumstances relate to the range of circumstances in which the threshold for the retention of material from unconvicted persons may be set aside.

The Examiner of Statutory Rules also drew the Committee's attention to this provision. It was his view that, given that it is a substantive amendment of primary legislation, the prescribed circumstances that relate to the application for the biometric commissioner's consent to retain fingerprints and DNA profiles should be set out in the Bill, with power to amend by way of subordinate legislation, subject to affirmative resolution if necessary, rather than leaving it to subordinate legislation, subject to negative resolution, as is currently proposed.

In order to address the concerns that were raised, the Department agreed to set out those prescribed circumstances in the Bill, hence the amendments tabled by the Minister today, albeit that they are not going to be moved. The prescribed circumstances reflect those in the Protection of Freedoms Act 2012, with the exception of the second part of the provision. As the provision is aimed at protecting some of the most vulnerable in society, the Department considered that a formulation that focused closely on the protection of the public rather than the broader prevention and detection of crime is appropriate and would relate exclusively to circumstances in which an individual has been arrested in connection with a serious, violent or sexual offence but where there is insufficient evidence to bring charges.

The Committee agreed to support the amendments, with some members indicating that, in their view, this is an appropriate approach that does not reflect on the innocence or otherwise of the individual and will assist in the detection and prevention of crime, and, therefore, is in the interest of public protection. Other members indicated that they would not support the amendment, given that it related to the retention of material from those arrested or charged but not convicted. In their view, that undermines the presumption of innocence and due process, and they have serious concerns about whether the framework, as proposed, particularly in relation to people not convicted, is compatible with human rights.

Again, on this particular issue, my party supported the amendments tabled by the Minister. Obviously, they are now subject to a petition of concern. Indeed, many of the organisations that came before the Committee, such as the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) and others, made the point very strongly that all these things should be set out in the Bill rather than being subject to the negative resolution procedure. In my view, the amendments strengthen the position of the House to be able to take decisions on the matter. Obviously, other Members have a fundamental disagreement with the principle itself, as opposed to whatever mechanism is used to bring it into effect. However, we were content with the amendments that were tabled.

Amendment Nos 22, 23 and 25 relate to article 63D, the retention of article 63B material and persons arrested for or charged with a qualifying offence with regard to the role of the biometric commissioner. Indeed, the need for one was discussed by the Committee during its consideration of the evidence that was received on this part of the Bill. The Department confirmed that, where the police are of the view that the prescribed circumstances apply, the Bill allows them to seek the approval of a biometric commissioner to retain the material. The commissioner will be a public authority within the definition of section 6 of the Human Rights

Act 1998 and will be obliged to observe the ECHR.

During the Bill's Committee Stage, the Department explored, with the police and the courts, the possibility of the proposed role of the biometric commissioner being undertaken by the courts. Having considered the matter further, the Department advised the Committee that, without experience of operating the new framework, the police had been unable to estimate the likely volume of cases once it is up and running, but anticipated that numbers could be considerable at start-up as they process the historical abuse inquiries, along with other cases. Without a clear idea of the likely volume and the associated resource implications, the courts were understandably reluctant to take the business on.

The Department also indicated that, if the courts were to accept the task, although reporting restrictions could be imposed, hearings would be public with a requirement on an applicant to make representation in court. The risk that public opinion would reach a view on their innocence might be seen to undermine the willingness of some to make such representations. The Department said that it would remain the case that, were the commissioner to find against an applicant, they would be entitled to seek judicial review of any such decision.

The Department indicated that it intended to proceed with the biometric commissioner, but gave an undertaking to keep the matter under review. The Committee indicated that it was content with that approach, although some members highlighted issues with it. From my party's perspective, we were content with the proposals that it would be for the biometric commissioner to deal with this, for those reasons that I have outlined previously.

Amendment No 27 to schedule 2 relates to retention of article 63B material in respect of persons completing diversionary youth conferences. In the course of our deliberations on the Bill, the Department advised the Committee that it intended to bring forward an amendment to bring completion of a diversionary youth conference within the framework on the same basis as a caution. The Department indicated that both those disposals require acceptance of guilt on the part of the offender and so are treated as convictions for the purposes of the retention framework.

While the Committee supported the proposed amendment, some members expressed the same concerns regarding the inclusion of completion of a diversionary youth conference within the framework as they had with the inclusion of cautions. Since the Committee agreed to support the amendment to bring the completion of diversionary youth conferences within the framework on the same basis as a caution, the Minister has written to advise members that he is minded to accept the amendment tabled by Mr Maginness to amend the treatment of cautions awarded to juveniles, which I will come to shortly. The Minister has indicated that his intention to accept this amendment has implications for the treatment of diversionary youth conferences within the framework. He has, therefore, brought a revised amendment along the lines of that proposed by Mr Maginness for cautions. The Committee noted the intention of the Minister with regard to this amendment at its meeting last Thursday.

My party will oppose Mr Maginness's amendment. Given that the Minister's amendment was to keep in line with what Mr Maginness proposed in respect of how cautions are treated, we will vote against what the Minister has proposed in respect of this issue. I will elaborate a little bit more on that when I get to Alban Maginess's amendment.

Amendment No 28 relates to retention of article 63B material in respect of persons given a penalty notice. This was another new provision that the Department advised the Committee that it intended to bring forward at Consideration Stage to permit limited retention for two years in cases where a penalty notice has been issued under section 60 of the Justice Act (Northern Ireland) 2011.

When questioned by the Committee, the departmental officials clarified that, generally, penalty notices would be issued without an arrest but that, in those cases in which a person was arrested for a recordable offence, his or her fingerprints and DNA would be taken and, in the event of a penalty notice being the disposal used, the two-year retention provision would apply.

Again, this is an area in which the Committee agreed to support the inclusion of the amendment, as drafted, in the Bill. Some Committee members indicated that they were content to allow limited retention in relation to penalty notices. Others, however, indicated that they had concerns regarding retention in relation to cases where a penalty notice has been issued on the same basis as cautions, and said that they would not support the proposed amendment.

Amendment Nos 29 and 33 relate to retention of article 63B material in respect of persons under 18 given a caution, and have been tabled by Mr Maginness. In the written and oral evidence received during the Bill's Committee Stage, organisations raised concerns that a caution was included within the definition of an offence for which a person is convicted. The organisations pointed out that cautions do not have the same status as convictions under other aspects of the criminal law. In their opinion, there was some disconnect between the Bill and what happens under other aspects of the law. Those organisations felt that considering cautions in this way is a disproportionate course of action and runs contrary to the purpose of a caution, which is to divert young people away from the criminal justice system.

In response to questioning from the Committee, the Department confirmed that a caution is treated as equivalent to a conviction for the purposes of the retention of DNA profiles and fingerprints because it involves acceptance of guilt. It is the Department's position that there is no logical basis for treating it otherwise for the purposes of the DNA and fingerprint databases.

A number of Committee members expressed concerns about the inclusion of a caution in the definition of an offence. Although noting that when a person is cautioned and accepts a caution, an acceptance of guilt is involved, they viewed the treatment of cautions as a conviction in the retention framework as inappropriate and something that in some way affects the purpose of a caution. They had particular concerns about children and young people, where the use of cautions is aimed at directing them away from reoffending, and indicated that they would not support the inclusion of cautions in the retention framework.

4.45 pm

Other Committee members were content with the inclusion of retention for a caution, on the basis that it would assist crime prevention and detection and that retention of DNA is not the same as a criminal record, in that it will not be disclosed.

The amendments tabled by Mr Maginness would change the treatment of juvenile cautions for the purpose of DNA retention. As I said earlier, the Minister advised the Committee last week that he was minded to accept the amendments, and the Committee noted that position.

Our party will be opposing the amendment that Mr Maginness has tabled. He tabled it in good faith, and I do not doubt for one minute the good intent behind it. However, what had originally been proposed by the Minister struck the compromise in respect of one caution: a second caution or conviction would lead to indefinite retention. Obviously, therefore, our party is not in a position to support the proposals that Mr Maginness will articulate shortly.

Finally, the Committee agreed to support amendment No 34, which corrects a drafting error in schedule 3, and, at its meeting last Thursday, noted the Minister's intention to table amendment No 32 to amend the definition of "DNA sample" in schedule 3 on the recommendation of Forensic Science Northern Ireland.

The DUP will be opposing all the amendments that have been tabled by Sinn Féin and the amendment tabled by Mr Maginness. As a consequence, we will be opposing the Minister's amendment, which deals with diversionary youth conferences.

Mr Elliott: These schedules to the Bill and this group of amendments are generally about the retention of DNA and fingerprints. Other parties have indicated that they want photographs to be retained as well. What I want, what the Ulster Unionist Party wants and, I think, what the vast majority of the public want is to ensure that we are not soft on crime and are not soft on criminals.

I am concerned that some on the opposing Benches want to give criminals every possible opportunity to evade the law. That is the reasoning behind some of the amendments. I listened to Mr McCartney say that DNA is your personal property. Of course it is, but if it can be used for the benefit of the law and the benefit of the public, it should be. If it can be used to stop crime and to convict people of crime, it should be used, just as your other personal property, such as your computers or your clothes, can be used. If samples need to be taken, they need to be taken. As a legislative authority, we need to ensure that we give every possible help and assistance to the law authorities so that they can carry out their tasks, prevent crime and ensure that they bring criminals to justice.

I understand that we are, of course, subject to the ECHR, but we must provide every assistance possible to the law enforcement authorities and not use legislation to inhibit those authorities. The Ulster Unionist Party will

not support any weakening of the law. Sinn Féin and the SDLP have submitted a petition of concern regarding the commissioner for the retention of biometric material, which is basically an appeal mechanism in the legislation. I have not heard any reasoning yet, although perhaps I will before the debate is over, as to why there is such opposition to that. I am quite happy to listen to that debate.

Mr McCartney: Will the Member give way?

Mr Elliott: I am quite happy to give way.

Mr McCartney: The Minister did not move his amendment. That is why we did not provide a rationale for our position, because we will be coming back to it. Our basic position is that it should be a matter for the courts.

Mr Elliott: I understand that, but I still have not heard the reasoning, and I have not heard an argument about why we should not have a commissioner and why it should go through the courts.

Mr A Maginness: I am grateful to the Member for giving way. The SDLP is supportive of the Sinn Féin amendments on this matter because we believe that the courts are best suited and placed to deal with any issues that arise. A biometrics commissioner is well and good, but the courts have the experience and the authority, and I and my party believe that they should be the adjudicator, if necessary. It is a matter of choice, but we believe that due process is important and should be upheld.

Mr Elliott: I thank Mr Maginness; he will have the opportunity to explain more. I am pleased that he has tried to explain Sinn Féin's position, because it has not explained it itself. I am quite happy that —

Mr McCartney: I told you why.

Mr Elliott: Sorry? I am quite happy for Mr Maginness to put forward Sinn Féin's position for it; that is well and good for him. This has been debated at Committee, and we have had the opportunities to have those discussions, but neither Mr Maginness, Mr McCartney nor anybody else from those parties brought forward any of those issues for a much fuller and wider debate at Committee.

Mr McCartney: Will the Member give way?

Mr Elliott: I am happy to give way.

Mr McCartney: We raised it at the Committee on a number of occasions. Your attendance at the Committee is maybe suspect; you may not have been there on those particular days.

Mr Elliott: I take exception to that, because I am sure that my attendance is every bit as good, or near enough, as that of Mr McCartney and some of his colleagues. He raised at Committee his party's concern about what is proposed, not why it wants something different and the reasoning for that, and that is why I believe that we have not had a reasonable opportunity to do that. It is the same with quite a number of the amendments: we have not had the opportunity to discuss them more fully at Committee. It would have been helpful to have that chance, and it may have helped us to understand much better, but we are quite happy to do it here and now and bring it back if necessary.

The Ulster Unionist Party will not support any weakening of the law, where reasonably possible, but we are quite happy to listen to the debate.

Mr A Maginness: I agree with Mr Elliott that it is important to support the law, and we, as a party, are anxious to support the law, but the law is not simply a matter of procedure but includes concerns about citizens' rights. Those concerns are enshrined in law through the Human Rights Act and through the European Convention on Human Rights.

It is quite clear, given the judgement in the Marper case, that we, in this jurisdiction, have an issue with the retention of DNA and fingerprints. Therefore, it is important for us to get our law right and to make it consistent with the judgement of the court. Therefore, we, as a party, along with other colleagues, are attempting to get the best legislation possible, and we believe that we should recognise the human rights issues.

Therefore, we are concerned that there should not be an overzealous approach to the retention of DNA. Yes, we accept in principle that DNA should be retained for a period of time when people commit offences. However, there are a number of other permutations. One relates to young people, and another relates to people who were arrested or charged where those charges were not completed by their going to court or by there being no conviction. Is it right and proper — that is the proposition that one has to put to the Assembly — that the DNA should be retained of people who were charged and not convicted and that their fingerprints be retained? That is the question.

In certain circumstances, it is not unreasonable for there to be limitations on that. In those particular circumstances, I suggest that there be no retention. When people commit offences and break the law, there has to be retention. That is right and proper, and the European Court and our own courts recognise that and see no problem with that, but, in a situation where you have indefinite retention —

Mr Wells: Will the Member give way?

Mr A Maginness: Yes, certainly.

Mr Wells: The scenario is more likely to be where a young juvenile commits a crime, a PSNI officer is perfectly aware that a crime has been committed and the situation is disposed of by means of a caution. All the evidence indicates that, if you take and retain the DNA, that individual is as likely to spiral down into a life of crime. However, if you have retained the DNA, you will often have some way of proving that the person has done the next crime that he or she commits. If you destroy the DNA, you will probably have no evidence to confirm that that person committed that crime.

I am surprised at the Member because he is a learned barrister of considerable experience. Implicit in what he is saying is that something will happen to that retained material by the authorities. He is saying that it will be abused or used wrongly or used to convict someone who is innocent. There is not a shred of evidence that that has happened.

I cannot tie down from any of those who are opposing this what is the real fear about what could happen to the material beyond the fact that it has been stored. I do not subscribe to this nonsense that it is a gross infringement of someone's privacy, that it brands them or that they spend the rest of their life with this burden that, because their DNA has been retained, they feel a criminal. It is absolute nonsense.

The young lads who are torturing my community in south Down could not care less whether their DNA has been retained from that aspect. Where they are scared is that they know that, if they commit another crime and their DNA is retained, they have a very good chance of being caught. So, he needs to explain why he, as a moderate, constitutional nationalist, is throwing his hat in the ring with Sinn Féin on this issue.

Mr A Maginness: It is not a matter of throwing one's hat in the ring with Sinn Féin, the DUP or anyone else. It is a matter of taking this issue on its merits, examining it and coming to a conclusion based on the law and on human rights. The Member will say that it does not matter to the individual. However, where a person's DNA and fingerprints are taken and they have not committed a crime, there is an implication that they are guilty of some offence.

Mr Wells: Will the Member give way?

Mr A Maginness: I will give way, yes.

Mr Wells: The amendment extends even further than that to photographs. Mr McCartney could not answer the question, but Mr McCartney, of course, comes from a different background to the SDLP. I will deal with that later. He could not answer why it is wrong for the police to retain photographs when the passport agencies in both jurisdictions will retain routinely passport photographs for many, many years. What is the difference? I do not feel that it is a gross infringement of my civil liberties if that happens.

Mr A Maginness: I suppose the difference is that, with the passport agency, you are not involving the courts or any imputation of misbehaviour or offending or anything of that nature. It is, essentially, a voluntary action on your part to give your photograph to the passport service.

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

5.00 pm

It is to your benefit, in so far as the agency has a record of your photograph so, if you get ill or there is a problem abroad, you can be assisted. Indeed, your photograph can be used for simple recognition so that you have no problem going through customs or passport control. So there is a material distinction, I believe, between the two situations. DNA, fingerprints and photographs are all the same type of material, so it is logical that photographs should be included with DNA and fingerprints.

Mr Wells raised a point about cautions. My amendment relating to young people deals with that. I think it important that I outline to the Assembly my position on that. It is amendment No 29.

Mr Allister: Will the Member give way?

Mr A Maginness: Yes, of course.

Mr Allister: Just before the Member moves off the original point, in trying to follow through his logic about retention, I want to understand how far it takes him. Does he hold that the authorities should not be able to retain a record of the name of a person arrested?

Mr A Maginness: No, I do not believe that you could reasonably object to that.

Mr Allister: On that premise, if it is not reasonable to object to the retention of the identity of a person, how is it reasonable to object to the means of identifying a person?

Mr A Maginness: The point of distinction is that the name is simply a record. I do not believe that you are talking about a material substance, such as DNA, fingerprints and photographs. I believe that there is a distinction to be made between those three things and a person's name. It is quite clear that there is a distinction between them.

Let me go on with my point on cautions, particularly of young people, and I refer to amendment No 29. I have to say that there was a lot of lobbying on this aspect of the Bill by witnesses before the Committee. Quite a number of organisations put forward submissions or gave evidence. One was the Children's Law Centre, and others included the Commissioner for Children and Young People, Opportunity Youth, the NIACRO and GeneWatch UK.

All of them reflected similar concerns. The Children's Law Centre, for example, said that cautions do not have the same status as convictions. It said that having retention where a caution was given would be a disproportionate course of action because it runs contrary to the purported purpose of a caution.

I ask colleagues to consider a situation in which a caution is given to a young person. The reason why a caution is given is to try to avoid circumstances in which that young person will become re-involved in the criminal justice system. If an additional aspect to that caution is that the person's DNA or fingerprints are retained, it diminishes the caution and makes it appear as though you were guilty of a crime in the ordinary sense that you committed an offence. I understand the Department 's argument, which was that, whenever you accept a caution, you are also accepting that you are guilty to some extent. That is a basic proposition that I do not seek to undermine. Nonetheless, if we are trying to move young people — minors — away from the criminal justice system, I believe that this undermines the value of a caution.

A number of those organisations that I referred to repeated that argument. However, it is interesting to note that the Public Prosecution Service's (PPS) code for prosecutors states that cautions are not regarded as convictions. So, on the one hand, we have a caution that could merit retention, while on the other hand, we have the PPS code for prosecutors saying that a caution is not a conviction.

The Children's Commissioner said that it was inappropriate and disproportionate to have retention.

Mr Humphrey: I am grateful to the Member for giving way. Does the Member seriously and genuinely believe that all that he has talked about so far on these clauses since he got to his feet will help the police on the ground to make our streets safer?

Mr A Maginness: That is a proposition that I am sure the Member holds very sincerely. However, the point that I will make to the Member is that, if we materially diminish cautions in some way, I think that we will do a disservice to an alternative way of dealing with young people who offend or who are likely to offend. That is a disservice. Although you say that it will help the police and all the rest, in the wider scheme of things it might help to undermine what the police do, and it might help to undermine the whole business of good policing in the community.

Mr Humphrey: Will the Member give way?

Mr A Maginness: Yes.

Mr Humphrey: Where is the evidence for the assertion that he just made?

Mr A Maginness: I am putting forward a proposition that the various respected organisations that I referred to reflected. Those included the Children's Commissioner, who has a public duty to look after the interests of young people and children in particular; Opportunity Youth, which is, again, a respected organisation; and NIACRO, which is highly respected and which said that it was inconsistent with the spirit of the Youth Justice Review. The Youth Justice Review spoke of wiping out young people's records when they reached the age of 18 so that there would be a clean slate and they could move on. That is because they wanted to try to decriminalise

young people who offended, maybe when they were younger but, because of maturity and so forth, were moving forward.

Mr Wells: Will the Member give way?

Mr A Maginness: Yes.

Mr Wells: This is going too far. There is no evidence for anything that he is saying. Before DNA was ever discovered, young people were cautioned and, sadly, the vast majority of them went on to commit much more serious offences for the rest of their lives. Then DNA comes along, they are cautioned, the DNA test is taken and at least the police can catch them when they start to inflict pain on their community.

The Member is trying to mimic what some of the witnesses said: because the DNA of a young person who has, for the sake of argument, been smashing a pensioner's window, is retained, he then carries the scars and mental anguish of that for the rest of his life and that drives him to a life of crime because he feels that he has been branded a criminal. Absolute nonsense. The evidence indicates that the vast majority of them do not even remember that their DNA was retained in the first place, that it just happens as part of the process, and they move on.

What it does mean, however, is that life for the police is made easier if they can carry out tests to apprehend that criminal at a later stage. No one has indicated any evidence to support what was said by those three groups that came before the Committee. They are liberal in their views and are certainly not out to help the PSNI. My support lies with the policewoman or policeman out on the streets, trying desperately hard to rid our community of individuals who are torturing it. That is where my sympathies lie; not with some mythical, non-existent evidence that people carry the burden of their DNA being kept in some locker in a police station.

Mr A Maginness: Those organisations are not anti-police. They are not opposed to law and order or good policing. In fact, they are for good policing and law and order. They want to bring about a situation in which young people who are offending cease to offend or to stop people offending in the first instance. Their bona fides, I believe, are well established in the community.

Government recognises those bodies. The Children's Commissioner is an official public post. NIACRO is a very respected organisation that does tremendous work in the community. If some of the policies and measures that those organisations talked about were put in place and into practice, we would probably have much less offending. That is their opinion. I accept the point that you are making and have made a number of times, namely this: where is the evidence?

Mr Wells: Non-existent.

Mr A Maginness: Where is the evidence in relation to the proposition that you make? It is an opinion —

Mr Agnew: Will the Member give way?

Mr A Maginness: In one moment. It is an opinion that those organisations are expressing, but one that is considered, reasonable and has the interests of the wider community at heart. I do not think that it is just some nonsense that people have cooked up to satisfy their own sense of ego.

Mr Agnew: I thank the Member for giving way. Does he agree that privacy is a very subjective matter? In this House, we all forgo and concede a significant amount of privacy.

To give an example of where somebody may be very protective of their privacy, there are people on Facebook on whose profiles, if you search for their name, you will find only their name and no pictures or personal information because that is what they choose. Being on Facebook and being viewed on Facebook is in no way an implication of criminality but they still feel that, to protect their privacy, they want to retain that information and to release it only to those whom they choose. That is how they wish to maintain their privacy, and that privacy is protected under human rights law. It is not for us to decide what someone should or should not include under privacy. That is for them to decide. What the human rights laws protect is people's privacy, and that is what we are talking about.

5.15 pm

Mr A Maginness: I am grateful to the Member for his comments. I agree with him entirely. But I suppose, in a sense, I am now about to contradict myself. The two amendments that I put forward are a compromise. The compromise is to accept that retention lasts for a period of up to five years. The point I am making is that that is a compromise. I accept that it would be very difficult for the Department to concede the full argument that there should be no retention whatsoever.

The desirable and ideal situation is that there be no retention at all in relation to cautions. However, we live in the real world, and the Department errs on the side of caution, if I may put it that way. Therefore, it will have no truck with that particular argument. So, I am not being purist at all. I am putting forward a proposition that is reasoned and reasonable and restricts retention to a five-year period. That is a reasonable position to adopt. I ask the DUP, in particular, and the Ulster Unionists to revisit this. It would be a pity to divide the House on the issue. You will have another week to think about it. Think long and hard, and come to the right decision, which is to support my amendments. I think that we could make progress on that.

I will conclude there, Mr Principal Deputy Speaker. There are no other issues that I need to enlarge upon at this point.

Mr Dickson: Mr Wells and I are probably going to have to agree again in this Chamber. I will give him my liberal view, and that is that DNA should be retained.

Mr McCartney takes the view that permitting the retention of material from unconvicted persons does not go far enough in addressing the Marper judgment. I think that that is where he is coming from on that. I always think that it is perhaps important that people get a full understanding of what a particular judgement is saying, what it is about, how it fits and what it is trying to do.

Mr McCartney appears to wish to interpret the Marper judgment as saying that no material should be retained from anyone not convicted. Quite clearly that is not what the decision is about at all. The decision says that it is permissible to retain material from those persons who have not been convicted. Therefore, it is perfectly reasonable to have an appropriate framework that holds an appropriate database to allow the police and the judicial system to go about their job of protecting the public. That is very clear. The retention of a person's private data cannot be equated in any way with the voicing of suspicions against that individual.

The amendments brought forward in respect of the retention and destruction of photographs were also briefly raised during the Committee's deliberations. It was argued that the photographs do not represent the same intrusion into a person's privacy, because they are not searchable, for example, in the same way as DNA and fingerprints —

Mr McCartney: Will the Member give way?

Mr Dickson: I will.

Mr McCartney: I have no desire to put the Member in a position. However, let me read the evidence given to the Committee by a departmental official in response to a question from Basil McCrea. He asked:

> *"What if the case has been before the courts and the individual is found to be innocent?"*

The response was:

> *"It is a question of balancing the protection of the public in that there was, at some point prior to acquittal, for example, sufficient suspicion of an individual."*

Therefore, the Department is actually saying that it is being retained on the basis that there is sufficient suspicion. Where is the presumption of innocence?

Mr Dickson: I am not sure that you can have a direct read-across to a presumption of innocence. This is about retaining information that allows the police and other parts of the judicial system to go about their duties and to safeguard those individuals, by allowing the appropriate authorities to eliminate them from a specific case or, within the framework, from proceedings at some future stage.

I will press on with photographs. The Justice Committee was told that the Association of Chief Police Officers had set up an appropriate working group. It is working with the PSNI to bring about management information guidelines, which will make the retention of photographs compliant with the European Convention on Human Rights. That is valuable and welcome. We accept that that is important work and that it is under way. It should be allowed to continue unhindered until brought to a satisfactory conclusion. Therefore, we are not prepared to support amendment Nos 18, 19 and 31.

Reference has also been made to amendments relating to the role of a proposed biometric commissioner.

Mr Agnew: Will the Member give way?

Mr Dickson: Yes.

Mr Agnew: I would like clarification on the issue of photos. I am in the position of listening

to the debate before I make up my mind, which I know is rare in politics. What is the Member's differentiation? He mentioned searchability, but my understanding is that there is technology that allows you to search a photo database. The point has been made about why we should distinguish between a name and a photo. Why should we distinguish between a photo and a fingerprint?

Mr Dickson: Without going into too many details, I think that some Members and, sometimes to the benefit of the police, too many people seem to think that what they see on 'CSI' works in reality. As I understand it, the reality is that photo databases are not searchable and do not work in that way. We are a very long way off having to mistrust the retention of photographs.

I will move on. The Northern Ireland Human Rights Commission stated that it had no difficulty with the appointment of a biometric commissioner, as it could make for a more efficient operation of the state. It made the point that it cannot go into every courtroom every time that there is a dispute of this nature. However, it also wanted guarantees that the commissioner would conduct his or her duties in compliance with human rights obligations. Of course, those obligations would fall to it, as a public authority, and it would be required to observe the ECHR. That should allay any reservations about non-compliance.

The Committee was told that the Department explored, with the police and the courts, the prospect of the latter taking on responsibility for the proposed role of a biometric commissioner, but they were reluctant to do so, as the police could not estimate the number of cases on start-up. The number is likely to be considerable, especially as historical abuse cases are being processed along with other cases, as the Chair of the Committee pointed out.

If the courts were to accept the task, it should be borne in mind that reporting restrictions could be imposed on them. Court hearings are public hearings, and there may be people who wish to challenge the biometric retention of information about them, but they would not want that to form part of public proceedings. Therefore, it is fair to suggest that the commissioner would be a more appropriate route for looking at and challenging the retention of biometric information.

We believe that a commissioner taking on that role, subject to the ECHR, would be better for the provision of faster, fairer justice but that it should be kept under review. It is more appropriate for a commissioner than it is for the courts, which would allow for the retention of that information in a public forum, rather than through the private route of a commissioner's office, but subject to ECHR scrutiny. Therefore, we cannot support amendment Nos 22, 23 and 25.

I will now turn to juvenile cautions and amendment Nos 29 and 33. The Children's Law Centre pointed out to the Committee its concerns about under-18s who receive two cautions for minor recordable offences having their DNA and fingerprints retained indefinitely. A number of other respondents also expressed concerns about the status of cautions with regard to under-18s.

Having considered those matters, the Alliance Party is prepared to support the amendments that have been tabled by Mr Maginness that remove indefinite retention and introduce retention for five years. Indeed, that seems to be a proportionate response. It is just a pity that he cannot extend that response in a proportionate way to other retentions. It strikes an appropriate balance between protecting the public and ensuring that under-18s who have accepted their guilt do not have their DNA and fingerprints retained for the rest of their life.

Finally, amendment No 30 relates to the Criminal Procedure and Investigations Act 1996. It is my understanding that the Act provides for the safeguarding of material so that it can be used in certain appeals, thus working to prevent miscarriages of justice. Removing the exemption would mean that such material would be destroyed to the detriment of fairness and accuracy in the justice system. It seems wrong that we would destroy material that could be used to overturn a conviction at some stage in the future. For that reason, my party will not support the amendment. We will oppose the Sinn Féin amendments and support the SDLP amendments and the Bill as it stands.

Mr Wells: In his absence, I pay tribute to our Chairperson, Paul Givan, who has guided us through this very difficult legislation, and, of course, our very loyal and helpful staff. I must say that I think that we all agree that Paul has shown himself to be a rising star in the Assembly.

Mr Hamilton: He will be damned now.

Mr Wells: Yes; I suppose that is the kiss of death to his political career, I should say. Not to be facetious —

Mr A Maginness: What about the Deputy Chair?

Mr Wells: No, no; Mr Givan is a rising star. Mr McCartney falls into my age group of political has-beens.

Certainly, in my opinion, Mr Givan has been extremely effective in his chairmanship of the Committee and has worked well with our experienced staff to guide us through what is a very difficult issue. Again, it is confirmation of the need to have the Assembly that, rather than having direct rule Ministers simply laying it down as Holy Writ, we can, in a democratic society, debate, analyse and take evidence on those very important issues.

It also has to be emphasised that, with regard to the vast majority of the Bill, there was unanimity in the Committee. There was no falling out, but there was an issue that divided the Committee right down the middle week after week. I think that the dichotomy is between those who support the police and want to do absolutely everything that they can to help the PSNI in its extremely difficult task of trying to keep people safe from criminals, and those who, for very obvious reasons, support the police outwardly, but still resent some of what they did in the past, and will do only the basic minimum to help them in their task.

Let us be honest: the elephant in the room is that we all know why Sinn Féin would not want the retention of DNA, fingerprints and photographs. The reality is that, had those techniques been available effectively in the 1970s and 1980s, an awful lot of its erstwhile friends would have been locked up long ago for their terrorist crimes. Therefore, Sinn Féin, by its very DNA and nature, will always oppose anything that facilitates the police in nabbing the criminal. That is its history. We expect that from Sinn Féin.

Mr McCartney can use all the lines and propaganda that he has been given by Connolly House, but we know his background. We know where he has come from. We know where many of the other Members on those Benches have come from. They have come from a terrorist background. Hopefully, that is in the past, but that is where they have come from. They will resist anything that facilitates the work of the PSNI. They may sit on the Policing Board and the district policing partnerships or the CSPs, as they are now called. They may sit on the Justice Committee, but theirs is a very lukewarm and tacit support for the PSNI and the work that it does.

5.30 pm

The surprising aspect of this is not Sinn Féin — I expect it from them. The real surprise is the SDLP. The SDLP has not only opposed these techniques being used effectively by the police but, even worse, signed the petition of concern. It knows full well the implications of signing that petition of concern. Those of us who have tried to work with the SDLP at a local level have seen a greening of that party in recent weeks. We have seen it in the Gerry McGeough issue and the McCreesh park issue in Newry, where Mr Bradley's friends in Newry and Mourne District Council meekly put their hands up to support the naming of a play park after an IRA terrorist.

Mr Principal Deputy Speaker: Order. I remind the Member to come back to the Bill. We are straying slightly beyond it at this point. I ask the Member to come back to the Bill to debate the issue.

Mr Wells: I was actually allowed to stray further than I expected. *[Laughter.]* I am very pleased that I got as far as I did. We have seen that greening, and it has now been shown.

Mr Agnew: Will the Member give way?

Mr Wells: Certainly.

Mr Agnew: I ask the Member please to use a term other than "greening", because he and I could both be accused of being green but maybe not in this regard.

Mr Wells: I use "green" not in the sense of sound environmental policy but in terms of republicanism.

They have become more republican. They have meekly — no doubt instructed by their friends in Sinn Féin — walked into the Speaker's Office and signed the petition of concern. They know the implications. They had the option this afternoon — it is rapidly becoming this evening — of fighting the valiant fight by putting down a marker, expressing their concerns and voting accordingly or of putting their name to a petition of concern knowing that they will effectively block everything.

We are now in a bit of a mess, because of the petition of concern and the fact that the Minister will now not move some of the amendments, which means that we will have to come back and start all over again. They still have time to recant, confess their sins, come to the Speaker's Office with those others who are

looking repentance as well, change their minds and adopt a much more moderate approach. That could be done without any loss of face or principle. They still have that opportunity. However, if they — so-called constitutional moderate nationalists, with a very small "c" and a very small "m" at times — persist in what they are doing, the legislation will inevitably be considerably weaker, and criminals will get off as a result.

Mr McCartney, again using his text supplied by Connolly House, and, to a lesser extent, Mr Maginness — probably original thought in his case — have said that there is no evidence that the retention of DNA photographs and fingerprints will lead to a greater level of convictions. I do not care, because if the retention of DNA means that one rapist in Northern Ireland is caught and stopped from terrorising the women of this Province, as has happened in England and Scotland on many occasions, it is all worthwhile.

With modern technology, a minute sample of DNA can give evidence to help in a conviction. I say "help in a conviction", because all the evidence indicates that DNA is additional to other evidence, but sometimes it is crucial. Evidence beyond DNA is still required to prove a case beyond reasonable doubt. There is very little indication that anyone on the mainland has been convicted entirely as a result of DNA evidence, but it has been used as corroborating evidence. This will make life more difficult.

I am not interested in the viewpoint of liberal organisations such as the Children's Commissioner or Include Youth; I am interested in the people at the coalface of catching and prosecuting criminals in Northern Ireland. The evidence from the police, when they came before us, could not have been clearer. They made it absolutely clear that they wanted the option to retain that material as it would help them greatly in their very difficult task of protecting our community.

What was evident from what was said by Mr McCartney, Mr Maginness and, of course, Mr Agnew, who is the arch-liberal, so we expect it from him — sound on the environment but heretical on everything else — is that there is not a shred of evidence to indicate that the retention of DNA and, of course, now photographs, which has come into the mix as well because Sinn Féin wants even photographs to be destroyed, causes any psychological trauma to the individuals concerned, many of whom simply forget about the fact that it has been taken or perhaps do not even know what was taken.

So there is no evidence. They cannot bring before me scores of young individuals who say that their lives have been traumatised and they have been carrying this burden of guilt on their shoulders —

Mr Agnew: I thank the Member for giving way. I will make a couple of points. First, I hope that his commitment to evidence is as strong when it comes to proposals for stricter penalties, longer sentences and, indeed, from some his colleagues, the death penalty — I do not know whether he shares that view — despite evidence that such things are counterproductive.

Secondly, I heard the exchange between Mr Wells and Mr McCartney. The debate has become a black-and-white, polemical one: we should retain DNA completely in every case all the time; or we should never retain DNA in any case if someone is not convicted. The Bill highlights different cases. In some cases in which people are deemed innocent, DNA is destroyed. In other cases, distinctions are made; the Member mentioned rape, which is the perfect example of there being good, sound reasons for retaining DNA. It is not my job to bring the debate back to the Bill, but can we recognise the fact that we do differentiate? If Mr Wells's view is correct that there is never any reason to destroy DNA, why is he supporting a Bill that states that we should?

Mr Wells: The reason why we are in this predicament is because of the so-called European Court of Human Rights, which does not mean the European Community. People fail to remember that membership of the European Court of Human Rights stretches from the Atlantic Ocean to the Caspian Sea and includes representatives from judiciaries of countries whose human rights records fall well below anything that would be acceptable in western Europe.

In a test case, those individuals have ruled that, as a society, we have to restrict the opportunities to retain DNA, fingerprints and photographs. We are bound by that, and I am not happy that we are bound by it. I am not even happy that we are part of the European Union. I voted no 30 or 40 years ago, and I would still vote no today. Involvement in the internal affairs of our society has gone way beyond a European common market and is now becoming a European federal system. However, we are stuck, we are in it, we have signed up to that convention, and they have ruled in a test case that we have to take action. Within that judgement, we should go as far as

possible to retain what we can, which is what we are trying to do as a party.

I congratulate Mr Elliott on his speech and appreciate what he said. He is absolutely right. Unfortunately, I also have to congratulate Mr Dickson. It grieves me to do that because the last time I did so, he put out what I had done to several thousand Twitter followers, so I was branded. No sooner had I said it and checked my Twitter messages than there he was saying it, and the whole world knew about it. He will do the same today.

We are trying to push the boat out as far as we can within the terms of a judgement that we do not accept in the first place. However, we are stuck with it. That judgement certainly does not force the Northern Ireland Executive and the Minister of Justice to destroy photographs. So the Sinn Féin amendment is totally unacceptable, and we will vote against it.

What are we going to do? Sadly, the vast majority of young individuals who are cautioned are guilty in the sense that the police apprehend them for a crime to which they admit, and there is absolutely no doubt. A police officer is not making that decision. On the basis of the person being guilty, a police officer is deciding on the best way to deal with the situation. Do we give him a caution?

Mr Agnew: Will the Member give way?

Mr Wells: Certainly.

Mr Agnew: I come back to the issue of evidence. Young people, as they mature, make mistakes, and bringing them into the juvenile justice system very often makes them more likely to reoffend. Given the Member's commitment to evidence, does he agree that the logical follow-on is that we should not caution young people at all?

Mr Wells: I am not a complete Luddite so I can understand how a police officer, faced with a certain set of circumstances, decides that the best way to deal with that case is through a caution. However, several years down the line, it will be found that the vast majority of hardened criminals started in their teens. If, under caution, you can take DNA, fingerprints and photographic evidence, you will have the evidence to catch those people if, sadly, they become hardened criminals.

Implicit in what Mr McCartney is saying, and with which the nodding donkeys of the SDLP agree, is that, somehow, that evidence will be abused. What I am waiting for, from the combined brains of the opposition, is one piece of evidence or indication of any case in the United Kingdom in which DNA evidence has been tampered with, manipulated or used to convict someone who is entirely innocent. That is implicit in what they are saying about the retention of that material.

The overwhelming evidence, particularly in sexual crime, where DNA is frequently used in evidence, is that many dangerous, evil men who are behind bars would not be there had there not been DNA evidence. Without going into the mechanics of it, a DNA trace is often left after some horrible rape or sexual assault.

Mr Agnew: Will the Member give way?

Mr Wells: Yes.

Mr Agnew: I come back again to the distinction made in the Bill. I asked Mr McCartney to give way just as he sat down, so I did not find out whether he supports the distinction, but I certainly do. For certain listed crimes, such as rape, DNA will be retained for the reasons that the Member outlined. It is important to make those distinctions. It is not all or nothing; distinctions can legitimately be made.

Mr Wells: The Member for North Down has to realise that it is absolutely inconceivable that a serious sexual crime would be disposed of by means of a caution. You are not going to catch the criminal at the stage of their being cautioned, when it is more likely that he or she has smashed a pensioner's window, caused damage to some vulnerable person's car, or something like that. That is where the caution is likely to be exercised; certainly not in the case of a serious sexual assault. The problem is that, if that individual goes on to commit a really serious crime, you tie police officers' hands behind their backs if you do not allow them access to the latest technology.

DNA has the potential to revolutionise how we detect crime in Northern Ireland. The Committee went to Carrickfergus and saw some of the evidence. The level of evidence that can now be achieved from the tiniest fragment of DNA is extraordinary. You see how the scientists can enhance DNA —

Mr Humphrey: I am grateful to the Member for giving way. There are considerable levels of so-called antisocial behaviour — low-level criminality — in some constituencies. Mr Maginness will be well aware that there are many pockets of it in North Belfast. People in

the lower Falls are being terrorised in their homes because of so-called joyriding and car theft, which, I understand, occurred at 10.00 am at the weekend. What would those people think about what their representatives advocate today, following on from their refusal to support the National Crime Agency (NCA) a few weeks ago, refusing to give all the teeth that are needed — *[Interruption.]* The Members may laugh, but the people living in those areas, who contact my constituency office as well as yours, are fed up with how they are being treated and with their views being ignored by their so-called representatives.

Mr Wells: Had I been allowed to wander further down the road before the Deputy Speaker caught me, I would have mentioned the NCA issue.

Mr Principal Deputy Speaker: I remind the Member to come back to the Bill. *[Laughter.]* This time, he should not go further on down the road.

Mr Wells: I did not do that because I knew that I would have been stopped immediately in my tracks.

There has been a change in attitudes to policing in my constituency. I went to a meeting with the police in a strongly nationalist estate in Downpatrick. The meeting was packed, and people were screaming at the police. What was interesting is that they were screaming that they wanted more officers on the beat, more patrols and a higher police presence in the area because they were being tortured by young hoodlums and vandals who were often from their community.

That was a bit of a paradox but also a very encouraging development. People were not screaming to claim police bias or to complain that the Catholic community was being downtrodden. That was not the case; they just wanted a bigger police presence. I am absolutely certain that, as the honourable Member for North Belfast said, those individuals would react very badly if their public representatives failed to allow the police to have the weapons that they need to carry out their difficult task.

5.45 pm

It is very frustrating that, sometimes, when you meet the police, they tell you that they often know the identity of the person who has carried out a crime but that they unfortunately do not have the evidence to convict. The whole community, including the dogs on the street, as they say, know who carried out the crime. Therefore, why would we deny them the resource that has been developed at great expense throughout the world to enable them to detect those individuals? That is the issue.

Finally, and I will finish with this, people who get their DNA taken, receive a caution and do not reoffend have absolutely nothing to worry about. Would someone please tell me how, if that evidence were retained indefinitely, it could be abused? If you never came to the PSNI's attention again, why would they need to go back to their labs, bring out that material and use it?

Mr McCartney mentioned my experience. I have nothing to worry about. They can keep my DNA until the cows come home, because I hopefully will never commit a crime where they are going to need it. If I do something that requires them to bring that material out and test it again, I will deserve exactly what I get, because I will have committed a crime. However, I have nothing to fear, and the vast majority of ordinary, decent citizens who have had DNA profiles retained have nothing to fear.

Mr D Bradley: Will the Member give way?

Mr Wells: Certainly.

Mr D Bradley: The Member made a very strong speech on law and order. I would be more convinced by his speech had his party condemned the illegal protests that took place, many of which ended up with —

Mr Principal Deputy Speaker: Order.

Mr D Bradley: — people petrol bombing police.

Mr Principal Deputy Speaker: Order. The Member should take his seat. We are dealing with a Bill, not protests or any other issue. I ask the Member to retake his seat and the other Member to finish.

Mr D Bradley: On a point of order, Mr Principal Deputy Speaker. You allowed Mr Wells a fair degree of latitude on these issues.

Mr Principal Deputy Speaker: First, I did not allow any latitude. Secondly, I would advise you not to challenge the Chair.

Mr Wells: I think that the Principal Deputy Speaker may react so badly to that challenge that he may resign from this Assembly in the

next few weeks, such will be his hurt about what you said to him. You will be responsible for that.

The Committee has argued this point ad nauseam. If truth be known, we got absolutely nowhere in reaching an agreement. I have to accept that. We are going to argue it ad nauseam again here this evening, and, unfortunately, we are not going to reach an agreement. You will never shift Sinn Féin on this. I accept that. For very obvious historical reasons it fears DNA.

I suggest that the SDLP and the Green Party rethink where they are going. The one thing that I am determined that we should not do is to put ourselves —

Mr A Maginness: Will the Member give way on that point?

Mr Wells: Yes.

Mr A Maginness: The SDLP amendment is all about cautions, and the SDLP has shifted ground on cautions. We have said yes to five years' retention, while the previous situation would probably have meant indefinite retention. I think that the parties on the opposite Benches should reconsider their position so that they can have a more nuanced or balanced position and take into consideration the very reasonable points that Mr Agnew, the SDLP and, dare I say it, Sinn Féin made on the whole position on cautions and people who have been charged and not convicted.

Mr Wells: As far as our group changing its view on this particular issue, pigs might fly.

I suggest to the Member that the removal of the petition of concern would help matters enormously. I think that that is the problem. I have no difficulty with him opposing what we are suggesting, but I think that it is a problem to use a petition of concern while knowing the seriousness of the consequences for the legislation. Maybe his party will wish to reflect on that between now and next Monday. I think that that is a very dangerous precedent to set. However —

Mr Poots: Will the Member give way?

Mr Wells: Certainly.

Mr Poots: This party has been criticised before for using petitions of concern. The SDLP is making this a sectarian issue, and that reflects very poorly on it, in that we have a nationalist block opposing this. The SDLP and the Green Party have demonstrated that they are soft on crime and soft on the causes of crime. Sinn Féin always courted the criminals.

Mr Wells: That is a clear and succinct encapsulation of the situation that we are in. It disappoints but does not surprise me, given the trend that we have seen of the SDLP drifting further and further into the Sinn Féin camp. The Principal Deputy Speaker will no doubt stop me at any second, so I will drift away from that.

We have an opportunity to rethink, because we are coming back to this on Monday. I hope that wiser counsel will prevail and that we can reach a sensible conclusion on this — one that does not pander to those who, frankly, fear any technology that is available and any new techniques to prevent the criminal. Many of them were up to their neck in criminality for many years.

Mr Ford: I am tempted after that last exchange between Mr Maginness and Mr Wells to say that, instead of each of them suggesting that the other should be reasonable and agree with them, they should both suggest that everybody agree with the Minister. However, I have no expectation of that happening.

One point has been floating around the Chamber for some considerable time, and it started with Mr McCartney's opening remarks. I have absolutely no reason to believe that the proposals I am putting forward in the Bill and in the amendments that I have tabled are, in any way, not compliant with the Assembly's obligations under human rights legislation. Mr McCartney asked me that question, and I give him that straight answer.

The first issue raised by most Members who spoke was that of photographs. Amendment Nos 18, 19 and 31 were tabled by Mr McCartney and his colleagues, who want photographs to be brought within the retention framework and made subject to the same destruction rules as DNA and fingerprints.

The photographing of suspects and the use, disclosure and retention of such photographs is provided for in section 64A of PACE and is applied in the same way as under the equivalent provisions in England and Wales. That statutory provision is supplemented by guidance on the management of police information provided by the National Policing Improvement Agency on behalf of the Association of Chief Police Officers (ACPO). That sets out the processes that support the

principles set out in the management of police information (MoPI) code of practice.

That came to the attention of the courts in England and Wales last June in the case of R (RMC and FJ) v the Commissioner of Police of the Metropolis. The case in question, which has been referred to already, involved the retention by the Metropolitan Police of the photographs of two individuals. On that occasion, the court was not satisfied that the existing policy struck a fair balance between the competing public and private interests or met the requirements of proportionality.

Lord Justice Richards, in the High Court of England and Wales, declared the policy as set out in the code of practice and guidelines unlawful, but allowed a reasonable further period within which to revise that policy. He stopped short of directing the destruction of the photographs without allowing the possibility of reassessment under a revised policy. I stress that that judgement was not, in any way, a reflection on PACE.

Following the judgement, ACPO set up a working group, on which the PSNI is represented, to bring the MoPI guidelines and the retention and use of photographs under them into compliance with the European Convention on Human Rights. That work is under way, and the PSNI will implement the outcome. I intend to let the police see that through to its conclusion and do not intend to bring photographs within the retention framework at this time.

Let me repeat some of the key points on that: the human rights and professional standards committee of the Policing Board is following the issue and has undertaken to keep it under review; the issue of photographs is being addressed by a police working party; and the court did not prescribe a legislative solution but directed the police to revise the policy, which is work in hand. Very specifically, given that we discussed legislative consent motions earlier, a decision of the English High Court is not binding on Northern Ireland courts, although it is generally regarded as persuasive.

I am satisfied that an administrative solution can be a satisfactory way of dealing with the issue. I intend to let that work take its course. I remind the House that photographs are not included in the retention framework in Scotland, which is regarded as the exemplar of good practice in these islands, nor in England and Wales, so I do not believe that it is necessary to bring photographs into the retention framework in Northern Ireland at this time. I therefore oppose amendment Nos 18, 19 and 31.

I turn now to some of the amendments that I am bringing forward, starting with Amendment No 20. Article 63C currently provides that fingerprints and a DNA profile may be retained until the conclusion of an investigation or any related proceedings. However, it was pointed out during the Committee Stage that an individual might be excluded from an investigation relatively quickly, but the investigation itself could remain open, potentially for several years. The policy intention in relation to that article was that the material could be retained until it had been established that it was of no evidential value to the investigation, in relation to either the person from whom it was taken or any other person.

Amendment No 20 to article 63C will tie retention to the perceived utility of the material, rather than the conclusion of the investigation, and will require it to be disposed of once it is clear that retention no longer serves any useful purpose. That seems to me to be an entirely proportionate approach. While I am talking about that, earlier in the debate I undertook to give the statistics on the number of people likely to be included in the database. In round figures, in Northern Ireland the database currently holds something like 5% of the population. Under the new framework, that will be reduced to 4%. Under the new arrangements in Scotland it is 6%, and in England and Wales it will be 8%. In the USA it is 3·5%, and in France it is 1·4%.

There is no doubt that, while the databases in the UK generally are something like three times the European average, they have proven to be 20 times more efficient in terms of dealing with it. For example, we have seen in recent years that the database in Northern Ireland — of course, it is not the database that convicts people; it is police investigation and a full evidence base that convicts people — has provided 700 investigative leads to the PSNI in recent years which they would not otherwise have. If we are serious about fighting crime, that is an entirely reasonable and proportionate position to take.

I have already indicated that I will not be moving amendment Nos 21, 24 and 26 at this stage, although the Chair has already detailed the issues as to why I believe that they would be an appropriate and proportionate way forward.

The first part of amendment No 34 makes the changes required to article 89 of PACE, making

any order to revise the circumstances subject to the affirmative procedure in this place and not simply the negative resolution procedure. As previously indicated, the prescribed circumstances will focus on cases where the alleged victim of the offence was, at the time of the offence, a juvenile, a vulnerable adult or associated with the person to whom the biometric material relates. When cases do not engage those criteria, the Chief Constable will also be able to apply to retain material where he is satisfied that the grounds exist to do so in the interests of the protection of the public.

At an earlier stage I undertook to explore the merits of making applications for retention of material in the prescribed circumstances subject to the approval of the courts, rather than the commissioner. Amendment Nos 22, 23 and 25 from Mr McCartney and his colleagues are aimed at achieving that result. Following discussions between my officials and representatives of the Police Service and the Courts and Tribunals Service, it is apparent that, without experience of operating the new framework, there is little clarity around the likely volume of cases and the consequent resource implications of that. However, there is a general sense that it is likely to be significant when the new framework is first implemented and historical abuse inquiries are processed, along with other cases, but the workload may tail off over time. I therefore propose to proceed with the appointment of a commissioner for the moment, but will keep the matter under review.

A number of points have been made around the application to the courts rather than a commissioner. One of the key issues, which has already been highlighted by Stewart Dickson, is that, if the courts were to accept the task, although reporting restrictions could be imposed, hearings would be in public and there would be a requirement for an applicant to make representations in court in public, with — as was said very tellingly — the risk of public opinion reaching a different view on innocence than that which would be in the formal determination. That could well undermine the willingness of some people to make such representations — people who were justified in doing it.

It is extremely noteworthy that the Northern Ireland Human Rights Commission had no problem with the appointment of a biometric commissioner, as it could make for more efficient operation of the state, given that we cannot go to the courtroom every single time. That is a view that has been expressed by some of the responsible NGOs dealing with the issue.

The commissioner, of course, would be a public authority within the definition in section 6 of the Human Rights Act 1998, which makes it unlawful to act in a way that is incompatible with convention rights. That would mean that any applicant dissatisfied with the hearing by the commissioner would have the opportunity to seek a judicial review.

On that basis, I believe that it is appropriate to continue with a biometric commissioner rather than leave all the issues to the courts. It would be in the better interests of justice to do so, and I am therefore opposed to amendment Nos 22, 23 and 25.

6.00 pm

A general issue around these points has been raised on the presumption of innocence. Some of the suggestions that have been made have gone beyond the actual realities of the European Court judgements. I certainly do not believe that we should presume that every person who has been arrested is a criminal, and the Bill does not do so. It provides for the retention of materials in certain specified and limited circumstances. In particular, those who are arrested for a serious offence and are charged but not convicted will only have material retained for three years with the potential for a further two years on application to the court. Only in cases of conviction for a recordable offences will material be retained indefinitely, as is currently the position and has been held to be out of line with ECHR requirements in the context of judgements relating to England and Wales and Northern Ireland.

I believe that the Marper judgement has shown that we can deal with that adequately by following broadly the Scottish pattern. The Marper judgement was concerned solely with indefinite retention from those who were not convicted. It was specifically in that regard that paragraph 109 of the Marper judgement stated:

> *"the Scottish Parliament voted to allow retention of the DNA of unconvicted persons only in the case of ... violent or sexual offences and even then, for three years only, with the possibility of an extension to keep the DNA sample and data for a further two years with the consent of a sheriff."*

Paragraph 110 continues:

"This position is notably consistent with Committee of Ministers' Recommendation R(92)1, which stresses the need for an approach which discriminates between different kinds of cases and for the application of strictly defined storage periods for data, even in more serious cases".

Clearly, therefore, the court did envisage retention from unconvicted persons in certain circumstances. That is what we are applying in the legislation.

There is no doubt that, as the research suggests, those who have been arrested but not convicted have a significantly higher risk of being convicted of a future offence than otherwise similar individuals who have not previously been arrested. That risk does not diminish to the same level as in the general population until a period of between three and five years.

Mr Wells: Will the Minister give way?

Mr Ford: I will give way to the Member.

Mr Wells: Does the Minister accept that that totally demolishes the argument being made by the SDLP and Sinn Féin representatives? We rest our case.

Mr Ford: Although Mr Wells is absolutely correct on that, the fact that it refers to those who have been arrested but not convicted having a significantly higher risk does not necessarily tie in with the remarks that he made earlier in the debate when, I believe, he said that the vast majority of young offenders go on to offend further. That is equally lacking in evidence. I am grateful for his support for my position, but I am afraid that I cannot support the remarks that he made earlier.

The position is clear: if conviction is not the outcome, it is only in cases involving serious offences that material will be retained and only for a limited period. Retention in cases involving an arrest but no charge will require that independent consent. That is proportionate.

One of the cases that has been quoted — it is a case that has been made by the police — concerns issues where allegations of rape have been made by different women against one individual. It may be something that happens late on a Friday or Saturday night, when the individuals are unable to give particularly good evidence on the basis of their state of intoxication and where it may well be the case that the alleged perpetrator alleges that the sex was consensual. In those circumstances, where similar allegations are being made, retaining a DNA sample and a fingerprint sample in the absence of charges seems to me to be potentially a most appropriate and proportionate way to deal with the potential of future offending. It would not apply in every case in which an allegation is made but in serious cases in which there is strong evidence. It is not about deprivation of liberty or having a criminal record but a limited retention of DNA and fingerprints for three years and possibly an additional two years on application to the court. I believe that that is justified and proportionate.

I will now turn to the area of juvenile cautions and, in particular, amendment Nos 29 and 33, which were tabled by Mr Maginness. As introduced, new article 53B of PACE, inserted by paragraph 3 of schedule 3 to the Bill, treats cautions as convictions for the purposes of the retention of DNA profiles and fingerprints, which would allow material to be retained indefinitely. That is because, for a caution to be awarded, the individual concerned must admit to the offence in question. There is mitigation for juveniles built into that. As with a conviction, if it is a first minor offence, the material may not be held indefinitely but for a period of between five and 10 years only, depending on the length of the sentence. However, on conviction or caution for a second offence, material from juveniles may be held indefinitely.

Concerns have been raised with me and my officials and in evidence to the Committee for Justice around the proportionality of allowing indefinite retention in the case of a juvenile who is given two cautions. Mr Maginness has tabled amendment Nos 29 and 33, which would decouple juvenile cautions from the indefinite retention provision and, instead, create a free-standing provision that any caution awarded to a juvenile would attract retention for a maximum of five years in each case. Cautions awarded to those aged 18 years or over would be unaffected. In his remarks, Mr Maginness outlined the different ways in which cautions are treated across different aspects of the justice system, which creates an inconsistency whichever way we deal with it.

Mr Maginness also talked, although not in reference to his formal amendment, about the issue of a clean slate at 18 and the youth justice review. There is a danger that, if we simply talk about a clean slate at 18, it could mean that a 17-year-old might have a clean slate after only a few weeks whereas, in the same circumstances, a 13-year-old would have the record retained for five years. That would

be an anomaly, and I hope that he will not proceed with an amendment in that context.

In the context of the framework as a whole, I believe that amendment Nos 29 — the new article 63HA — and 33, tabled by Mr Maginness, will be appropriate and proportional. I will support them.

I turn again to some of my amendments around diversionary youth conferencing and penalty notices. I intend to bring those two further proposals into the framework. Diversionary youth conferences, like cautions, may be employed only in circumstances where an individual admits to the commission of an offence. I propose, therefore, to treat those in the same way as is now proposed for juvenile cautions, allowing retention for a maximum of five years in each case. Amendment No 27 incorporates those provisions as new article 63HB.

Secondly, the provisions in the Justice Act (Northern Ireland) 2011 introducing penalty notices were brought into force on 6 June last year. Such notices should now be brought within the retention framework where the individual concerned has been arrested in connection with a recordable offence. Amendment No 28 will, therefore, add new article 63HC permitting retention in such cases for a period of two years only. That is consistent with the position in Scotland, England and Wales.

I do not intend to speak to amendment No 30, since Mr McCartney has indicated that he will not move it.

I turn then to amendment No 32. The Committee Chair has acknowledged that this relates to a technical issue raised by Forensic Science Northern Ireland about the definition of a DNA sample. It is appropriate that we have that definition, in line with its advice, to ensure that the statement is simply that a sample is a sample taken for the purpose of deriving a profile. That is technical language, but it is the appropriate way of handling the issue.

Finally, the second part of amendment No 34 — I referred to the first part earlier — corrects a drafting error in paragraph 6 of schedule 3 to the Bill. That error escaped the legislative draftsman until now, and I do not think that any comment has been made on it.

I trust that is a satisfactory summary of the differing views. I believe that the proposals as they stand in my name, both the existing Bill and my amendments, and those put forward by Mr Maginness are an appropriate, proportional and rational way of moving forward. I thank the Members who contributed to the debate from different directions. I also repeat my thanks to my staff and the Committee for the work that they have done so far.

Mr McCartney: Go raibh maith agat, a Phríomh-LeasCheann Comhairle. I thank everyone who has spoken in the debate. I want to briefly restate a number of issues and address a couple of points that have been made. Nothing that I have heard today has shaken our belief that this has to be based on the principle of presumption of innocence. That is a principle on which we test all that we do and —

Mr Agnew: Will the Member give way?

Mr McCartney: Yes, sure.

Mr Agnew: I made this point when I was addressing Mr Wells. He raised the issue of rape, and, as the Minister pointed out, there is a compelling reason for treating that as a different case. I am interested to hear the Member's view on that in relation to the presumption of innocence.

Mr McCartney: I covered that earlier this afternoon, although perhaps you were not here. I said that there are situations in which DNA found on someone after a serious sexual offence or serious assault should be retained. We have said that, despite what is said sometimes from the other side. I will not make too many comments about that.

I have said on a number of occasions — I have tested it throughout the Committee Stage — that we have a concern based on some of the things that some officials have said to us that this will not be fully compliant with the ruling of the European Court of Human Rights and that we will find ourselves back before the court. I heard the Minister stating unequivocally that it is wholly compliant and that there are no concerns in his Department or among any of his officials that it is not fully compliant and will not be seen in that light in the future. That is on the record, and we may want to come back to that.

The reason that we tabled the amendment about the presumption of innocence was the answer from officials on a number of occasions at Committee Stage. Those answers were prompted by questions from Basil McCrea, who at that time was, I assume, representing Ulster Unionist Party policy. He was told by an official that one of the reasons why DNA can be

retained, should be retained and will be retained is when there is sufficient suspicion of an individual.

Mr Wells: Will the Member give way?

Mr McCartney: Yes.

Mr Wells: I knew that the ghost of Basil McCrea would haunt us at some stage in the debate. I assure you that the authentic voice of the Ulster Unionist Party on the issue was articulated by Mr Elliott. It certainly was not articulated by Mr McCrea, who, once again, went on one of his solo runs.

Mr McCartney: It is interesting that you are often accused of going on a solo run when you say something worthwhile. I understand why you are trying to put that to the side and say that, because Basil McCrea is no longer a member of the Ulster Unionist Party, what he asked at the Committee is not relevant, but I do not see it like that.

Mr Principal Deputy Speaker: I ask the Member to return to the Bill.

Mr McCartney: This is about the Bill, Mr Principal Deputy Speaker.

You may want to set aside what Mr McCrea asked in Committee, but the official referred — these are his words — to "sufficient suspicion of an individual". Therefore, those tasked with framing the Bill and taking it forward say that they want to be able to retain DNA if they have sufficient suspicion of an individual. That may be despite the investigator not taking the case to the prosecution service or the prosecution service taking the case and saying, "No case to answer". Alternatively, you may go to court and be found not guilty. That will still not be good enough. Officials want another category for those who, it says, are sufficiently suspicious. That is why we are very firm on the presumption of innocence.

Along with other members, I raised in Committee the issue of the size and extent of the database on 28 June 2012. This is the first rebuttal that we have had. Perhaps the Minister will provide us with the statistics that he has used today and state their source, as it will be interesting to see the source. He said that the PSNI had informed him that there were 700 investigative leads from DNA. We have not been told, even though it would have illuminated the debate — perhaps we can return to it — the number of cases in which the DNA used was in the data bank legitimately through other aspects of the judicial process. Another question that was not answered was this: how many of those leads led to prosecutions? Answers to those questions would help us to illuminate the debate and come to conclusions. However, we have been left hanging as if to say, "There you are: 700 leads". Somehow, that is seen as promoting your argument. Sometimes, what you do not say takes away from the argument that you are trying to promote.

6.15 pm

The issue of photographs did not come out of the blue. Mr Wells said that it was discussed in Committee, and so it was. It came from the Department, not from Sinn Féin. An official accepted that there is the potential for a legal challenge when it comes to photographs. Another departmental official said:

> *"It is for the police to get their own house in order on the issue of photographs. They recognise that ... there is the potential for a legal challenge when it comes to photographs."*

The police accept that they are open to a challenge and they have to get their house in order. We are here to put a legislative framework in place that allows other people to put their house in order. That is why photographs are included in the Bill. It is not because we thought it up but because the Department nearly instructed us that it was perhaps a good thing to do.

Tom Elliott felt that I did not address the issue of the biometric commissioner. I will explain it to him, although I do not want to make this any longer than necessary. When the Minister indicated that he was removing the amendments, we felt that it was perhaps not appropriate to give the reasons why we thought that it was inappropriate. The Minister said that he is open to suggestions, and perhaps the Committee will return to that. However, our reason is very simple: we believe that that is what the courts are for. If somebody wants to test legislation, we should use the courts rather than set up another commissioner. We have surveillance commissioners and all sorts of commissioners, and a lot of people say that they usurp the authority of the courts.

Mr Ford: I appreciate the Member's giving way. I thought that, in my outline of the way that the commission would operate and be subject to the potential for judicial review, I made it clear that it would in no way take away the rights of

the courts to determine an issue but would take away a large volume of work and would, hopefully, not require anything like the same input of resources. That would allow matters to be considered in private rather than in the public gaze with its potential implications for applicants.

Mr McCartney: I understand your logic. The point is well made, but there is an assumption that there will be a large volume. Therefore, when you try — perhaps we all do it — to make the case, you make out that the problem will be bigger than it perhaps will be. However, I argue on the principle that the courts are there to provide for such challenges and we should use them.

Steven Agnew raised a point. He is away, but we covered that in the main commentary.

Jim Wells is Jim Wells, as the saying goes. He had a contention about something that was not said. I have often heard that people have been convicted for what they say; I have never heard of convictions, even in the Diplock courts, for something that you did not say, but that is another day's work. He has the idea that we are somehow suggesting that the DNA can be tampered with and that might lead to false prosecutions and so on. We never said that once. The only person who said it today was you, so maybe your own mind needs disentangled on the ability of people to do that in a mischievous way. I said and we continue to say that our opposition is based on two planks: that it undermines the principle of presumption of innocence and that we do not feel that it will be fully compliant with the ECHR.

Mr Wells: Will the Member give way?

Mr McCartney: I will give way.

Mr Wells: I am glad that the Member has made that point. What can possibly go wrong if the DNA is stored in a secure unit somewhere in Northern Ireland and is only ever brought out when there is an indication that that person has been involved in criminal activity? What is his issue? He is not even alleging that the police would tamper with it, abuse it or use it to falsely convict someone. He is underlining my point that the ordinary Joe Citizen who does not cause a crime or do anything wrong has absolutely nothing to fear.

Mr McCartney: There is always a case where people do not listen to what you are saying. You are creating a category that says that a person is sufficiently suspicious. If a person has been arrested and released, that, in our opinion, is the way that it should be in every aspect of life. There should be no special category of "We think that you are sufficiently suspicious".

Mr Wells: Will the Member give way?

Mr McCartney: I will give way.

Mr Wells: There is a direct parallel to this, which his party has signed up to. Access Northern Ireland can provide several levels of intelligence to various organisations when they apply for information. It can provide the hard intelligence, which is convictions. It can provide the medium level of detail, which is prosecutions that did not lead to conviction. It can provide the soft intelligence, which is that allegations have been made about an individual that may make him or her an unsuitable person to look after children. The Member does not resent that, and that is done to protect children from adults who may be inappropriate. So how can he argue that it is inappropriate in this case?

Mr McCartney: There are two things to be said about that. First, we have opposed the use of soft intelligence, and, indeed, we have supported many people who have taken cases about the use of soft intelligence, secret evidence and evidence that cannot be contested in court and won. Our position is very clear: if it is so open, why can it not be tested? We do not agree with the employment circumstances of the past in which people were denied employment perhaps because their father's father's father was once interned without trial. At the time, that was "acceptable". We say that it is not, and we will ensure that there are safeguards to protect people in that circumstance in the future.

I see that Mr Humphrey is also absent. In a number of interventions, he asked how the people of the Falls Road would view our position. He said that they would not view it very kindly, and the basis of his contention was that he got a couple of phone calls from people on the Falls Road. To me, the best test of all of this is, as Gregory Campbell said last week, the people. Let the people decide. I will use Gregory Campbell as my reference for Mr Humphrey. I will not rely on a couple of phone calls from anywhere to tell me that what I am doing is right, wrong or indifferent. We will let the people decide.

Mr Poots gave us a bit of a lecture on the use of the petition of concern. In many ways, he made

a good point about whether it is being used in circumstances for which it was perhaps not designed. That is a fair point, and perhaps we as an Assembly could revisit how the petition of concern should be used in the future. I suppose that I would say this, but, in this instance, I believe that it is a correct use because the issue is in and around equality. In the previous mandate, the sexual offender notification clauses of the previous Justice Bill were taken through Committee Stage right up to Further Consideration Stage. They were supported and voted through by everyone, and, at the last minute, a couple of weeks before the election, the DUP put down a petition of concern. We are back now with the same legislation. Throughout Committee Stage, the departmental officials and the four DUP representatives accepted that the Bill had not changed in any real sense since the previous mandate. Therefore, if this were being tested by a jury — a rare thing in these parts sometimes — it might come to the conclusion that it was a bit of an abuse of the petition of concern procedure.

Mr Givan: Will the Member give way?

Mr Wells: I will, surely.

Mr Givan: I appreciate the comment that the Member makes. In that sense, he is right. The petition of concern is used in the House in a manner not envisaged when those who signed up to the Belfast Agreement decided to put it in. If Members, particularly those from the nationalist community, who often lecture this side of the House on abusing the petition of concern procedure want to convince us that we should use it more appropriately, surely you need to start practising what you preach rather than putting down a petition of concern. Why is the retention of the DNA of people who may be suspected of crime of particular nationalist concern? Why is that relevant only to the nationalist community and not to the broader community?

Mr McCartney: That is a point well made, and perhaps we can have that discussion. On the sexual offender clauses, that was not a concern to the DUP in this mandate but it was in the previous one. I am trying to point out that there is no point in saying to Members that they are abusing the petition of concern as if you are sitting in some sort of whited sepulchre. I do not think that there are too many whited sepulchres in this place.

I will just finish on this point. Stewart Dickson referred to amendment No 30. We took that off. I did not move it, because the departmental officials pointed out an unintended consequence of our amendment. That shows that, when people come with a reasoned argument, we are prepared to change our mind.

Mr Ford: Sometimes.

Mr McCartney: The Minister is speaking from a sedentary position. We are prepared to listen to reason, but there are principles on which we base our arguments and contentions. Jim Wells can get up and wax lyrical and try to throw what he perceives to be insults, but, I have to say and I have said it before —

Mr Wells: They were insults.

Mr McCartney: They may have been, but I just wanted to point that out to you. I heard you talking about the environment and congratulating Steven Agnew, but, as you know, hot air only rises, and most of what you said today rose to nowhere.

Question put, That amendment No 18 be made.

The Assembly divided:

Ayes 37; Noes 50.

AYES

Mr Boylan, Ms Boyle, Mr D Bradley, Mr Byrne, Mr Durkan, Mr Eastwood, Ms Fearon, Mr Flanagan, Mr Hazzard, Mrs D Kelly, Mr G Kelly, Mr Lynch, Mr McAleer, Mr F McCann, Ms J McCann, Mr McCartney, Ms McCorley, Mr McDevitt, Dr McDonnell, Mr McElduff, Ms McGahan, Mr M McGuinness, Mr McKay, Ms Maeve McLaughlin, Mr Mitchel McLaughlin, Mr McMullan, Mr A Maginness, Mr Maskey, Ms Ní Chuilín, Mr Ó hOisín, Mr O'Dowd, Mrs O'Neill, Mr P Ramsey, Ms S Ramsey, Mr Rogers, Ms Ruane, Mr Sheehan.

Tellers for the Ayes: Mr McCartney and Ms McCorley

NOES

Mr Agnew, Mr Allister, Mr Anderson, Mr Bell, Ms P Bradley, Ms Brown, Mr Buchanan, Mr Campbell, Mr Clarke, Mrs Cochrane, Mr Craig, Mr Dickson, Mrs Dobson, Mr Dunne, Mr Easton, Mr Elliott, Dr Farry, Mr Ford, Mrs Foster, Mr Frew, Mr Gardiner, Mr Girvan, Mr Givan, Mrs Hale, Mr Hamilton, Mr Hilditch, Mr Humphrey, Mr Hussey, Mr Irwin, Mr Kinahan, Ms Lo, Mr Lunn, Mr Lyttle, Mr McCallister, Mr McCarthy, Mr I McCrea, Mr McGimpsey, Mr D

McIlveen, Miss M McIlveen, Mr McQuillan, Lord Morrow, Mr Moutray, Mr Newton, Mrs Overend, Mr Poots, Mr G Robinson, Mr Ross, Mr Storey, Mr Weir, Mr Wells.

Tellers for the Noes: Mr Lunn and Mr G Robinson

Question accordingly negatived.

Mr Principal Deputy Speaker: I will not call amendment No 19 because it is consequential to amendment No 18, which has not been made. Amendment No 20 has already been debated.

Amendment No 20 made: In page 15, line 14, leave out from "the conclusion" to end of line 17 and insert

"the Chief Constable determines that the material is of no evidential value in relation to—

(a) the investigation of the offence; or

(b) proceedings against any person for the offence." — [Mr Ford (The Minister of Justice).]

Mr Principal Deputy Speaker: That concludes the Consideration Stage of the Bill for today. The Business Committee has agreed that the remainder of this stage of the Bill will be scheduled for next Monday, 25 February.

Motion made:

That the Assembly do now adjourn. — [Mr Principal Deputy Speaker.]

Adjournment

Lisanelly Shared Education Campus, Omagh

Mr Principal Deputy Speaker: Order. I ask Members to resume their seat or leave the Chamber quietly.

The proposer of the Adjournment topic will have 15 minutes. The Minister will have 10 minutes to respond, and all other Members who wish to speak will have approximately six minutes.

Mr McAleer: Go raibh maith agat, a Phríomh-LeasCheann Comhairle. I take the opportunity to speak on the proposal to develop a shared education campus at the vacated British Army site at Lisanelly in Omagh, County Tyrone. Members present will know that the campus is a top priority for Omagh and, indeed, for west Tyrone, owing to the multiple benefits that the project can provide for the children and future generations.

Lisanelly is an unprecedented opportunity to transform a 140-acre site, which has been derelict and vacated for the past number of years, into a new source of hope and achievement for the future. To date, a mountain of work has been undertaken to get the project to where it is today. Indeed, there is widespread support from all sections of the community for the development of the shared campus, which could contain schools from a wide range of sectors. They would work together, while retaining their distinct ethos and identity.

The campus has the potential to provide modern post-primary education provision and will include first-class educational facilities for up to 3,000 or more pupils in a more co-ordinated and effective way than is now possible. It will also enable local schools to embrace the curriculum changes and meet the targets of the entitlement framework.

School projects can be developed and delivered together with facilities, planned in a way that allows the schools to collaborate and work together. By collaborating, the schools can avail themselves of state-of-the-art facilities that would not be possible if they stood alone.

An excellent example of that was highlighted during the launch of the master plan in 2010. The example provided, which related to the schools of activity, stated that there was the potential to provide 3G covered pitches, with stadium-style spectator facilities. That is one example that was given of what can happen when schools pull together. The collaborative nature of the project will ensure value for money, while providing first-class facilities for the young people of Omagh. The model represents a template for shared education that can potentially be implemented in many other areas.

The project board has engaged extensively with schools, young people, parents, educationalists, business leaders and the wider community, and the consultations have indicated that there is widespread, significant support for the campus, particularly among our young people. In fact, I am told that, during one of the recent consultation workshops that were held as part of local democracy week, young people expressed a great deal of impatience that the project was not moving faster than it was. The brochure from the launch of the master plan provides a snapshot of some of the comments that were made. I will just read some of them. One refers to it as:

> *"an amazing chance that should not be missed".*

Another says that it:

> *"could be a model for schools across the globe".*

Another strongly supports it, but says that:

> *"individual identities must remain".*

Another comment states that:

> *"shared facilities would mean that each school could have better access to much better facilities that each on their own could afford and sustain".*

Another comment stated that:

> *"This is an exciting project and a fascinating opportunity for the young people of Omagh".*

Another comment that I will share with you said:

> *"Keep the momentum going to make it happen as soon as possible."*

6.45 pm

That is a snapshot of some of the opinions that were gathered, particularly from younger people, during one of the most recent consultations. Those are certainly the views that have prevailed right up until the present day.

In getting to the point that we are at now with the project, the transfer of the site into the ownership of the Department of Education was a major step forward in edging the project closer to reality. I am very familiar with that particular piece of work because, during that time, I worked as a personal assistant to my party's MP Pat Doherty, who played a central role in that particular campaign, which preceded my time as a MLA. I know of the hundreds of hours that Pat clocked up at countless meetings with Secretaries of State, Defence Secretaries, Ministers, MPs, TDs and MLAs from all backgrounds to keep the concept alive at a time when the site was in danger of slipping out of public control. I therefore want to pay tribute to Pat, who worked vigorously for many years to ensure that the site would come into public ownership.

I also want to pay tribute to Caitríona Ruane, who, in her capacity as Education Minister, enthusiastically embraced the concept of the shared campus at Lisanelly and played a central and hands-on role in advancing the project. I am glad to note that the current Minister, Mr O'Dowd, has continued the project with the same commitment and energy. His swift intervention in the case of Arvalee Special School during its hour of need in 2012, when the building was burned to the ground, is clear evidence of his commitment to the educational needs and well-being of young people in our district.

It is also important to note the excellent work of Omagh District Council; the Strategic Investment Board (SIB); the Western Education and Library Board (WELB); the Lisanelly schools working group, which was chaired by local church leaders; and Omagh business leaders, who have always been supportive of the project.

Although the main focus is, quite rightly, on the educational benefits, there are, indeed, wider benefits as well. For example, the campus will not only support and encourage excellent educational provision, but will provide an opportunity to promote regional balance and regeneration, which, of course, is in line with the Programme for Government commitments.

Lisanelly super output area is the single most deprived area in the entire Omagh district. It is

located in the top 14% of the most deprived super output areas in the North. The construction of that huge development has the potential to create hundreds, if not thousands, of jobs in an industry that is under severe pressure. There is also the possibility of developing the vacated schools that are located in and around the town centre, which creates a very exciting possibility to make the town centre a more vibrant hub of economic activity. Of course, the concept of working and sharing together, which underpins Lisanelly, is something that is essential as we all strive towards a shared future together.

In conclusion, a Chathaoirligh, the construction of the campus will provide long-term social and pedagogic benefits for the children of Omagh. I believe that it could also usher in major positive economic and regeneration benefits for the entire community. It is an investment in the future. I congratulate the Minister for prioritising the project, coming here this evening and taking a hands-on role in helping to edge it forward. Lisanelly can offer a real vision for the future of how education can be delivered. All our children and young people deserve the best opportunities in the best surroundings.

Mr Buchanan: First of all, I thank the Minister for being in his place to listen to the debate, which is of the utmost importance to the future direction of education in Omagh.

When the Lisanelly site first became available for development, there was much interest in what type of development would be of most benefit to Omagh into the future. The concept of the education campus generated much debate and was welcomed by many in the education sector and others with an interest in the future education of our children in Omagh and, indeed, in the wider west of the Province.

Omagh District Council, along with the business community, the SIB, the working group, the Western Education and Library Board and others, has to date done a lot of work in promoting and seeking to get the development of the campus site under way. However, progress has been extremely slow, to the extent where confidence in the community is beginning to dwindle, with questions being asked about the Department's commitment and about whether this will ever come to fruition or whether it is simply pie in the sky. That is the feeling among some people in Omagh, and that is why I believe that this debate is so important.

We have schools in Omagh that are in dire need of a newbuild. The structure of those schools is abysmal, and, as a result, they are finding it more and more difficult to attract students. Take, for example, Omagh High School: its students recently excelled to great heights in educational attainment, but the building has far outlasted its lifespan and urgently requires a newbuild. The Sacred Heart College is in the same position as far as a newbuild is concerned. We remember the destruction of Arvalee school following a fire at its premises before Christmas, which saw the pupils scattered over two or three different sites. Thankfully, it will soon be operating out of temporary accommodation back on its own site. Although that arrangement is all very well for the short term, a newbuild is a must in the longer term.

In light of all that, I must ask the Minister this evening what he and his Department are doing to speed the development of the campus site. What is holding up progress? Has the maintained sector handcuffed the Minister, not permitting him to make the necessary progress?

There also appears to be a problem with the area plan in the Western Education and Library Board, which is hindering progress on the detailed design of schools on the site. Until there is clarity on that issue, it is my understanding that the design work will remain on the shelf.

Phase 1 of the works, which entails the demolition of existing buildings and the modification of the site, is expected to take two years, but it has not even commenced. Perhaps the Minister can explain the reason for that delay. Construction of Arvalee school is a must, as I said. In conversation with those involved in the campus site development, I have been informed that phase 1 can commence and run in tandem with the completion of the area plan and design works as well as the development of Arvalee school, the business plan for which is currently with the Department of Finance and Personnel (DFP).

Therefore, I seek clarity from the Minister this evening on his commitment. It is all very well to say, "The Department is committed to this", but what is the level of that commitment? Is there something else that the Minister or the Department can, at some stage later down the line, turn to and say, "We would have delivered this, but x, y and z hindered us, and we were not able to deliver it"? What we need the Minister to do this evening is spell out for us what that commitment is. What does he mean when he says that he is committed to the campus site in Omagh? When can we expect to see phase 1 commence on site? When can

we expect to see the area plan completed in order to allow the design works to continue? When can we expect to see the foundations laid on the site for Arvalee school?

That is one of the things that will give people confidence and let them see that the Department really is committed to this site. That is what we need to know this evening. There must be no ambiguity; rather, there needs to be clarity on this issue. It is no good if this goes on and on, and then, at some stage in the future, we are told, "We are sorry; although we were committed to it, something else held us back". Let us know now exactly what the situation is so that if it is not to develop and move forward, we can look to other areas for those schools that are in dire straits and which really need new builds in Omagh.

These things will clearly demonstrate a firm commitment from the Minister and the Department on the development of the site. I trust that when the Minister responds, he will clear up any ambiguity and give us clarity and timelines so we will know exactly what the situation is and when the site will be developed.

Mr Hussey: I also welcome the fact that the Minister is here. I congratulate Mr McAleer on securing the debate.

I begin by declaring an interest as a member of the board of governors of Omagh High School.

When Lisanelly was an army barracks, it made a large economic input to Omagh because there were so many soldiers and jobs. The loss of the barracks has had major economic consequences for Omagh, which cannot be forgotten.

The link between Lisanelly and St Lucia barracks cannot be overlooked. We have had a debate on St Lucia, and Mr Buchanan asked the deputy First Minister a question about St Lucia yesterday. I asked a supplementary question. However, in response to Mr Buchanan, Mr McGuinness said:

> *"The development of the sites is critical".*

I would have said "are" critical; he said "is" critical. It is still critical for Omagh. He continued:

> *"In the event of there being an educational campus on the Lisanelly site, lands that are under our control at St Lucia could be made available to the education authorities". — [Official Report, Vol 82, No 3, p35, col 1].*

Given that that is the deputy First Minister's answer, is he implying that there will not be an educational campus on the Lisanelly site? He also said:

> *"The Department of Education has pushed forward decisively with what it wishes to do with the Lisanelly site. There will be further discussions between the Department and some of the local schools that are interested — and others that may be less interested — in locating to a campus that, I think, would provide a unique sharing arrangement in education." — [Official Report, Vol 82, No 3, p35, col 2].*

Mr McElduff and I were part of a political group that visited Drumragh Integrated College recently, which was, in its own right, a fascinating afternoon. There is no doubt that the young people of Omagh buy into the concept of an educational village.

Reference has been made to a local democracy event, which clearly shows that. I was a member of Omagh District Council from 2005; Mr McAleer and Mr McElduff were also members of the council, and, of course, Councillor Buchanan is still a member. Mr Byrne was a councillor in previous years. From 2005, members of the council, regardless of our political affiliation, joined together to push forward an educational campus at Lisanelly. That was Omagh District Council's vision. It is not a Sinn Féin, DUP, UUP or SDLP vision; it is an Omagh vision. This is what Omagh wants and expects.

Omagh High School has been sitting on the same site for over 50 years. I do not know whether the Minister has ever visited that school; as a board member and a politician, I obviously have visited. The school is falling down around people, yet it achieves some of the highest available scores because of the commitment of the staff. It is an excellent school, but the facilities are rubbish. Sacred Heart College brought together two schools several years ago, and it works very well. Again, the site is not perfect. Arvalee School and Resource Centre had the misfortune of having a terrible fire on its site, and pupils are now in temporary accommodation.

Three schools have agreed to move onto the Lisanelly campus, and three schools are undecided. I recently asked the Minister about the chairman of Omagh Academy's board of governors, who made it clear that that school no longer wants to be part of the project. Omagh Academy, Loreto Grammar School and

the Christian Brothers Grammar School do not seem to want to play this game.

My advice is to leave them where they are. The three schools that need to move — Omagh High School, Sacred Heart College and Arvalee — need to be facilitated. We need an assurance today that they will be facilitated. We need work on the site.

7.00 pm

Mr Buchanan and Mr McAleer referred to the fact that confidence was dwindling. That is because we see a site, but that is all we see. When I was vice-chairman of the council, I was here with other councillors to help to promote the shared educational campus idea. For you, Minister, the shared educational campus theory can be put into practice. The shared educational campus will work because the schools can keep their own identity but, where necessary, share. We all want that concept to work, and Omagh could be the perfect example for the future. However, by doing nothing and allowing the delays to go on and on, confidence goes out the window.

I want an educational village in Omagh that is the example for every other town in Northern Ireland. Omagh has had its share of troubles and sorrows. We are in the west, but we cannot be forgotten. I ask you, Minister, to assure us that there will be movement on Lisanelly. Perhaps, before the end of this Assembly term —

Mr Principal Deputy Speaker: The Member should bring his remarks to a close.

Mr Hussey: — we will see some movement.

Mr Byrne: Like the other Members who have spoken, I thank Mr McAleer for securing a debate on this topic. It is timely and important that we have the debate at this juncture.

The proposed Lisanelly educational campus in Omagh is a model of schooling that could provide a significant new educational experience based on a unique example of building different schools on one campus rather than on individual sites. The proponents of the shared educational model believe it to be a good model for shared education into the future. Shared education would be achieved on a large integrated site or educational campus in which a range of schools could be sited beside one another.

The three grammar schools in Omagh — Loreto Grammar, Christian Brothers Grammar and Omagh Academy — and the other two secondary schools — Omagh High and Sacred Heart College — have all developed a strong educational history and legacy. Many former pupils and staff are proud of their school identity. Drumragh Integrated College, which recently got a new school, would also like to be on the new campus. Arvalee Special School could also be accommodated on the site, which would be desirable.

As Mr Hussey said, the three grammar schools are more self-conscious and, indeed, precious about their school history, educational legacy and reputation. They have been looking for a lot of reassurance about the independence of school character, governance structures and educational autonomy in a shared campus. Thus far, their boards of governors and trustees have been somewhat hesitant and, indeed, reluctant about committing to the project. Mr Hussey referred to the chairman of the board of governors of the academy. He spoke to me about his anxiety should the academy commit to the site and the other two grammar schools not do so.

Thus far, the advocates of the project and the project team have primarily advanced the shared campus as a building construction project with unique physical characteristics. There is still not an educational argument that is robust and convincing to all concerned, particularly for some school governors and trustees. I am convinced, as are others, but we have to get the trustees and governors of these other schools on board.

The plan proposes to build six secondary schools on a 140-acre site that could accommodate approximately 3,700 pupils. Each school would share sports facilities and some other services, but each would retain its identity, as was referred to. The cost of the project would be £100 million-plus, which would be a tremendous economic boost for Omagh and a tremendous educational project and development.

The shared campus approach could be a good model of area-based educational planning for Northern Ireland in the future. However, that is assuming that all schools plan to use the facility and agree to it collectively. A number of schools have been hesitant to move from their existing sites. What negotiations have been conducted with those schools? I asked the Minister recently what formal and informal discussions or consultations have been ongoing. It is important that the interests of

pupils and parents, along with the views of governors and trustees, are fully explored and taken on board.

The pooling of subjects at AS and A level could be a positive development that would allow schools to meet the requirements of the common curriculum within the educational framework. I know that some schools already share some subjects, but that could be made easier for pupils if the schools were closer to each other. It is not fair to have, for example, four pupils from the Christian Brothers' school who are studying the minority subjects having to go a distance in the wet and rain to the convent or the academy. It makes much more sense to have those pupils on a single campus site.

A number of areas still need clarification. The questions that arise include asking which facilities, such as canteens, administrative functions or other services, will be shared. There is also the question of the Dean Maguirc College in Carrickmore. I think that there is still a very strong desire to retain a secondary school in the Carrickmore area. I know that there has been some discussion in the past about that school also becoming part of the campus site, but I think that there is still a very strong local feeling that the school in Carrickmore should exist on its own. As Mr Hussey said, that school, like Omagh High School and the Sacred Heart College, badly needs a new building. The Omagh High School and Sacred Heart College buildings are falling down.

My request is to the Minister this evening. There is a need for an educational project team — a core group of people and civil servants — to advance this case, to get on with the work and to end some of the uncertainty. I think that it is fair to say that the Reverend Herron and Monsignor Donnelly have played a very strong role in trying to advance this project. They have co-ordinated a group of people in the Omagh area along with officials from the Western Education and Library Board, the former chief executive of that board and others. They have done a lot of good work, but, as Mr Buchanan said, the time has now come for some forward movement and some action.

I am convinced that a group of —

Mr Principal Deputy Speaker: Bring your remarks to a close.

Mr Byrne: — core civil servants should be put together to carry out the necessary consultations. Let us get on with the project.

Mr Storey: I want to make a contribution to this debate in support of my colleague Tom Buchanan. If possible, and as other Members alluded to, I also want to try to bring some clarity to the course of direction not only of the project in Omagh but of what may be the Department's possible trajectory, as it may want to roll this type of idea out in other places.

I am also glad that the Minister has joined us this evening. I hope that he has cooled down a little from Question Time. I do not know what tablets he was on or what the case was, but he certainly got rather excited. We will try not to annoy him too much this evening so that he can go home nice and calm.

The Education Committee visited the Lisanelly project, and we very much appreciated the hospitality, kindness and the warmth of the welcome that we received. I believe that it gave the Committee members who went an overview and a first-hand insight into the potential and possibility that could exist in the Lisanelly project. I want to place that on record.

When the Member introduced the debate tonight, I wondered whether he was going to give either a detailed analysis of where we were going or a eulogy to previous Education Ministers and the current Minister. Given all that he said that they have done, perhaps he was preparing them for the new year's honours list.

Despite all that, as we sit or stand in the Chamber tonight, we have a project that has not progressed in the way that was intended. We can skirt around that, hide it or try to dress it up, but Members know that that is not how I do business. My colleague Tom Buchanan referred to the questions that must be asked. Is the Minister handcuffed? Is he being curtailed?

Nobody has mentioned it, but let us remember that there was a court case. There was a school that said, "We ain't shifting", and it took the Department to court. We then had the appeal and the regrettable situation of the appeal judgement giving 50% of the argument to one side, and the same to the other. However, the question that needs answered is whether a section of the Catholic maintained sector is going to be allowed to delay educational provision in Omagh.

When I look at the Western Education and Library Board's area plan — the Minister placed great emphasis on ensuring that area plans were produced — what do I find? I find that:

"The Diocesan Programme Board has made the following overall recommendations for future post-primary education in the Derry Diocese."

Are we working on the basis of a parish, a diocese or on the basis of making educational provision for the young people of Omagh? Who comes first?

I recently visited schools in the controlled sector in Omagh. There are concerns, fears, worries and apprehensions, but they know that possibly the only way that new capital provision will be made in the Omagh area is via the Lisanelly project. Why should they be allowed to sit in accommodation that is less than acceptable because others cannot make up their mind or have other issues — whether it is who owns the property, who makes the decision, whether it will be transfer based, and all of those things? While all of that goes on, we have a site that remains stagnant and is not being developed in the way that we would like.

The fact that Arvalee Special School will be rebuilt is to be welcomed. I too thank the Minister for taking on board that issue in the way that he has. We can all be thankful that that has happened. However, I conclude with this, and Members have referred to it this evening: let us have certainty and clarity. Let the Minister bring us up to date tonight on what he has been told and what discussions he has had with the maintained sector's diocesan board. Is it now committed to delivering a project with the potential to deliver on our and the Executive's objectives of creating shared education provision? With bated breath, we wait to hear about that from the Minister this evening.

Mr McElduff: Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Ar dtús, ba mhaith liom comhghairdeas a ghabháil le Déaglán Mac Giolla Uidhir as an ábhar seo a phlé os comhair an Tionóil inniu. I thank my constituency and party colleague Declan McAleer for securing the debate, which gives West Tyrone MLAs and the Chair of the Education Committee an opportunity to raise pertinent questions.

As other Members detailed, the Omagh shared educational campus has certainly caught the imagination. It is an iconic project and I, too, praise the leadership of the Rev Robert Herron, Monsignor Joseph Donnelly, the Western Education and Library Board, Omagh District Council and Pat Doherty MP, who were strongly supported by the Department of Education and strongly led, too, by the Strategic Investment Board and, not least, by programme director, Hazel Jones. Successive Ministers have also demonstrated their enthusiasm and support for a vision of integrating and sharing education, while protecting the individual ethos of the schools in question. It is about the efficient and effective use of public resources. It would effectively tick every box if one was to map out an ideal future for post-primary educational provision in an area.

7.15 pm

I am aware that the Education Committee, as has been said here, visited the site. I am aware, too, that the Good Friday Agreement Implementation Committee of the Oireachtas has visited the site, and it has been discussed in the British-Irish Parliamentary Assembly as well, where Michael Mates seconded my proposal to the then British Secretary of State, Shaun Woodward, that it needed to be transferred to the Executive. We were described in the Sunday 'Observer' as:

"the odd couple of Anglo-Irish politics".

Michael Mates pointed out that he was a British military officer who operated from the Lisanelly camp in the 1960s, so I cannot imagine that me, Ross Hussey or Michael Mates will agree on the past, but I think we will agree on the future.

This is about young people. It is about investing in the future of Omagh's children and young people, and there is excitement out there at that prospect. I believe that, even in the schools that are currently uncertain about their intentions and have not committed, the young people of those schools, and many of the teachers, are looking forward in great number to that vision becoming a reality. It will be a site where academic and vocational exist side by side, and there will be increasing respect for the vocational in that environment. That is a good thing.

I thank the Minister, John O'Dowd, for the recent visit, which I was part of. Essentially, it was an event at Omagh College. I am sure that he has been since, but my last direct engagement with the Minister on this matter was at that event.

Other Members have asked the relevant questions — when and who. When is it going to progress to the next stage? What is the next stage? Who has signed up? What discussions are taking place to further persuade them of the value of signing up?

My vision for education in that part of west Tyrone is one where the schools will share the site and where there are viable rural schools and post-primary schools, a la Dean Maguirc in Carrickmore and St John's College in Dromore. The Omagh district has a large youth population, and can accommodate all of that. We are specifically talking about the Lisanelly education campus today.

That project, together with the A5; the enhanced local hospital in Omagh; the educational campus itself; hopefully those newbuilds in Dean Maguirc and St Colmcille's Primary School; and health centres in that area — these projects will provide a much-needed shot in the arm for the construction industry. It is an area where hundreds and thousands of young people are emigrating at this time. There are 160 young people in Australia at this time from the Dromore and Trillick community alone. Dromore is a large village or small town and Trillick is a village. They are five miles apart, and between Dromore and Trillick, 160 young people are in Perth, Brisbane and Sydney at this time.

In conclusion, I ask the Minister to provide clarity and certainty as far as he can in relation to next steps, who has signed up and all of that. I thank the Minister for being in attendance, as well as the Chair of the Education Committee, who hails from a different constituency, but his interest is very welcome.

Mr O'Dowd (The Minister of Education): Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Cuirim fáilte roimh an deis seo díospóireacht ar champas an oideachais roinnte ag Lios an Eallaigh agus an tairbhe do phobal na hÓmaí agus don cheantar máguaird. I welcome this opportunity for a debate on the Lisanelly shared education campus and the benefits that it will deliver to the community in Omagh and the surrounding area.

The Lisanelly shared education campus provides the town of Omagh and neighbouring areas with a unique opportunity to develop a model for shared education — a model that can and will act as a flagship project for the area and as a beacon showing the way forward for other educational communities. It is truly about putting the pupils first and securing a shared educational, social and environmental future for our young people.

The Lisanelly campus project will deliver a joined-up, shared future for the children of the Omagh area. The proposal that is currently under development, which is for a series of shared education centres and core schools that are designed to the latest standards, will ensure that pupils' needs are fully met and that they are educated in a collaborative manner, integrating with other young people from all sections of the community while respecting the individual ethos and values of differing sectors and education models.

The Chair of the Education Committee suggested that my temper was not in the best form this afternoon. I am in good form this evening, and after reading out that vision for Omagh, why would you not be in good form? Why would you not support that? It is about education for all the young people of Omagh, treating them on an equal basis in an integrated way on the one site.

It is time to put the young people of Omagh first, ahead of the needs and wishes of individual educational institutions. Mr Byrne touched on that subject and said that a number of boards of governors and perhaps trustees or individuals had concerns about the Lisanelly site and the way forward. They may well have concerns, but I have never seen a more democratic process than that around Lisanelly.

There has been consultation with everyone, and everyone's views have been asked for. There has been discussion after discussion. Omagh District Council is in favour of the project, and there is cross-party support for it. Why should we allow a number of individuals or individual schools to stand in the way of that vision? I am of the view that we should not.

To answer the Chair of the Education Committee and Mr Buchanan, I am not handcuffed to anyone. I do not do handcuffs, and I am definitely not handcuffed to anyone on this matter. My loyalty lies with the Lisanelly campus. No other sector, individual school or body that is opposed to Lisanelly has my support in any shape or form.

It is time to move forward with the project, because it is the right thing to do. Mr McElduff mentioned the construction and economic benefits. It is estimated that every £1 of capital investment by the Government results in a wider benefit of £2·84 to the economy. For every £1 million that is invested, 28 jobs are created. A project the size of the Lisanelly campus has the potential to generate over £300 million in the local economy and to bring more than 3,000 jobs in construction and associated fields to the Omagh area. That, I am sure, will ensure that many of those young people who might have had to travel to Australia will not have to go there, because they will benefit from investment such as this.

Where do we go next? Let us see where we are. It may be useful to remind ourselves of the timescale for the project, because I can understand local frustrations that these matters are taking longer than was perhaps envisaged. It was first proposed in 2006-07 that Lisanelly was a viable project. The site did not move into Department of Education ownership until April 2011, which is just under two years ago. Since then, we have been proactively moving forward with the consultation process, and we now have an outline business case with the Department.

The outline business case shows that building the schools on the Lisanelly site is economically the best way in which to move forward. Arvalee Special School is moving onto the site, and we have submitted outline planning permission for the site as well.

What is holding up Lisanelly? There are a number of factors, of which the first is money. A quite significant investment of somewhere between £120 million and £150 million is required to fulfil the project. I am looking at a variety of funding options. We are being imaginative in how we fund it. I believe that a number of organisations and bodies from beyond these shores are willing to play a constructive part in funding the project, and we are engaging with them. Secondly, as I mentioned previously, a number of individuals or individual schools have expressed "concerns" on the matter.

Another concern, which had been a factor in delays, was the area-planning process. A number of Members mentioned that and asked what is happening with it. I intend to make a statement on area planning to the House next Tuesday. In a previous statement to the House about capital constructions and future school builds, I said that Lisanelly was, and remains, the core project for Omagh. Ahead of the statement on area planning, I will confirm again that there is only one show in town in Omagh — the Lisanelly site. Until I complete the Lisanelly site and until I ensure that those schools that wish to move onto the Lisanelly site are completed, I do not envisage moving forward with any other capital project in Omagh.

Mr Storey: Will the Minister give way?

Mr O'Dowd: Yes.

Mr Storey: I thank the Minister for the clarity that he is trying to give us this evening. However, there is something that I have not been able to get confirmed fully. In the area plan for the Western Education and Library Board, reference is made to a position paper that is going to be produced by the Catholic sector. Is he aware of that position paper? Has it been produced? What influence will it have on the statement on area planning that he intends to make to the House next week?

Mr O'Dowd: It will have no influence in that sense. I know where I am going with Lisanelly. I understand that the Catholic sector is engaging with the trustees and boards of governors of a number of schools on the basis of whether or not those schools are signing up for Lisanelly. That is a decision that those individual schools will have to make. I think that there is a wider responsibility on those boards of governors in this matter.

No one school can think of its individual needs in respect of this project. This is much bigger than any individual school in Omagh. This is about the future well-being of this generation and future generations in the Omagh area. It has been debated democratically. The democratic institutions responsible — the council, the elected representatives and the Assembly — are behind it. It is a Programme for Government target. I will not allow an individual, or individuals, to hold up this project.

From Tuesday of next week, I will be making announcements on area planning. I am in a position to say that the Lisanelly project will be confirmed as part of area planning. Capital investment in Omagh will be on the Lisanelly site for those schools that choose to go onto it. After we have completed that, those schools that do not wish to go onto the Lisanelly site will be considered for future funding, if funding is available at that time. However, I will not, as Mr Byrne suggested, set up a body of civil servants to discuss the matter further. The matter has been discussed enough.

Mr Hussey: Will the Minister give way?

Mr O'Dowd: Yes.

Mr Hussey: I thank you for what you said so far. I am on the board of governors of Omagh High School. We were told some years ago that the Lisanelly campus was the only show in town. In my remarks, I asked whether you would go ahead without the input of Omagh Academy, Loreto and the Christian Brothers. Those schools that have committed to the project are entitled to see their newbuilds as soon as possible, particularly Omagh High School and Sacred Heart College. Are you now saying that you will go ahead with those schools because they have bought in?

Mr O'Dowd: I am saying that, but let us not rule out any school at this stage. What is the best future for the controlled sector in Omagh? Is it simply to build the high school for 700 pupils, or is it to look at proposals — as recently happened in Strabane — for a bilateral school where there is access through academic selection and non-academic selection on the one site? Is that the way forward for it? I ask the controlled sector to have a serious think about the best options for the controlled sector in Omagh.

I firmly believe that any school that moves onto the Lisanelly site will have world-class facilities that will be attractive to pupils and parents. I would be highly surprised if any parent chose not to go onto the Lisanelly site after seeing the facilities that are planned for that site. Let the controlled sector have further discussions about the actual shape of the schools in the controlled sector. I do not want to rule any school in or out at this stage.

However, what I am saying is this: the only capital development that will take place in Omagh over the next number of years will be on the Lisanelly site. I am not looking at building any individual schools in Omagh ahead of Lisanelly. I cannot be any clearer than that. That is crystal clear. I urge any school that has not yet signed up to Lisanelly to seriously consider its position both as members of the Omagh community — schools are part of the community and have a duty not only to their pupils but to the surrounding communities — and as citizens. They should realise that what is happening in Omagh is a key development, not only for Omagh but for across the North. That sends out a major signal that we can make change, that we can share within education and that there are possibilities here for other towns and cities across the North.

Members, I can understand some of the frustrations, and I appreciate Mr McAleer bringing the debate forward. However, I hope I have made it crystal clear, and I know this has been said before, that the only show in town for Omagh is Lisanelly.

Adjourned at 7.30 pm.

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