

# Official Report (Hansard)

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# Contents

## Assembly Business

Public Petition: Health Service Dental Care .....	1
---	---

## Executive Committee Business

Marine Bill: Further Consideration Stage .....	2
--	---

## Oral Answers to Questions

Employment and Learning.....	24
------------------------------	----

Enterprise, Trade and Investment .....	29
--	----

## Executive Committee Business

Marine Bill: Further Consideration Stage ( <i>Continued</i> ) .....	35
---	----

Social Security Benefits Up-rating Order (Northern Ireland) 2013 .....	37
--	----

Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 .....	40
---	----

Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations (Northern Ireland) 2012 .....	39
---	----

Child Support (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2012.....	41
---	----

## Private Members' Business

Child Poverty Targets .....	42
-----------------------------	----

## Assembly Business

Extension of Sitting .....	58
----------------------------	----

## Private Members' Business

Energy Costs .....	59
--------------------	----

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to arrive not later than two weeks after publication of this report.

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Wells, Jim (South Down)  
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# Northern Ireland Assembly

Monday 13 May 2013

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

*Members observed two minutes' silence.*

## Assembly Business

**Mr Allister:** On a point of order, Mr Speaker. I appreciate that this is a matter over which, at best, you probably have influence rather than control. However, last week, again, we had a classic illustration of Executive Ministers — this time the First Minister and the deputy First Minister — choosing to make a statement on what they called a critical issue, not to the House but to the public media. Indeed, there was no sign of any intent to come to the House at all today about the matter. Is there nothing more that you can do to stem the contemptible "So what?" attitude to the House?

**Mr Speaker:** I have some sympathy for the Member's point of order. I know that he has a question for urgent oral answer with the Business Office at the moment on which I have not taken a decision. My clear understanding is that the First Minister and deputy First Minister are coming to the House tomorrow to make a statement, and that is why I have not made my decision on your question for urgent oral answer. If that is not the case, I will certainly take the Member's question. It is an issue, and I continually encourage Ministers to come to the House. On urgent and important business, they should come to the House. Yes, I have some sympathy with the Member.

## Public Petition: Health Service Dental Care

**Mr Speaker:** Mr Kieran McCarthy has sought leave to present a public petition in accordance with Standing Order 22. The Member will have up to three minutes to speak.

**Mr McCarthy:** Thank you very much, Mr Speaker. On behalf of some 1,700 very concerned County Down residents, I will shortly present to you their heartfelt objections to what is proposed by our Health Department in its change to treatments available through general dental services. Last week, we challenged the closure of residential homes and our children's cardiac unit; today, we plead for our dental services. No one knows what we will be faced with tomorrow. The dental proposals go against the values of Transforming Your Care, namely to be better at preventing ill health, to provide better patient-centred care and to tackle health inequalities.

Northern Ireland already has the worst oral health in the UK. These proposals will simply exacerbate that, and those in our constituencies who cannot afford to pay for their dental needs will fall further back and into ill health.

We pay tribute to those who administer our dental health services. They have worked hard over the years to ensure that all dental needs are met through the National Health Service. We wish the practice allowance and commitment allowance to continue, as these give our local dentists the opportunity to dispense only the best service to every patient.

Our dentists and constituents are shocked at the proposal relating to dentists' work, namely that dentists providing large bridges and root canal treatment would have to leave their patient in the chair and consult an official at the Business Services Organisation (BSO) on whether they had clearance to do the work. That would lead to a distressed patient, less efficiency and more bureaucracy. Surely this

cannot be right, and it must not undermine the professional judgement of any of our dentists.

We do not wish to see a two-tier dental service. The 1,700 people who signed the petition, along with the British Dental Association (BDA), wish to see a full dental service for everyone. These cutbacks will have a devastating effect on the most vulnerable.

Last week, the authors of Transforming Your Care clearly got it spectacularly wrong over the closure of residential homes. They must not be allowed to get it wrong over dental care services. Mr Speaker, I will now present you with the petition from 1,700 local residents and thank you so much on their behalf.

*Mr McCarthy moved forward and laid the petition on the Table.*

**Mr Speaker:** I will forward a copy of the petition to the Minister of Health, Social Services and Public Safety and the Chair of the Health Committee, Sue Ramsey.

## Executive Committee Business

### Marine Bill: Further Consideration Stage

**Mr Speaker:** I call the Minister of the Environment, Alex Attwood, to move Further Consideration Stage of the Marine Bill.

*Moved. — [Mr Attwood (The Minister of the Environment).]*

**Mr Speaker:** Members have a copy of the Marshalled List of Amendments detailing the order for consideration. The amendments have been grouped for debate in my provisional grouping of amendments selected list. There is one group of amendments. The debate will be on amendment Nos 1 to 8, which deal with adding grounds for judicial review to the Bill, placing duties on the public authorities and enhancing related penalties. Once the debate is completed, 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. If that is clear, we shall proceed.

#### **Clause 10 (Validity of marine plans)**

**Mr Speaker:** We now come to the single group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 8. Members should note that amendment Nos 3 and 4 are consequential to amendment No 1 and amendment Nos 6 and 7 are consequential to amendment No 5. I call Steven Agnew to move amendment No 1.

**Mr Agnew:** I beg to move amendment No 1:

In page 7, line 36, at end insert

*"(c) that the document, or part of the document, is irrational;*

*(d) that the document, or part of the document, is incompatible with any of the Convention rights."*

*The following amendments stood on the Marshalled List:*

No 2: In page 7, line 38, at end insert

"(5A) Notwithstanding the generality of subsection (4), applications under that subsection may be made by—

(a) a natural or legal person affected or likely to be affected by, or having an interest in, the relevant document;

(b) a non-governmental organisation promoting environmental protection."— [Mr Agnew.]

No 3: In clause 11, page 8, line 15, at end insert

"(c) that the document, or part of the document, is irrational;

(d) that the document, or part of the document, is incompatible with any of the Convention rights."— [Mr Agnew.]

No 4: In clause 12, page 8, line 39, at end insert

"the Convention rights' has the same meaning as in the Human Rights Act 1998;"— [Mr Agnew.]

No 5: In clause 22, page 16, line 7, at end insert

"(8A) Where the authority has given notice under subsection (5), it should only proceed with the act if it is satisfied that—

(a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,

(b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and

(c) where possible, the authority will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

(8B) The reference in subsection (8A)(a) to other means of proceeding with an act includes a reference to proceeding with it—

(a) in another manner, or

(b) at another location."— [Mr Agnew.]

No 6: In clause 24, page 17, line 40, leave out "section" and insert "sections 22(8A)(c) and"— [Mr Agnew.]

No 7: In clause 25, page 18, line 7, after "section 22(2)" insert

", or the duty imposed by section 22(8A),"— [Mr Agnew.]

No 8: In clause 25, page 18, line 12, leave out paragraphs (a) and (b) and insert

"(a) if the achievement of the conservation objectives stated for an MCZ is hindered as a result of the failure, a public authority is, unless there was a reasonable excuse for the failure, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine; and

(b) in all other cases the Department must request from the public authority an explanation for the failure and the public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request or such longer period as the Department may allow."— [Mr Agnew.]

**Mr Agnew:** In my view, amendment Nos 1 to 4 are about being explicit about the grounds for judicial review. When we discussed the clause that those amendments apply to at Consideration Stage, my concern was that, in explicitly outlining the grounds for judicial review, the Bill was narrowing those grounds from within common law. That attempt, perhaps deliberate, was made when, originally, the timeline for lodging a judicial review was limited to six weeks. I welcome the fact that that was extended at Consideration Stage to 12 weeks. We already have common law provision for judicial review. In putting in that clause, I think the original intention to reduce the timeline for judicial review belied a wider attempt to narrow the grounds for judicial review.

As I mentioned at Consideration Stage, the Aarhus convention requires that financial and other barriers to access to justice in environmental law are reduced or removed. My reading of the clause is that it narrows access to judicial review and breaches the Aarhus convention or, at the very least, is not within the spirit of the convention.

Amendment Nos 1 and 3 attempt to broaden the grounds for judicial review. As Members will be aware, in common law there are four grounds for judicial review. Two are in the Bill, and two are not. So, illegality and impropriety are in the Bill, but irrationality and compatibility with convention rights are not. Through

amendment No 1, I propose to introduce those two extra criteria to bring the Bill into line with common law.

Moving on to amendment No 2, there was discussion at Consideration Stage about whether a "person aggrieved" could be interpreted as bodies such as environmental NGOs. I was clear in my view at that stage that clause 10 as it is now was not required, because we have access to judicial review in common law. However, once you start being explicit on the grounds, you have to be very explicit and include all the grounds. That is why I maintain that the clause does more harm than help. So, I felt the need to table amendment No 2 to be very explicit. Although it may be implicit in the Bill that an environmental NGO could be a "person aggrieved" — I will be interested to hear the views of the Minister and others on that — I felt it necessary to be explicit on this point so that there would be no doubt and it would be made very clear. The Aarhus convention requires that environmental NGOs be allowed to make a legal challenge in cases of environmental law. Again, this amendment is trying to keep the Bill in line with the letter and spirit of the Aarhus convention and to ensure that the Bill is more broadly in line with common law with regard to access to judicial review.

Amendment No 4 is a simple defining amendment that aims to make explicit what is meant by "Convention rights". In my view, it was necessary to clarify amendment Nos 1 and 3 and to give them proper definition in the Bill.

Moving on to amendment Nos 5 to 7 —

**Mr Weir:** I thank the Member for giving way. Will the Member clear up a little bit of confusion? We seem to have moved on to amendments Nos 5 to 7 but not amendment No 4. He seems to be referring particularly in amendments Nos 1 and 3 to the Aarhus convention. Yet I note that, in amendment No 4, he defines "Convention rights" in the context of the Human Rights Act 1998, which I assume would be the European Convention. I am a little confused that he seems to be referring to one convention in one phrase and then, from a definitional clause point of view, seems to define that as relating to a different convention from the one that he referred to in his speech on amendment Nos 1 to 3.

I wonder whether he might clarify that confusion.

**12.15 pm**

**Mr Agnew:** I apologise for that confusion and for perhaps not being clear. Essentially, amendment No 4 tries to ensure that amendment Nos 1 and 3 are defined properly and to bring the Bill into line with common UK law. When I mention the Aarhus convention, I am referring to the broader framework for access to environmental justice. When I refer to common law, I am referring to UK common law. For that reason, the amendment refers to the UK Human Rights Act 1998, which, as the Member will be aware, transposes, to some extent, European directives into UK legislation. I am happy to give way to the Member.

**Mr Weir:** Surely when we are talking about the Human Rights Act 1998, the specific reference to "the Convention rights" can be interpreted by the court only as meaning the European convention, whereas the Member's intention in amendment Nos 1 to 3 clearly seems to be meaning the Aarhus convention. In that sense, there seems to be a mismatch in the definitions that the Member has given, which, I would have thought, could leave the amendments flawed, certainly from a drafting point of view.

**Mr Agnew:** I take the Member's point. As I said, and as the Member well knows, European directives and domestic law work very much in tandem. The UK Human Rights Act 1998 is the transposition of convention rights into UK law. Therefore, in legislating in the context of devolution in the UK, that was, in my understanding, the most appropriate way in which to define it. It is very clearly an attempt to ensure that the Bill ensures explicitly that there is an equally wide or, indeed, a no-less-narrow definition of the requirement to access judicial review that we have in common law.

Amendment Nos 5 to 7 deal very much with the responsibilities of public authorities in cases in which the conservation objectives of a marine conservation zone (MCZ) may be hindered. I had originally tabled similar amendments at Consideration Stage. I did not move them at that time in order to try to aid discussion with other parties. Given the tight turnaround, I am pleased that that was able to take place in some cases. Unfortunately, I was unable to speak directly with all parties.

Members will be aware that, elsewhere in the Bill, there will be a requirement on persons to show that if they wish, in any way, to act in a way that is detrimental to the conservation objectives of an MCZ, they will have to apply three tests. First, is there a better, less harmful way to do it? They will have to demonstrate that there is not. Secondly, is the damage of the act outweighed by a greater public interest?



Thirdly, is there a way in which to mitigate damage in one area through compensatory measures in another area of equal conservation value?

It seemed strange to me that, in the Bill, there seems to be less onus on a public authority. I hope and believe that public authorities should lead by example. At the very least, they should have the same requirements placed on them that private individuals have. In that regard, the amendment simply provides equity between public authorities and persons. We can all assume that a public authority will always act in a way that is deemed to be in the public interest, and we have seen that on land, where various pollution fines have been received by Northern Ireland Water. So, it is important that we have stringent criteria in the Bill for Departments to act.

I am glad that I was able to meet some parties to discuss the matter, because I know that there were some concerns that it may inhibit a public authority's ability to act in the case of an emergency. I think that it was Mr Elliott who, in the last debate, raised the issue of an oil spill. That is why the proposed new subsection (8A)(b) is key. It states:

*"the benefit to the public of proceeding with the act clearly outweighs the risk of damage".*

I would define that as the public interest test. It is clear that that subsection would allow public authorities to act in the wider public interest even if that hindered the conservation objectives of an MCZ. Indeed, the Bill already provides for a 28-day notification period. My reading of that is that you cannot act within 28 days unless given permission to do so by the Department. So, again, I know that there was a concern about urgency. However, to me, that concern is greater than the provisions outlined in amendment No 5.

Amendment Nos 6 and 7 are very much consequential to that.

One other concern to address — which may or may not be a concern, but I want to deal with it should it come forward as a concern — is the potential cost to public authorities of this added scrutiny and more stringent criteria for giving permission to harm the conservation objectives. We need to be clear that we need to have stringent laws on the management of marine conservation zones, because that is the right thing to do and because the marine strategy framework directive requires us to have good environmental status by 2020. Failure to get

that status would be significantly more costly than any administrative cost that may arise out of this amendment.

Finally, amendment No 8 proposes to introduce a penalty if public authorities are found to be hindering the conservation objectives of an MCZ and fail to demonstrate that they have indeed acted in the wider public interest. The amendment essentially proposes to bring how we treat designated areas on land into line with how we propose to treat designated areas at sea.

In the Environment (Northern Ireland) Order 2002, there is a potential penalty of £20,000 if a public authority damages an area of special scientific interest (ASSI). So, this is about seeking consistency in law in respect of penalties and consequences. Again, it is about ensuring that, in setting up MCZs, they are about more than pieces of paper and nice objectives, and, equally, that there are consequences should the conservation objectives of MCZs be breached by a public authority.

As regards the level of the fine, we obviously considered whether that was still the correct level given that we are a number of years on from the Environment Order, but we felt that, in respect of having consistency in law, using the £20,000 figure, and therefore providing the same penalty and protection, showed that we see the MCZ designation as equivalent in importance to that of ASSI.

**Mr Weir:** I thank the Member for giving way. He explained quite clearly the derivation of the level of fine on summary conviction to put it on a par with that. In respect of the drafting intention, the amendment refers to a fine limit of £20,000 for a summary conviction but makes no reference to any amount for a conviction on indictment. Is the intention to be completely open-ended with regard to any fine on indictment? That is certainly the way it appears, as drafted. I would be grateful if the Member would elucidate.

**Mr Agnew:** I thank the Member for his question. I will take time in my winding-up speech to try to answer that. The intention, as I say, is to ensure equivalence. The amendment mirrors what is in the Environment Order. Not having drafted that legislation —

**Mr Weir:** Will the Member give way?

**Mr Agnew:** Yes.

**Mr Weir:** I thank the Member. This intervention is on a separate point, but if the Member is going to respond to some of these matters in his winding-up speech, it is maybe worthwhile raising it at this stage to give him a little time. Amendment Nos 1 and 3 relate to judicial reviews and a document or part of a document being "irrational". I am fairly familiar, from a judicial review point of view, with the issue of whether something is unreasonable. There is clear case law around the definition of the word "reasonable". Will the Member explain the use of the word "irrational" and how he sees that being defined by the courts?

**Mr Agnew:** I thank the Member for his question. Given that there is an explicit clause on access to judicial review, the intention was, as best as possible, to word amendments in such a way as to reflect what is commonly interpreted by the courts. The Member may suggest that there are better ways to have worded the amendments but, certainly with the time and advice I had, that seemed the best way that I could find to transcribe common law explicitly into the Bill.

As I have said, my preference was not to have an explicit clause. Good precedents for judicial review have been set, and transcribing those poses difficulties. However, without any further opportunity to amend the Bill, I could see no better way to transpose common law into it. I did seek to meet all parties in advance of this debate, but there was a restricted timeline. The amendments, as drafted, need to be taken or left on those grounds. I thought it best to meet as many people as possible in advance of tabling the amendments and in advance of the debate to ensure that I got them right and drafted them as best I could. I am interested to hear feedback from others on how they view the amendments.

To conclude, the Green Party's clear and consistent intent in the amendments is to ensure that the enforcement of the measures in the Bill is as stringent as it can be and the deterrents are sufficient to ensure that, when we designate MCZs, they are meaningful, and that the Bill in its entirety pushes us closer to the target of achieving good environmental status by 2020 and provides for sustainable management of our marine areas.

The objective of the amendments is very clearly to ensure that public authorities are held to account on these issues as much as, if not more than, private individuals. My reading of the Bill, as introduced, was that it was, perhaps, a bit soft on public authorities. Indeed, I was concerned that there may have been attempts

in the Bill to protect the Department. In that regard, the amendments seek to ensure that the Department and other public authorities are held to the highest account.

## 12.30 pm

**Mr Hamilton (The Deputy Chairperson of the Committee for the Environment):** I wish to speak initially on behalf of the Environment Committee. I apologise for the Chair's absence; she is at a conference in Dublin that is part of the Irish presidency of the European Union and sends her apologies. I am sure that she would not mind my saying that she is very pleased, in fact giddy, at the House's support for her amendment on sustainability that was made a couple of weeks ago. In fact, she was so giddy that she threatened to kiss me in joy at the whole thing. I managed to beat a — I have witnesses to prove that I beat a fairly hasty retreat. *[Laughter.]* She was very pleased that her amendment was passed by the House, and I had to point out that, although I did not support it, my opposition was somewhat muted.

**Mr Elliott:** I am hugely surprised at the length that some Members in this House will go to in order to get their own way.

**Mr Hamilton:** I refer the Member to the comments I made earlier about beating a fairly hasty retreat.

Back to more serious matters, if I may. I will begin by addressing Mr Agnew's proposed amendments Nos 1 to 4, which relate to the circumstances in which there might be a judicial review in relation to a marine plan. The Committee was content with clause 10 as drafted, subject to an amendment being made that would extend the time to allow for an application for a legal challenge against a published marine plan. The Committee also agreed to recommend that the Minister should stress that there is a recognised process for engagement throughout the preparation of a marine plan and that the High Court option should not be considered an alternative.

I welcome the fact that such an amendment was made at Consideration Stage, and that the Minister provided us with the necessary reassurance. However, I should also add that, although we were content with clause 10 as drafted, we were initially concerned that the grounds for a judicial review of a marine plan were too limited. The Committee suggested that these grounds should be expanded, at least to include irrationality. The Department argued that the rest of the UK marine planning

authorities had similar provisions with regard to challenges in order to allow judicial review of a marine plan and that the standard grounds of judicial review were reflected in the grounds of challenge specified. The Committee accepted that argument. It is not that the Committee is opposed to the principle underpinning amendments 1 to 4; rather, we accepted the Department's argument that amendments were not necessary. I look forward to the Minister clarifying whether that remains the position.

The Committee does not think that Mr Agnew's proposed amendment No 5 to clause 22 and the consequential amendment Nos 6 and 7 are necessary. Clause 22(11) requires a public authority to have regard to any advice or guidance given by the Department under clause 24. The Department told us that a public authority must have a very good reason for dismissing this advice because a third party could challenge its decision via judicial review. The Committee was satisfied with this explanation and so was content with clause 22 as drafted.

On the proposed amendment No 8 to clause 25, the Committee was content with this clause subject to a departmental amendment requiring a public authority to provide a written explanation if it fails to comply with the duties required by an MCZ. As such, an amendment was agreed at Consideration Stage, and the Committee does not believe that any further amendments to that clause are necessary.

That concludes my remarks on behalf of the Committee, but I want to say some things on behalf of my party. This Bill has been characterised throughout its passage — from drafting, the Committee's consideration and the amendments to various clauses at Consideration Stage — as an attempt to get a balanced Bill, because there was a recognition on everybody's part — the Department, the Committee, the stakeholders — that there is a range of interests at stake here. Principal among those are the interests of the marine environment, but underneath that there are interests of various sectors: the environmental lobby and various environmental groups; fishing interests; shooting and conservation interests; and energy interests. At all stages, an attempt was made to reach a balanced Bill.

The Bill that the Minister presented to this House was reasonably well-balanced, and a few tweaks and changes have improved that balance. My concern at this late stage — Further Consideration Stage — is that, while I accept the right of any individual to bring competent amendments forward, I am always

mindful of upsetting that balance that has been created through the fairly extensive work that the Committee did at roughly this time last year during its scrutiny and some of the work that has continued up to this point.

So, all of us, no matter whether we were from the Department, the Committee or the various stakeholder groups, have always sought to get an appropriate balance in how we deal with our marine environment, as characterised in this Bill. I think that that is a reasonable and appropriate principle to have when dealing with important legislation like this. There are lots of interests that are sometimes competing. Therefore, we need that degree of balance.

I do not want to say too much about amendment Nos 1 to 4 — I know that Mr Weir wants to speak on those on behalf of the party in some greater depth — other than, as I mentioned when I spoke on behalf of the Committee, in order to test the Department's position, the Committee raised some of the issues that Mr Agnew raised and enunciated in the presentation of his amendments. The Committee was satisfied with what the Department said on that. One of the key responses that we got — it is worth highlighting — was that, if we were to legislate in the way that Mr Agnew is proposing, Northern Ireland would be outwith and outside what other jurisdictions in the United Kingdom have done with legislation. Obviously, they are much further along the line on marine legislation that is similar to this Bill, but they have legislated in a way that the Bill proposes that we legislate, and we need to be careful about legislating in a different way in Northern Ireland.

At Consideration Stage, we were careful when Mr Agnew proposed an amendment on the sea fishing defence, which would have made Northern Ireland distinct and different and put the fishing community at a disadvantage. I think that we need to be similarly careful about legislating in a way that is entirely and fundamentally different from what other jurisdictions in the UK have done.

I want to speak about amendment No 5 in a little more depth, and, obviously, there are a couple of consequential amendments to it. I understand — I think I understand, anyway — where Mr Agnew is coming from with his amendments and what he is trying to achieve. He can correct me if I am wrong in trying to argue what his position is.

I sympathise with his argument that, if you take the time to go through a fairly painstaking process to designate certain parts of our marine

environment as marine conservation zones, by that very process and by setting it aside you are saying, "This area that we are mapping out in our inshore region is so important that we must be incredibly sensitive when we do anything that might affect it." I can agree with that, and I have argued that point and agreed with it throughout the process of the Committee's involvement with this legislation. I worry, though, that what is proposed, in the first instance, ignores the general duty that exists in what is now clause 22(2), which states:

*"Every public authority to which this section applies must (so far as is consistent with their proper exercise)—  
(a) exercise its functions in the manner which the authority considers best furthers the conservation objectives stated for the MCZ".*

So, there is already a fairly broad general duty on public authorities to exercise their different functions while operating in the marine environment. They perhaps have entirely different interests from those of the Minister of the Environment, but they still have to do so in a way that does not "maintain" or "keep where it is," but that:

*"best furthers the conservation objectives stated for the MCZ".*

Clause 22(2)(b) —

**Mr Agnew:** I thank the Member for giving way. He was about to go on to clause 22(2)(b), which refers to "where it is not possible". That paragraph also refers to "least hinders", which, to some extent, replicates proposed new subsection (8A)(a) of my amendment. What it does not include is the public interest test, which is how I define proposed new subsection (8A)(b) of my amendment, whereby you have to demonstrate that the harm you are causing is outweighed by a greater public interest.

Equally, it does not include that kind of mitigation or compensatory measure. So, to me, it falls short of what we expect of persons elsewhere in the Bill. Although subsection (2) goes some way to addressing some of my concerns, it does not go the whole way and does not put the same level of criteria on public authorities as on persons.

**Mr Hamilton:** I accept that, and I was going to go on to paragraph (b) and particularly point out the two words "least hinders". I accept that, as drafted, the clause does place a duty on public authorities to think a little more carefully about

what they do in and around an MCZ rather than simply leaving it that they can do what they want. A duty is being placed on them. Not only is that additional to what the Member proposes — so we keep those general duties — we add additional specific duties.

The problem that arises is that what the Member proposes may be reasonable in the sense of certain events that could happen, and I talked about this a little at Consideration Stage. I can think of two types of event. One is fairly benign: it might be, say, an energy company wanting to lay a pipeline or a telecommunications cable or the like on behalf of the Department of Enterprise, Trade and Investment (DETI), which is taking forward something on the energy front. Something such as that would be considered and dealt with over a long time. You see it happening and know that it has to be done. You see the benefits and decide that you want to do that, and you then take it forward through a process that may take months or even years. In considering the impact of laying a cable or pipeline that might go across an MCZ, the public authority would be able to look at ways in which it "least hinders" the marine environment and furthers the conservation objectives of the MCZ. That is an example of an event that you can see coming down the line and know is happening. You agree that it has to happen, but you accept that there are ways in which to do it.

In his amendment, the Member proposes the following in subsection (8A)(a):

*"there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives".*

That is something that you would do automatically in the event of something that was foreseeable and planned. Indeed, it is a duty that, I believe, is placed on that public authority by clause 22(2)(b). However, other types of event could come up, where a public authority has to act very quickly without the luxury of seeing something planned and thought about over a long time. At Consideration Stage, I used the potentially relevant and realistic example of a spill from an oil tanker. We know that the Irish Sea and the North Channel see a fair amount of traffic of that variety. There was an instance in the past year of an oil tanker — I cannot remember the name of the ship — off the Copeland Islands, very close to Belfast lough. For a number of days, many of us were concerned about what would happen to the oil tanker involved and

whether we would have an environmental incident on our hands. You do not have the luxury of knowing that that is going to happen. It is perhaps a known unknown or a not-entirely-unknown unknown: you know that it could happen, but when it happens —

**Mr Agnew:** Will the Member give way?

**Mr Hamilton:** Yes, I will let you in before I elaborate.

**Mr Agnew:** I take the Member's point, which is why, in my opening, I made a reference that I will make again: in the amendment, subsection (8A)(b) sets out a public interest defence. If taking the act is clearly more in the public interest than not taking it, there will be that defence. In the example that he outlined, it would be strange to argue other than that clearing up an oil spill was in the public interest. There is not much point in having an MCZ if it is covered in oil. So, it is clear that, in the example he outlined, the public authority would be enabled to act in such circumstances if the amendment were passed.

**12.45 pm**

**Mr Hamilton:** I thank the Member for his intervention. I used the example of an oil spill because it is understandable. It is perhaps extreme. Obviously, a lot of things that happen will fall between the laying of a pipeline or cable and the fairly extreme example of an oil spill, and they may not be just as clear cut. However, even in that example or something similar, clause 22(8)(b) would allow the public authority to set aside the requirement in subsection (7) to give 28 days' notice to the Department before it acts. In fact, for a lot of the fairly benign issues that I was talking about, you would need more than 28 days to work out how that would happen and the best way to achieve it. Clause 22(8)(b) gives power to the authority to act where it thinks that there is an urgent need to do so, and that would apply to something like an oil spill.

My problem with the Member's amendment is that it would put additional hurdles in place. Irrespective of whether we universally accepted that there was an urgent matter requiring an immediate response by whatever public authority or authorities were responsible, the amendment would place additional duties and requirements on them. It may involve several public authorities. With something like an oil spill, several public authorities would be engaged — both central and local government, as well as arm's-length bodies — and all would

have to go through and pass the tests that the Member lays out in his amendment, ask themselves whether there was no other means of proceeding and look at the benefit to the public of proceeding with the act.

Clearing up an oil spill is clearly — I think that everyone would agree on the word "clearly" — something that would need to be acted on fairly promptly and urgently. There may be other grey areas that I, not being an expert on the marine environment, cannot think of. There may be several ways in which you could act but only one decisive way that would not only save and further the objectives of the MCZ but would protect the whole marine environment. The benefit of the marine environment to Northern Ireland will extend beyond MCZs, and damage that we cannot contemplate could be done if we focused entirely on them. I am concerned that what the amendment proposes would put additional hurdles in the way of public authorities considering their response, which may need to be rapid, to incidents. They would have to think about things. What would happen if there were disagreement externally about whether the benefit was clear and whether there was a better way? We could get into a system of challenge from other public authorities, never mind external challenge.

In my view, this is an amendment to a clause that is quite clear and recognises the very issue that the Member is getting at, which is the duty on public authorities. Before acting, they must think a little more about what they are doing and how that will affect the marine environment. They are to do so in a way that furthers the objectives set in establishing the MCZs or in a way that "least hinders" those objectives. I think that I understand where the Member is coming from — I hope that I do. I sympathise with his general point, but the legislation as drafted deals with that. I worry that what he proposes to put in place would put in the way of public authorities hurdles that could impede the rapidity of their response to urgent matters that come up. For those reasons —

**Mr Weir:** Will the Member give way?

**Mr Hamilton:** Yes.

**Mr Weir:** I apologise if the Member touched on this while I was out of the Chamber briefly, but there are a couple of further dangers in paragraph (c). I appreciate the thinking behind it, but, if something can be of environmental benefit, should that not be done anyway rather than waiting for a quid pro quo? Something is either needed or it is not. If something does not

need to be done, you will be doing something unnecessary simply to tick a box. If something is needed, it should be done irrespective of that.

If I were being entirely cynical about public authorities, I would ask whether there was a degree of danger that they might hold back on doing certain things that are required on the basis that they might have to throw them in as a balancing measure at some future stage. By way of the law of unintended consequences, you inadvertently create a situation in which you delay or prevent potentially environmentally beneficial acts. That is because, for want of a better phrase, the public authority wants to leave that club in the bag in case it needs to use it at a later stage.

**Mr Hamilton:** I thank the Member for his intervention. I am sure that public authorities would not be as cynical as he is, given what he outlined, but you never know.

I did not touch on subsection (8A)(c) in amendment No 5. There is an uncertainty there: how can you do benefit to damage that has been done? There may even be a legal principle around whether you can do benefit to something that has been damaged. It is not clear where those measures of "equivalent environmental benefit" would take place. They could, conceivably, take place in an entirely different location that is not marine-based. The Member will correct me if I am wrong, but I would have thought that such measures should take place in and around the same area and should be to rectify some of the damage that has been done. The amendment states:

*"where possible, the authority will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit".*

It does not say "marine environmental benefit". It could be the planting of trees or something to do with animals, birds or insects.

**Mr Agnew:** I thank the Member for giving way. Does he accept that the wording is lifted from elsewhere in the Bill where "persons" are referred to? It is putting in an equivalent duty. The Member has a concern about the particular wording and its implications, but my understanding is that it is a Marine Bill that is legislating for the marine environment. So, the measures would have to be within a marine context.

The Member is on the Committee for the Environment, and other members of that

Committee have the same concerns. That wording exists elsewhere in the Bill. Forgive me, I forget the other clause at the moment; I think that it is in clause 23. Was the Committee concerned about the existing wording in the Bill where it applies to persons? If not, why would the Member be concerned about the wording in relation to a public authority, given that the implications are the same?

**Mr Hamilton:** The Member makes a fair point. He is challenging me to recall the Committee's view on anything. We looked at the Bill a year ago, so the fact that I can remember anything is probably a good thing.

For the reasons that I outlined, I am less concerned about subsection (8A)(c) than I am about (a) and (b), which was why I was moving on before Mr Weir intervened. So, for Members' benefit, I will not rehearse those reasons.

I will now turn to amendments Nos 6 and 7, which are consequential, and to amendment No 8. I will touch first on new paragraph (b) in amendment No 8. There is already a clause in the Bill on this; in fact, I think that it was added that this matter should be in the Bill. Although I appreciate that there is a subtle difference, I think that the duty and the requirement are already there. In respect of new paragraph (a), I share some of Mr Weir's concerns. Without wishing to steal any more of his thunder, I always have concerns about public authorities fining other public authorities at that high level and about the circular movement of money. Members may say that it is only £20,000, but the second line of the paragraph states:

*"unless there was a reasonable excuse".*

It is likely that one public authority would challenge what the other public authority or Department was saying about whether the excuse was reasonable enough. If a Department says that what was done in certain circumstances was unreasonable and the other public authority thinks that it was reasonable, they may well test that in court. The cost to the public purse will be not £20,000, which may be a small amount of money in the grand scheme of the Northern Ireland Budget, but, when we are talking about legal fees and costly lawyers being involved, somewhat more than £20,000.

I share Mr Weir's concern about the reference to a public authority being:

*"liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine".*

There is a question mark over the level at which such a fine would be set. Again, the principles of the circular movement of money and whether the fine would be limited at £20,000 because of the likelihood of legal challenge to it are issues.

I hate to be the bearer of bad news for Mr Agnew, but that all adds up to a lack of support for all the amendments that he proposes today. However, if I can give him some small bit of solace, I will say that I understand the principle, particularly in respect of amendment No 5. I hope that I understand where he is coming from, and I have some sympathy with where he is coming from. I merely argue back to him that the Bill already addresses those concerns. We should move forward with the Bill as drafted and unamended and deal with the very important issue of the marine environment and how we can better protect it. I go back to my point about how we balance all the interests, whether they be environmental, fishing, shooting, energy or governmental.

**Mr Boylan:** Go raibh maith agat, a Cheann Comhairle. Ba mhaith liom cúpla focal a rá. I will say a few words about the amendments. I will use my native language by saying "Tús maith", which means "A good start". This legislation is a good start.

I want to start with the amendment that relates to judicial reviews. I understand that there should be an appeals mechanism and a review process. However, we are starting here with legislation to look after our marine environment and to set out clearly how we should go about that, yet already we are talking about a judicial review process. I will not go into too great detail, especially on the first four amendments. However, I will say that, in my experience, there will always be a legal challenge to anything that is brought forward. There is no doubt about that. If there are ways of bringing a legal challenge, there are certainly people out there who will find them. We could talk about judicial reviews all day, but those in the legal system will always find a way to challenge something.

On the amendments themselves, I have to keep referring to the legislation that we are dealing with at the minute, which is the Planning Bill. I know that the process is that you are allowed to table amendments for the Chamber. However, unfortunately, we have not had proper time to consult on these amendments. I have some sympathy with the Member in that regard. In all the amendments that he has tabled, he is trying

to make the Bill better. However, we have gone through a good period of consultation on the legislation —

**Mr Agnew:** I thank the Member for giving way. I take his point that to some extent the procedures, particularly the time between Consideration Stage and Further Consideration Stage, do not allow much time for consultation. However, the Green Party submitted its views on the Bill to the Committee for Committee Stage. We are not on the Committee, so we felt that putting forward our arguments at that stage rather than waiting until Consideration Stage was the way to do it. I do not think that the Member was making a criticism. However, almost in defence against a criticism that was not made, I will say that we have tried as much as possible and as much as the process has allowed to be up front with our intentions to allow as much time as possible for consideration of our proposals.

**Mr Boylan:** I take the Member's intervention, and I understand where he is coming from. However, we went through a long period of consultation. The Bill has sat for a while now, but we have got to a point at which participation on this legislation has been welcomed. We are starting to move from a process of consultation to one of proper participation. That is why I say that the Bill has had a good run. On the Member's amendments, I think that we took it on board in Committee that the clause, as drafted, was satisfactory. I know that a change was made to this clause concerning the period in which a challenge can be made, but I cannot agree with the proposals in amendment No 1 and consequential amendment Nos 3 and 4.

**1.00 pm**

I want to talk a wee bit about amendment No 5, because the key to all of this is the MCZ process. I said to the Minister at Consideration Stage that how we designate an MCZ is key: it has to be evidence-based. Amendment No 5 relates to clause 22. If there are concerns from NGOs and everybody else in relation to all of this, they should be part of the process of bringing forward as much evidence as possible to designate an MCZ.

I am sorry that the Member did not bring up any examples. I want to talk a wee bit about his concerns in relation to damage to the MCZs. There are two elements. One is the reactive element, and I use the example of an oil spill. Maybe the Minister can elaborate a wee bit on the process when it comes to emergency cover and everything else, because, in some cases, I

would be concerned about the reinstatement of something that had been damaged. In some cases, there may not be an opportunity to reinstate things fully where damage has been caused, but I want to hear what the Minister says about what exists in regulations. That is one element.

The other element arises where there is, as the Deputy Chairperson said, a pipeline or a utility of some description. That, surely to God, should be looked at during the designation process. If we are going to designate MCZs, we should be looking at what would go there in the future and take that on board. Those are the two elements involved.

We can only discuss these things and learn from the mistakes we have made and also examples or models of good practice. I keep going back to that, and I will keep repeating it until there is a process for the proper designation of an MCZ. The designation cannot be done without being evidence-based.

In relation to clause 22, I have some concerns when it comes to putting extra duties on public authorities, because, if we are going to do that, we need to give them the necessary resources. I am concerned, in particular, about local authorities, given that we are going to transfer a number of powers to them. They will buy into this. This is a good piece of work, and its success will depend on everybody being involved, particularly NGOs, in the designation of MCZs.

In relation to amendment No 8 and clause 25, I will say this, as I mentioned with regard to working with public authorities. I ask the Minister whether we could look at dealing with some of the concerns, raised by Mr Agnew in his amendments, through secondary legislation or even guidelines with respect to the responsibility of public authorities, when looking at the whole process of designating at the start. Maybe there should be guidelines, duties or whatever is there. Some duties are covered in the Bill, but, if the Member feels that this piece of primary legislation is lacking, we could look at some other ways of bringing measures forward, either through guidelines or secondary legislation.

With that, I will bring my remarks to a close. I will not be supporting the amendments. Go raibh míle maith agat.

**Mrs D Kelly:** As a member of the Committee for the Environment, I support the views expressed by the Deputy Chair on behalf of the

Committee. Unfortunately, our party will not be supporting the amendments.

The amendments tabled have obviously helped the debate about the Bill and its interpretation, and they provided some clarity. For that, Mr Agnew ought to be commended. Amendment Nos 1 to 4 deal primarily, as others have said, with the judicial review process, and there is a definition under amendment No 2. The grounds for judicial review are quite clearly defined in the Bill, in keeping with legislation and commitments elsewhere.

Amendment No 5 is a wee bit unclear. The Minister has given commitments, and, as others have said, there was extensive consultation with a range of stakeholders, including those who have sea fishing interests, environmentalists and public authorities, and it would be unjust to demand a different approach to local councils than to Departments. That is one reason why we cannot support the amendment.

Amendment No 8 relates to a public authority's failure to comply with its duties in relation to MCZs and with regard to advice and guidance from the Department of the Environment (DOE). That is a situation where the district council is the only authority and would potentially have action taken against it.

**Mr Agnew:** Will the Member give way?

**Mrs D Kelly:** I will.

**Mr Agnew:** To be clear, my understanding of the term "public authority" is that it includes councils as well as Departments. It is any public authority. My understanding — I stand to be corrected — is that it has a wide definition. The amendments do not refer to local government and are not specific in that regard.

**Mrs D Kelly:** The Member is right that the term "public authority" has a wider context but, given that the Departments enjoy Crown immunity from prosecution, there is a difference in how bodies that come under that definition are dealt with.

As a party, we are strongly supportive of the protection of the marine environment, which has a lot of potential for marketing and tourism of a different nature. We strongly support the Marine Bill but we are unable to support the amendments.

**Mr Elliott:** I thank the Minister for getting the Bill to this stage. I do not have a great deal of



interest in supporting the first four of Mr Agnew's amendments, and that clearly means we will oppose them. We do not think that they are necessary at all. I have relayed that to Mr Agnew and I am sure that he is aware of my position on those amendments.

There is merit in amendment No 5. Before the previous debate, Mr Agnew tabled the same amendment but withdrew it. At that stage, before Mr Agnew withdrew it, the Minister indicated that he was going to support it. I have a number of questions about that. First, is it competent in the context of clause 47? Clause 47 deals with Crown authority, and the amendment seems to conflict with that. Has any legal advice been sought on that either through the Department or by Mr Agnew? I do not want us to approve something and, at a later stage, it be declared not competent or that it does not fit with other parts of the Bill. Clause 47 states:

*"No contravention by the Crown of any provision of this Act is to make the Crown criminally liable".*

To my mind, that is what amendment No 5 would do. The clause goes on to state that the High Court may decide on that at a later stage. We are supportive of the principle behind amendment No 5 but I am not sure that we can support it because we are not confident that it is competent. I will be interested to hear what the Minister says about that and what Mr Agnew says in his winding-up speech. Obviously, there are also some consequential amendments to that.

On amendment No 8, we have had some debate around the £20,000 fine that may be levied on Departments, and I wonder how that fits with other pieces of legislation. I know that there is an argument about whether you should impose that maximum amount of £20,000 or whether you should leave it open to a wider amount if the authorities or the courts feel that a much larger fine should be levied against a Department. Those are some of the issues. I will wait to hear what the Minister says about amendment No 5 and, indeed, what Mr Agnew says in his winding-up speech.

**Mr Weir:** I rise a little earlier than I thought I would. I see that, in the absence of the Chair of the Committee, the Alliance representatives seem to have abandoned ship, and we are left with empty Benches at this point in the debate. Mr Hamilton said that I would be dealing with these issues in some detail. I do not intend to deal with them in some detail, not least because, I suspect, the more detail that I go

into, the more detail it will tend to provoke from the Minister in response. Quite frankly, I do not want to give him any more excuse than he normally has.

I will deal with a few of the issues that have been raised. I do not intend to talk about amendment Nos 5 to 7, which have been covered fairly comprehensively by my colleague. I await to hear what has to be said. Suffice to say, I agree with the general tenor in that, although I understand the thinking behind amendment Nos 5 to 7, there is already coverage in the Bill. I have already highlighted some concerns on the drafting of amendment No 5.

Amendment Nos 1 and 3 run very much together, and again I believe that the provisions in the Bill are sufficient. We raised the issue at Committee, and we got assurances. Indeed, I wait to hear from the Minister on that. To pick out irrationality as simply one ground for judicial review when there are a number of others that could be looked at puts things a little out of kilter.

Amendment Nos 1 and 3 have been quite badly drafted, particularly when read in the context of amendment No 4, which seeks a definitional clause that can be read only in the context of amendment Nos 1 and 3. Amendment No 4 ties in "Convention rights" with the European Convention on Human Rights, which we are bound by anyway. Leaving that aside, it ties in a definitional quality on references to "Convention rights". Clearly, this is interpreted within this piece of legislation, yet it is clear from what the Member said when moving this that he has a completely different convention in mind when he talks about amendment Nos 1 and 3. He talked about the Aarhus convention and the need to secure compatibility with that. Yet, in light of amendment No 4 if it were passed, courts could not interpret amendment Nos 1 and 3 as referring to the Aarhus convention because it specifically defines "Convention rights" as referring to the European Convention on Human Rights.

**Mr Agnew:** Will the Member give way?

**Mr Weir:** I will give way to the Member.

**Mr Agnew:** It is not a case of defining it within the Aarhus convention. I made reference to the Aarhus convention in making the point that the Bill should, at least, be within the scope, if not compliant with it, or if compliant with it, be compliant both in word and spirit. There are two separate points, I suppose. It is about

defining grounds for judicial review, and there is a more general point on access to justice beyond what exists in common law within the European framework. So, the Aarhus convention sits above, almost, the UK common law. The attempt of the amendments is to bring the Bill in line with UK common law and to seek, overall, to ensure that it is compliant with the Aarhus convention.

**Mr Weir:** It is intended to have "Convention rights" in one sense to mean one thing and in a different definitional sense to mean something else. Clearly, any legislation is bound by common law and by the European Convention. Not all of us in the House will be the greatest fans of every aspect of the European Convention on Human Rights, but it is enshrined in domestic law. Therefore, it is not only unnecessary but, from this point of view, confusing, because if the court is trying to read in what the Member said in the first instance to this, there will be a degree of conflict within that. On the issue of irrationality, as has been indicated, if there is a specific reference to irrationality, that is something that would put us in a different situation from similar legislation that applies in other parts of the United Kingdom. Again, I am not convinced of the necessity for that.

**1.15 pm**

I turn briefly to amendment No 2 —

**Mr Allister:** Will the Member give way?

**Mr Weir:** Yes, I will give way to the Member.

**Mr Allister:** Following the Member's earlier intervention about irrationality, is it not the case that, in judicial review, that which is deemed "irrational" in more modern cases is really the same manner of expressing what was formerly expressed under *Wednesbury* unreasonableness? Without wanting to bore the House, I point out that this goes back to what Lord Diplock said in the landmark *GCHQ* judicial review, where he set out irrationality as equating to *Wednesbury* unreasonableness, which is not just unreasonableness but has to be so outrageously unreasonable as to be irrational, to put it in simple terms. So, I do not think that there is any magic in the introduction of the word "irrational". I think it is, in fact, a more up-to-date way of expressing *Wednesbury* unreasonableness.

**Mr Weir:** I thank the Member for his intervention, and I understand that. Obviously, irrationality is something that encompasses

what previously may have been referred to as unreasonableness; indeed, it is something so unreasonable that no rational or reasonable person could have decided that.

The point that I am trying to tease out from the proposer of these amendments is that, if he seeks to change the law to make a specific reference to irrationality, it is incumbent on him to explain what he sees as the meaning of that. Courts can draw conclusions from their own inferences but, if someone is putting forward legislation, they need to at least understand exactly what is behind that intention.

I turn to amendment No 2. I do not believe that it is necessary, as there is provision already in clause 10. I take exception to this sort of blanket definition:

*"a non-governmental organisation promoting environmental protection."*

How is that to be defined? As has been indicated by Members who spoke previously, very delicate balances have been set up through this legislation. Will this amendment give carte blanche to any one, two or three people who set up and call themselves an NGO promoting environmental protection? Does this give parity, for example, to other organisations that could arguably have an interest? There is a specific mention of environmental protection organisations, but no specific reference to, for example, the interests of the fishing fraternity or the shooting and conservation side of it.

**Mr Agnew:** Will the Member give way?

**Mr Weir:** Yes, I will give way.

**Mr Agnew:** I appreciate the Member's point. Before I submitted the amendment, it was something that I questioned. However, I think that that is why, notwithstanding the generality of subsection 4, the wording is important. It is explicit in saying that environmental NGOs should be able to take that challenge. The wording comes from the Aarhus convention, and that is required for access to environmental justice, but it certainly does not exclude other organisations. So, to some extent, it is to ask the Minister whether it is his interpretation of his Bill that those organisations could take legal challenge. This is just about being explicit. As I said from the outset, I would rather that this clause were not here and we could just allow judicial review under common law.

**Mr Weir:** I fear that, in striving to dot all the i's and cross all the t's, the Member is in danger of

disappearing up the Aarhus convention. It should not simply be treated as some degree of Holy Writ. I do not see the equivalence. The Member was right to question whether paragraph (b) of amendment No 2 is needed. It is quite clear that paragraph (a) is covered by the legislation, and paragraph (b) seems to make explicit one particular section, but there is sufficient cover within the legislation as it is drafted. Clearly, what is there around locus for someone taking a judicial review, for example, means the court will be able to determine whether someone has sufficient interest, and I believe that that is an adequate enough protection.

My colleague has dealt with amendment Nos 5 to 7, so I will make no further comment on them.

As was said, paragraph (b) of amendment No 8 replicates what is in the Bill. It is unnecessary because it simply repeats what is there. As was said about paragraph (a), it is not a good principle for money to circulate from one public authority to another. Fines are issued that then go back into the government system, which is not a sensible use of public money. It is a principle that has largely been accepted. There is some loose drafting in the amendment, in that it refers to a cap on the level of fine on summary conviction, but, from the wording, the level of fine on indictment seems to be open-ended. I am not sure whether that is the intention. The Member can deal with that in his winding-up speech. The wording seems to be flawed.

The amendment would mean that public authorities are putting money — the fines collected — through the courts, which, presumably, would then go back into the Executive. The fines seem to serve very little purpose, except, as Mrs Kelly pointed out, to create a potentially injurious situation in which local authorities would not benefit from the fines but instead have money removed.

The biggest single winner would be lawyers. I am a former lawyer, and I appreciate that there are others in the House. The amendment would not serve any useful public purpose because the fines would simply shift money around. It would put more and more money into the hands of lawyers. With a summary conviction, there is a maximum fine of £20,000. As we see in our court system, on most occasions for which there is a maximum fine, that is very rarely exercised. Minimum fines flow around the system, and you pay groups of lawyers on both sides of the argument, which is slightly illogical.

I believe that the protections in the Bill are adequate. I share some sympathy with others for the thinking behind the proposals, but I do not believe that any of the amendments improve the Bill. I look forward to remarks from the Minister and the proposer of the amendments in summation.

**Mr Attwood (The Minister of the Environment):** At Consideration Stage, Mr Speaker, I acknowledged the work of all those who had contributed to the Bill, in the Assembly and outside the Assembly. However, I wrongly overlooked your staff in the Business Office and elsewhere in the Assembly who helped in getting the Bill to this stage. I want to correct that now.

In Mr Agnew's concluding remarks, he talked about the ambition and requirement to have good ecological status by 2020, a coherent network of designations and the need for sustainable management of the marine area. Whatever about the amendments that I am about to address, he was right to conclude his remarks by outlining the ambition of the legislation. Over the weekend, that struck me quite acutely because two relevant stories in yesterday's papers point up the very issues that Mr Agnew referred to.

One newspaper article confirmed that, for the first time in human history — that is how far back this goes — the concentration of CO<sub>2</sub> has passed a milestone of 400 parts per million. At one level, those are statistics, but at another level, that reflects the fact that, at no time for three million to five million years, have we had that level of concentration of CO<sub>2</sub>. Greenhouse gas can be assessed scientifically by drilling down into the ice caps and capturing air bubbles from that period. The last time that we had that level of greenhouse gas and that scale of global warming and threat, the Arctic was ice-free, there were savannahs at the Sahara and sea levels were up to 40 metres higher than they currently are.

Although those are global figures, they will work through to the quality of our local ecosystems. When they do so over the next 10, 20 or 30 years, there will be a dramatic decline in our habitat range that will mean that half of our common plant species and one third of our animal life will face threats to their habitat as a consequence of global warming and gas emissions. The impact of that will be a loss in the quality of water, air purification, flood control, nutrient cycles and so on.

That is the global picture, and the Marine Bill is part of the local response to that. For the sake of argument, if all of that were to work through into Strangford lough, which, as people know, is one of the most protected waters in Europe and will be the first marine conservation zone, the loss of habitat and impacts on the quality of water, air purification, flood control, etc would all be very significant. That is why Mr Agnew's comments and amendments are relevant in challenging us on where we are taking the legislation, which leads me to the conclusion that, unfortunately, I will not support any of his amendments.

First, I will deal with amendment Nos 1 to 4, which deal with judicial review and so on. As we know, these issues were touched on by Mr Agnew at Consideration Stage. Let me give as much reassurance as I can to Mr Agnew and other Members so that I can narrow the difference between us — if there is any difference because I think that the difference is not of the scale that some comments suggest. Amendment No 1 seeks to extend the grounds on which an aggrieved person may make an application to the High Court on the validity of a marine plan so that they expressly include irrationality and incompatibility with any of the Convention rights. The irrationality point was touched on in an earlier exchange between Mr Weir and Mr Allister.

Let me say very clearly that, in considering these amendments and the issue generally, I took legal advice from a number of sources. There may be some convention that I am not entitled to name sources — the Speaker seems to agree. Apparently, I am not allowed to name all my sources of legal advice. However, I reassure people that I have taken all legal advice from within the Department and within government. I will put it that way, which probably captures who I am referring to. That legal advice is very consistent with what is or is not captured in the Bill as it stands. I touched on this during the Bill's previous stage, and I want to confirm that, even since then, I have checked and double-checked the legal authority. As a consequence, I give the House the further legal reassurance that the Deputy Chair of the Committee invited me to confirm. If necessary, that will act as a guide to the judiciary in its interpretation of the legislation in the event of judicial reviews on the far side of the Bill becoming law.

I want to give reassurance about what the Bill means as we speak. Although there is a point at which you could have a process relying just on common law — there are four points of legal challenge on common law, which Mr Agnew

referred to — I reassure the House that the legislation and its meaning as has been outlined to me capture those four points of common law.

### **1.30 pm**

So, let me confirm the following as a consequence: clause 10(4) provides the capacity for judicial review in which the standard allegations of unreasonableness/irrationality may be raised. I think that part of the debate that Mr Allister and Mr Weir were having is that clause 10(4) captures the issues of unreasonableness and irrationality that Mr Agnew touched on in his opening contributions. I am told that there is consequently no need to refer expressly to any particular ground of challenge. The law deals with impropriety and failure of process, as again Mr Agnew outlined in his opening remarks. However, the advice that I have been given is that, when the law as it is drafted goes before a court in the event of a judicial review, unreasonableness and irrationality are captured by the legislation. So, I want to give that reassurance.

The second issue concerns whether, where convention rights are concerned, there is any consequence of the law as drafted in a judicial review. I indicated this at an earlier stage, and I have checked and rechecked it since the Consideration Stage of the Bill, so I confirm that DOE, as with any Department, may not, by virtue of section 24(1) of the Northern Ireland Act 1998, carry out any act that is incompatible with any of the convention rights or Community law. Therefore, in my view, the argument on incompatibility with convention rights is rebutted. That is because, although the relevant sections in the Northern Ireland Act gave expression to the will of the people of Ireland through the Good Friday Agreement, you are not able to carry out any act that is incompatible with any of the convention rights or Community law. So, I want to give that reassurance to the House and to Mr Agnew in particular.

A further point was raised about compatibility with the Aarhus convention. I want to give further reassurance and place it on record that clauses 10 and 11 are compatible with the convention as they afford members of the public access to the courts to challenge the marine plan or any amendment thereto on the basis that the document is not within the appropriate powers or that a procedural requirement has not been complied with. Further, where an application for a judicial review or statutory review of a decision, act or omission that is subject to the Aarhus

convention's provisions is made to the High Court after 15 April — this is relevant to the point — there could be a situation where third-party organisations go to court for judicial review, or tempted not to go to a court or restricted in going to court because of the costs. I want to confirm that the relevant cost regulations that came into force on 15 April, which the Department of Justice (DOJ) took forward, fix the cost that the High Court may award against applicants and respondents in Aarhus convention cases. In general, the caps are £5,000 where the applicant is an individual and £10,000 where the applicant is a legal person or an individual applying in the name of a legal entity or unincorporated association. Therefore, as previously, I am affirmed in my view that, where issues of judicial review are concerned that are the subject of amendment Nos 1, 2, 3 and 4, I am satisfied that I can give again today the reassurance that I gave. I hope that that will settle some of the worst fears and concerns that Members or people outside the Chamber might have.

Amendment No 2 seeks to define in part what is covered by "person" so that it includes "a natural or legal person" and

*"a non-governmental organisation promoting environmental protection."*

I reconfirmed my legal advice, and a "person aggrieved" may include non-governmental organisations and community groups. According to section 37 of the Interpretation Act (Northern Ireland) 1954, which gives expression to what a "person aggrieved" may mean, a "person" may include individuals, bodies corporate and unincorporated bodies. In that regard, I confirm that "person" is not narrowly defined, is an inclusive concept and would clearly capture the third-party organisations that are the ambition of amendment No 2 to capture. I am pleased to give that reassurance to the Member.

I do not intend to comment on amendment Nos 3 and 4, as they are consequential to amendment No 1 being made. In those circumstances, however, I ask that Members accept that those amendments are not necessary and that I accordingly oppose them.

Amendment Nos 5, 6 and 7 relate to the general duties of public authorities in relation to MCZs. The amendments were withdrawn on the previous occasion, so there has been more substantial debate at Further Consideration Stage today. I indicated on the previous occasion that I would look closely at the

amendments' intention. Indeed, I had some conversation with Mr Agnew in that regard.

I will deal with the substantial points in amendment No 5, which proposes to insert new subsection (8A)(a), (b) and (c) into clause 22. The first deals with the issue that a public authority:

*"should only proceed with the act if it is satisfied that—*

*(a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ".*

That is to amend the relevant clause in the Bill, which states that a public authority, in its duties to an MCZ, has to ensure that it:

*"exercise its functions in a manner which furthers those objectives, exercise them in the manner which the authority considers least hinders the achievement of those objectives."*

It is certainly arguable that the standard of the Bill, in which "least hinders" is the duty on the public authority, is a higher standard than that proposed in the amendment, which states that the public authority has to act in a way:

*"which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ".*

In the relevant words in the clause as drafted and in the amendment as outlined on the Marshalled List, the question is whether the standard of "least hinders" is lower or higher than "substantially lower risk of hindering". It is my view that "least hinders" places a higher standard on a public authority than one that is of "substantially lower risk", because "least" is a higher threshold than "substantially lower risk". Consequently, I have an issue with amendment No 5.

The second reason that I have an issue with the amendment is technical, and technical is not necessarily the best response to amendments to Bills that clearly have an overall ambition to do more to protect a public asset such as the marine environment. I have some issues with the amendment's technical integrity, and I use that word advisedly. The standards in the amendment, as outlined by the proposer:

*"substantially lower risk of hindering";*

*"clearly outweighs the risk of damage";*

and,

*"measures of equivalent environmental benefit",*

are very substantial. I do not deny that. They would have been better placed earlier in clause 22. In any case, the body of the amendment, as outlined by Mr Agnew, has all sorts of consequences for other parts of the Bill in a way that could lead to — and this was touched upon by other Members in their contributions — levels of inconsistency and confusion in the conduct of the Bill.

Therefore, although I understand the sentiment and, as I have indicated, have sympathy with some of the amendment's sentiments, I do not feel sympathetic towards it when taken in its totality with respect to drafting, the consequences for the Bill overall, and the risk of creating confusion and uncertainty as to the Bill's intentions.

That is also the legal advice that I have received. The advice that I have received from a number of sources — again, without naming them — suggests to me that there is tension between the intention of the amendment and that which is already in the Bill. We have to ensure that we try to legislate for good law, not for confusing law, and that we create certainty and avoid doubt. We need to be careful about the consequences of that amendment in its totality.

My third problem with amendment No 5, as outlined, is less of a problem than it is an issue with my understanding of how this is all going to work. It was touched upon by Mr Boylan in his contribution. What will be the public authority's responsibility? Will it have a fairly casual, laissez-faire, approach to its obligations under the marine plan, such that it would get to a point in time where something that it might intend to do is so controversial, risky and damaging that it might do it? In that regard, I do not think so. That is why I have an issue with subsection (b) of the amendment.

If one looks at clauses 22, 23, 24 and 25 of the Bill, as amended, they outline arguably the most rigorous process with regard to obligations on public authorities that arises from primary statute. There are many instances in law and in this jurisdiction when public authorities have to follow certain processes in respect of their

functions and statutory obligations. We could all talk at some length about that.

Later, I will touch on Mr Boylan's question about what the process will be on MCZs and whether it will be rigorous and exhaustive. I say to the Member that it is arguable that what is now in the body of the Bill regarding the duties of public authorities on MCZs — the process outlined in clause 22 and subsequent clauses — is so exhaustive that public authorities will have to be very disciplined in any actions that they may want to take with regard to a MCZ that would mitigate the risks that, clearly, the Member has tried to capture in his amendment.

By my reading of it, a public authority, in its general duties in respect of MCZs, has to go through a maze and jump over four or five hurdles — if that is not mixing my metaphors — in order to ensure that it complies with its general duties. Similarly, it has to jump five different hurdles before it can get to the point of making a decision about activities capable of affecting a particular feature of an MCZ. In that regard, as clause 24 outlines, the Department not only has a power but a duty.

#### 1.45 pm

There is a difference between a power and a duty, which the Finance Minister seemed to forget last week in respect of his decision on the flying of the Union flag on public buildings. He has a duty, arising from the Flags Order 2000, to fly the Union flag on some buildings on designated days. He has a power to designate other buildings on which it is flown. In his exercise of that power in respect of Goodwood House, he should have followed good process and had conversations with people, including me. It may or may not have been a satisfactory conversation, but there was not one. So there is a difference between a power and a duty but, under clause 24 of the Marine Bill, the Department has a power and a duty to give advice or guidance to public authorities in respect of MCZs. It specifies the issues on which advice and guidance may be given. Clause 25 goes even further. The explanatory and financial memorandum states:

*"This clause enables the Department to obtain an explanation if it thinks a public authority has failed to exercise its functions to further ... the conservation objectives".*

That clause has effect even when the public authority did not initially request the advice or guidance. Therefore, not only do we have the hurdles in respect of the obligations of public

authorities, and not only can we give advice and guidance, but the Department even has powers to obtain an explanation when the public authority did not initially request advice or guidance. When you take the Bill in its totality in respect of the general duties that fall to public authorities in relation to MCZs and the particular duties in relation to certain decisions, you see that there is a rigorous process that captures the sentiment of what is in proposed subsection (8A)(b).

I understand Mr Agnew's point — he will come back on this when he makes his winding-up speech — about stating in statute that an authority should proceed with an activity only if:

*"the benefit to the public of proceeding with the act clearly outweighs the risk of damage".*

He believes that that is better than the process I outlined because it creates more certainty and has more legal authority, and people will, therefore, think that they are more obliged to follow it. However, in my view, clauses 22 to 25 provide such a rigorous, disciplined and demanding process that the scenario that Mr Agnew articulated in respect of decisions that a public authority might want to take is not realistic, because a public authority clearly would not act in a way that would carry that level of risk.

I note that proposed subsection (8A)(c) states:

*"the authority will undertake ... measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ."*

Again, I very much understand the principle behind that. When it comes to a public authority having responsibility for taking certain decisions or actions in respect of an MCZ, my judgement is that you would then have to say to them that, as a consequence, they would have to give with one hand and take away with the other. I understand and have some sympathy with that principle. Although it is not quite the same, there is a similar principle in wider environmental law: let the polluter pay. If you do damage, you have to pay for the mitigation or restoration of that damage. I have sympathy with that sentiment and principle, which is elsewhere in public law. However, in my view, as we work through the Marine Bill, to have a principle that where the public authority takes certain measures, you then have to undertake compensating measures of equivalent environmental benefit to the damage is, at this stage, overreaching.

**Mr Agnew:** I thank the Minister for giving way. I make the point that it is "may" rather than "must" in the amendment. That recognises the fact that it will not be possible to do in all circumstances. Just to be clear, it is "may" rather than "must".

**Mr Attwood:** I note the point, but even if I have some sympathy with the sentiment, my concern in respect of paragraph (a) is that there is a danger that a lower standard rather than a higher standard may be introduced into the Bill. Given the rigour of the process that public authorities have to go through in their duties generally and in respect of decisions that may affect an MCZ, I am not minded to support that amendment for those broader reasons.

I will deal with amendment No 8. Paragraph (b) replicates a clause that is already in the Bill, so I do not have any particular comment to make around that. I do have some issues in respect of paragraph (a). My difficulties are as follows. The first difficulty, as was touched upon by Mr Weir, is that a consequence of amending clause 25 to include paragraph (a) is the creation of a criminal offence that would fall to public authorities. "Public authorities" as outlined here, and as indicated by the Member, is an inclusive and broad concept. As Mr Weir indicated, Departments, which act further to the Crown, cannot be captured by law in that way. Consequently, while again I understand the sentiment, to legislate in this way would be bad law, because it would capture Departments that cannot be captured in that way.

The remedy for Departments is by way of judicial review, on the far side of which a court might render a decision by a Department unlawful. There is not a Minister in this Government who has not been there or who will not be there soon, one way or the other. So, there is a problem in the first instance, in that the scope of the amendment is outwith convention, practice and law, because public authorities cannot be captured in that way. District councils could be; a point made, I think, in an earlier exchange. However, a public authority — being Northern Ireland Departments as included in the Bill's definition of a public authority — cannot be held criminally liable. Consequently, on that ground alone, that amendment would, in my view, fail.

In any case, the Bill already places a statutory duty on all public authorities, including Departments, to exercise their functions to further the conservation objectives of an MCZ. Those duties must be exercised in accordance with the requirements of public law. Failure to do so would leave the offender vulnerable to

challenge by judicial review. Whilst I have sympathy with the sentiment, the amendment is legally and practically fatally flawed, and consequently I must decline to accept it.

I will deal very briefly with a number of points made by other Members. Mr Boylan made a very fair point. The entire Bill is shaped to maximise the input into the marine plan and the MCZ designation process. As I indicated at the previous stage, the process to get this far has been, in my view, one of the more inclusive, comprehensive and exhaustive ones. I like to think that those three standards would inform how the marine plan and MCZ designation are taken forward.

Those are warm words unless you have the firm evidence that that is how things will be managed.

Work on this is already going forward because, as I have indicated, Strangford lough is likely to be the first MCZ and there may be a potential second MCZ up in Rathlin because of the quality of sponge life on the sea bed, which acts as an incubator for various forms of fish life. After Royal Assent, the Department will consult on draft guidance on designating MCZs in order to ensure that our guidance is comprehensive and captures what needs to be captured in designation. The draft guidance will set out how the Department intends to approach the selection designations of MCZs under Part 3 of the Bill. It will set out the factors that the Department considers important in the selection process, including economic, social and cultural factors, which was as a result of an amendment that came from the Committee regarding the use of the word "cultural". As I indicated, the island fishermen have identified a potential site that they might be happy to have designated as a no-take zone, which is a win-win. It is a win for the fishermen, a win for the fish life and a win for the protection of the marine environment on that part of Rathlin.

Clearly, the process of designation has to be informed not just by the views of all the relevant stakeholders, to borrow that phrase, but by the best science. In that regard, the best science is the 2011 'State of the Seas Report', ongoing survey work undertaken by the DOE since 2006 and other scientific work undertaken since the 1980s by the Ulster Museum. Further survey work is being undertaken by scientific staff in the NIEA, and it is clear that there will have to be further science and research undertaken to ensure that, as we move to the point of designation of an MCZ, whether we are taking a light-touch or a maximalist approach, best science informs our decisions and it is not

made up as we go along. Clearly, the ambition of the MCZ is part of creating a coherent network of protected sites in our marine environment, and we will clearly focus initially on protecting threatened, rare or declining species or habitats.

I think I have touched on most of the points raised in the debate. We should all acknowledge the work of Mr Agnew in proposing the amendments. He is not a member of the Committee — more's the pity — which means that he has not been in a position to make these arguments as fully as he might have. Clearly, some of the marine stakeholders will have made these arguments very fully in Committee heretofore. We have to acknowledge that there are clearly good intentions and ambitions behind the amendments, and they have helped inform Further Consideration Stage, but, as has been outlined by other Members, understanding the ambition and agreeing with the content are different.

## 2.00 pm

**Mr Agnew:** I thank the Speaker and Members for the tone of the debate in considering my amendments. It has largely been respectful, and I think most Members have played the ball and not the man, which I thank them for.

A general point has been made that, given that the first some Members knew of the amendments was when they were tabled for Further Consideration Stage, although there is sympathy with the intent, there may not always have been enough certainty and clarity around them. Indeed, perhaps if some amendments had been worded differently, they would have been considered further. A certain amount of that relates to the process we have here and raises a question around whether we have sufficient time between deadlines for submission of amendments and consideration of them. However, I am sure that, if we had more time between those two stages, there would be criticisms that there was too much time and amendments would come forward that could not be submitted if there was too long between the deadline and the debate. I am sure that the Bill Office would be pushed in that regard. So, there is no perfect system, and I am certainly not going to stand up and say that it is the system's fault.

I suppose that another argument is that, had those amendments come forward sooner at Committee Stage, greater consideration could have been given to them. You could argue that that is a good argument for having more Green



Party MLAs so that we can be on all the Committees. As Members will be aware, I do not sit on the Environment Committee, but I take a keen interest in it while sitting on the Committee for Enterprise, Trade and Investment. I commit to Members today that I will try to return after the next election with more Green Party MLAs to contribute to more legislation at Committee Stage. I am sure that Members will be pleased to hear that.

The Green Party submitted a response to the Committee's consultation on the Bill. It is probably unusual for a political party to do that, as you have the opportunity to make your arguments at Consideration Stage and Further Consideration Stage. However, we wanted to inform the debate. I will be candid in saying that this has been a learning process for me as an MLA and for my party more broadly in how we seek to influence when we are not represented, say, on a Committee. I noted that the Chair suggested to the Committee that the Green Party should make an oral presentation. Unfortunately, that was rejected, and I think that it was argued that the place for the Green Party to do that was in the Chamber. However, had we been afforded that opportunity, perhaps we would have had more time to consider the amendments. As I said, it is something that my party and I will consider in the future for other legislation. It has been a learning experience, and we will take learning from it.

Amendment Nos 1, 3 and 4 deal with the introduction of the extra element of grounds for judicial review. I appreciate the Minister's clarification that the advice that he has been given is that the two subsections would allow for the full scope of judicial review. I do not have access to his advice, and he was candid enough about the restrictions that he has on where that advice came from and its nature. He made it clear that his advice is that my concerns, while they may be genuine, are unfounded. However, I reread the clause after Consideration Stage and that is still not my interpretation. I accept that I am not a legal expert and that I do not have access to the legal expertise that the Minister would have, but, no matter how many times I read the clause, although I maybe accept the point around convention rights, irrationality seems to be missing. I will say no more than that, because, without getting a team of lawyers into the room, we will not get a definitive answer. I accept the Minister's statement, and I appreciate that he has put on the record the intention of the Bill as well as its wording. That is certainly helpful. In that regard, I am glad that I tabled the amendments to get that

response. It may go some way to mitigate the concerns that I have.

Given that the will of the House is fairly clear on the amendments, I will come to some specific points made on them. Mr Weir and Mr Allister, in their exchange, interrogated as well as I could the term "irrationality" and its meaning in law. My understanding of it and the advice that I have been given is that it is a fairly clear term with a legal background. Wednesbury unreasonableness was referred to, and I think that "irrationality" is the best and most appropriate word. I put that to the House, including Mr Weir, who raised the issue, and I hope that it clarifies the point.

Although, I think, Mr Hamilton, the Deputy Chair, was speaking as a DUP Member at the time, he referred to perhaps doing things differently from the rest of the UK with regard to judicial reviews. That argument confuses me. I ask why the Member did not come forward with an amendment for a marine management organisation (MMO) such as they have in GB. It is an argument that sometimes seems to work in our favour and one that we do not always want to move from. Unless there is really good reason to do so, I am never completely convinced that we should say, "Let's not deviate from another jurisdiction". If there are good grounds not to do that, that is fine, but, in and of itself, it is not a strong argument for not doing things our way.

Other Members commented on the amendments throughout the debate, and I am just trying to check through those. We have had a lot of debate about whether we should be explicit, what is implicit in the Bill and how the Bill will be interpreted, and I remain unconvinced after hearing the Minister. Although some of my concerns have been allayed to some extent, I remain unconvinced that we need an explicit provision for judicial review. That is still my position. I accept that it appears not to have been a big issue for the Committee, so maybe that is why the case was put late. However, that is still where I stand on it.

The one further point that I would make about amendment No 2 and being explicit about environmental NGOs is that, while it is clear that "persons" could indeed refer to a corporate body — the Minister has been very clear about that — and other advice given to me is that it would not be uncommon to interpret the law in that way, I have some concerns about the "aggrieved" issue. An environmental NGO may not be directly aggrieved, and the Bill creates a higher test for an NGO to say that it has been

aggrieved. That is why the subsection in the amendment was necessary: to make it explicit that, although you may not be directly impacted on by an act or a document, the work in which environmental NGOs are engaged and what they seek to achieve may be. I thought it important to put forward the amendment. Again, I appreciate the Minister's clarification, and having that on the written record will, I think, be important to some environmental NGOs. I suppose that we will see, over time, how it is interpreted and whether there is such a restriction. I do not think that environmental NGOs are queuing up to take judicial reviews. Notwithstanding the point that the Minister made about the cap on costs, judicial review should always be a last resort. Indeed, I think that it is a last resort for NGOs and, more broadly, for other bodies. It is an expensive and difficult process that would not normally be taken lightly. Equally, that is why I feel that the scope for judicial view should not be narrowed. The significant financial and other hurdles are sufficient to limit judicial review to cases where it is felt necessary to go down that line.

The debate on amendment No 5 and the subsequent amendments has been helpful. I accept what the Minister and some others said about proposed subsection (8A)(a) in amendment No 5 being replicated to some extent at an earlier point in the Bill. In fact, as the Minister would point out, the Bill goes further. If I had been able to discuss that possible amendment at an earlier stage, I might have drafted it differently. However, I see proposed subsections (8A)(b) and (c) as adding to the Bill where a duty on public authorities is concerned, because I see them as putting in necessary protections. Indeed, when Mr Hamilton talked about my intentions, he spoke about them quite well when referring to the work that would be put into creating an MCZ and, indeed, into creating the legislation to allow MCZs to be established. That gets to the crux of what I was trying to achieve, which was to say that Departments should not run roughshod over MCZs. I apologise to the Minister for that term; I know that there is more in the Bill to ensure that that does not happen. Key to it was the public interest defence and putting that in the Bill so that it is clear that, given the importance of MCZs to achieving the objective of good environmental status, the only time you should hinder their conservation objectives is when there is a wider public interest for doing so. That is a pretty good principle for any environmental legislation. It is unfortunate that it is not explicit in the Bill, and it would appear that it is not going to be explicit in the Bill. I accept the Minister's views that, taken

as a totality, it is certainly implicit in the Bill, but that public interest test is an important one.

Although I accept some of the points about the compensatory measures providing benefit elsewhere, I think it was "may, where practical". I sent a letter to the Minister on a recent issue to do with a tree preservation order (TPO). As the Minister will be aware, it can be the case with TPOs that, for management reasons or for reasons related to the health or condition of the tree, you will cut down trees under a TPO, or the Department may require equal benefit elsewhere to be provided. Again, that is a good principle that should be applied to public authorities as well as to private individuals. That was the rationale of the amendment.

Finally, I move on to amendment No 8. Again, I accept some of the points that the Minister and Mrs Kelly made about the ability of the House to put in a Bill provisions for the imposition of penalties on public authorities that would be broad in definition. Again, it would have been beneficial to discuss some of these things at Committee Stage or earlier in the process. We have existing environmental legislation — the Environment Order, which I referred to — that has a similar provision. So, I will take away from today's debate as a learning experience how that is applied and interpreted in law and, if it has been beneficial, what benefit there has been from its being there. It is in existing legislation, and I accept that that in itself is not a strong enough argument to replicate it. However, that is why I will go back and see whether the provision has been beneficial, because then, in future, I can look again at whether I would want to cite that legislation as good legislation or not. Given the concerns that have been raised, I will look at the legislation with those concerns in mind to see whether those who drafted it got it wrong or whether my reliance on it in tabling the amendment was sound.

## 2.15 pm

I will now turn to Mr Weir's point, because I said that I would get back to him. On amendment No 8, he raised a concern that there was no limit on penalties imposed on indictment. My understanding is that it is not common in law to do so. If I have got the term right, it is "at large", and it is not common in that regard.

I accept his point. Reading the amendment, I can see that that may have been a genuine concern, but my understanding is that being specific and proposing a limit in the amendment would have been outside of what is common practice and, indeed, seen as good legal

practice. To answer briefly his query, that is the advice that I have been given. Subject to receiving any stronger advice, that is where I am on it, but I suppose that I will make this point and be candid about it: the amendment was largely taken from wording in the Environment Order 2002, to which I have already referred. I thank the Member for his point.

**Mr Weir:** The Member has highlighted the issue of indictable fines, but it is also not common legal practice for one public authority essentially to take criminal action against another public authority and try to fine it. Will the Member also deal with what is essentially a circular flow of money within government?

**Mr Agnew:** I was coming to that, because that comment was made by a number of Members. Ultimately, why do we have penalties in law at all? They are there to act as a deterrent. The penalty is included in the hope that it will not be used. I do not want to see the conservation objectives for an MCZ hindered, nor do I want public authorities act against those objectives, but is there sufficient disincentive in the Bill as it stands? The Minister talked about powers and responsibilities, and, although there are sufficient responsibilities placed on Departments, what happens when public authorities act outside those responsibilities? Judicial review, which the Minister mentioned, is always a legal avenue that is open, but, as I said, it is a last resort. The fine mechanism is a relatively quick-acting disincentive against public authority breaches to put in a Bill, but I accept some of the Minister and Mrs Kelly's points about the amendment, which, as I said, was to some extent lifted from existing legislation. I will look at that again for my own learning as much as anything else but also because there is existing legislation on which the amendment is based. The comments made by the Minister and Mrs Kelly suggest that the amendment may be flawed. I think that the Minister said that it was a fatally flawed amendment. I am worried, therefore, that we are using fatally flawed legislation for the protection of ASSIs. That concerns me, and I will go back and look at that.

I apologise if I have not covered all Members' points. I hope that I have touched on the main ones and given my rationale. In conclusion, I reiterate my party's support for the Bill as a necessary piece of legislation. As I said in my opening remarks and as the Minister said, it is legislation that will help us to achieve the objective of good environmental status for our marine area. That is an important objective, because it is required by Europe. It should also

be an objective that we all share in managing a sustainable environment for generations to come, showing good environmental governance and seeking to right some of our mistakes of the past, which may have been made either in ignorance or in the context of a lack of regulation and good joined-up governance of our marine area. I welcome the fact that we are going a long way towards putting that right. The Bill will not be everything that I hoped it would be, but it goes a good deal along the way towards achieving what were my party's objectives when we put forward our comments and amendments. I welcome the fact that we have got to this stage of the Bill. I welcome today's discussion and thank Members for their consideration.

**Mr Speaker:** Order. As Question Time will commence at 2.30 pm, I suggest that the House takes its ease until then. The Questions on the amendments will be taken after Question Time.

*The debate stood suspended.*

2.30 pm

*(Mr Principal Deputy Speaker [Mr Mitchel McLaughlin] in the Chair)*

## Oral Answers to Questions

### Employment and Learning

**Mr Principal Deputy Speaker:** Questions 7, 13 and 15 have been withdrawn, and written answers are required.

#### Students: Scottish Universities

1. **Mrs D Kelly** asked the Minister for Employment and Learning what discussions he has had with his Scottish counterpart on Irish passport holders' access to student funding. (AQO 3998/11-15)

**Dr Farry (The Minister for Employment and Learning):** I have been in contact with Mike Russell, Cabinet Secretary for Education and Lifelong Learning in Scotland, and there have been a number of meetings between our officials at which the issue has been discussed. I stress that eligibility for European Union tuition fee status at Scottish universities is a policy matter for the Scottish Government and the higher education institutions in Scotland.

The Scottish Government have determined that it is the responsibility of each Scottish university to make a decision on a student's eligibility for the European Union rate of tuition fees by applying residency guidelines produced by the Scottish Government. Prior to that, presentation of an Irish passport was sufficient for a Northern Ireland-domiciled student to be eligible for European Union fee status in Scotland. However, from academic year 2013-14, the Scottish universities will independently seek to establish whether an applicant has exercised a right of residence elsewhere in the European Economic Area or Switzerland. I stress again that this is a matter solely for the Scottish Government.

**Mrs D Kelly:** I thank the Minister for that information. Minister, do you have any idea of the numbers involved? This is something that is coming across in a number of our constituency offices — the numbers of young people involved and how they might be assisted in establishing the criteria with each university. Is there going to be a uniformity of approach by the Scottish universities, for example, and can

you, as Minister, make any representation on their behalf?

**Dr Farry:** I understand Members' eagerness, especially when they are dealing with constituents, to urge the Department and me to intervene in the matter, but I stress that it is as much a matter for the Scottish authorities as our own system is for us, and we need to respect each other's responsibilities. All that we can do is recommend that any students who wish to avail themselves of what they perceive to be an opportunity should take their own independent counsel from the Scottish authorities directly and make their own judgement based on that. Unfortunately, we cannot be more helpful than that, and it would actually be counterproductive to go further.

**Mr McElduff:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. In the spirit of east-west and North/South student mobility being increased, can the Minister give us an update on any dealings with Minister Ruairi Quinn to remove the remaining obstacles to North/South mobility at undergraduate level?

**Dr Farry:** I thank Mr McElduff for his question. My officials have had a very detailed discussion with their counterparts in the Department of Education and Skills in the Republic of Ireland in recent days, and I hope to see Mr Quinn on Wednesday evening at the University of Leuven in Belgium on the margins of the European Council. I will certainly take the opportunity to once again press him on the issues that the Member has referred to.

**Mrs Overend:** Can the Minister outline the effect of this access to student finance issue on the number of students from Northern Ireland going to Scottish universities?

**Dr Farry:** We do not have the formal figures just yet, but, anecdotally, there was an increase in interest, especially last summer, when this came to light. One would anticipate that there perhaps has been an increase in applications to Scotland, but we will be able to confirm that in due course. It is important to stress that it is for each individual student to make their own decisions in full understanding of the opportunities and the risks involved in taking that course of action.

**Mr Lyttle:** What impact has the decision to freeze tuition fees in Northern Ireland had on university applications and student flows within these islands?

**Dr Farry:** Again, we are in fairly early days in this regard in that we have had only a year and a bit of formal information. We have seen that our decision in Northern Ireland to freeze tuition fees for our own local students has had a beneficial impact and that the number of applications to local universities has been more or less maintained while applications elsewhere in these islands have seemed to drop off to some extent. Those are the initial figures, and, in the medium term, we may see a stabilisation in application figures. The evidence to date suggests that our decision locally has certainly had a major impact on people's decision to go on to higher education. We want to see people progress in that manner in this society because it is important that we invest in the skills of our young people for the good of our economy.

## Recruitment Agencies

2. **Mr Hilditch** asked the Minister for Employment and Learning how many recruitment agencies are currently in operation. (AQO 3999/11-15)

**Dr Farry:** My Department's employment agency inspectorate estimates that there are approximately 210 recruitment agencies in operation in Northern Ireland. However, recruitment agencies are not required to register with the Department. The figure, therefore, is only an estimate, albeit one that has been informed by our ongoing programme of inspections.

**Mr Hilditch:** The Minister will be aware of my ongoing interest in what is sometimes the plight of the agency worker. Minister, with the expansion of agency employment, are you content that regulation is robust enough in the interests of the agency employee?

**Dr Farry:** The Member will be aware that we had the agency workers directive transposed in Northern Ireland in 2011. That increases considerably the protection that is provided to agency workers. It also has a 12-week derogation for the start of certain aspects of the directive. That was negotiated at a UK-wide level between the social partners, namely the Confederation of British Industry (CBI) and the Trades Union Congress (TUC). That is beneficial to Northern Ireland in creating some flexibility in our own market. We are having a review of aspects of the agency workers regulations, and I am also happy to look at the wider issue regarding inspection over the next number of months.

**Mr P Ramsey:** What safeguards are in place to ensure that, when recruitment agencies are advertising for posts such as social workers and nurses, they are not advertising at a significantly lower salary? In fact, many of them are advertised at the minimum wage.

**Dr Farry:** I understand the concerns that Mr Ramsey is voicing. Unfortunately, as a Department, we do not have the locus to intervene in the specific way that he suggests. There is, of course, protection through the national minimum wage, which applies in all respects. I certainly understand the concern that is being voiced in this regard, but it is one aspect of the many to do with the balance of flexibilities in our market that we wish to find in Northern Ireland. Clearly, from a business point of view, there are arguments about increased flexibility. Others take a different view on protection for employment rights and the interests of employees, and it is important that we reach our own decisions about what is in the best interests of our economy overall.

**Mr Flanagan:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Can the Minister give us an assurance that, as part of the ongoing process to bring in the Steps 2 Success scheme, no recruitment agency will be paid twice for finding a young person a job through that scheme?

**Dr Farry:** As the Member is aware, we are finalising our policy on that. Hopefully, I will be coming to the House in the next number of weeks to formally announce the way forward on Steps 2 Success. This has been informed by a wide-ranging consultation with the public and, indeed, by a very detailed engagement with the Committee. All those issues, including the one that the Member raised, will be taken into account for the final design. We will certainly look to ensure that there are safeguards in the manner that the Member requests.

**Mr Beggs:** The Minister indicated that there are some 210 recruitment agencies and that there are others that do not even make themselves known to the Department. So, can he advise us how he is proactively working to ensure that agency staff who are being recruited are fully aware of their employment rights under the 2011 legislation to ensure that they receive comparable rates of pay, to which they are entitled?

**Dr Farry:** I thank the Member for his question. That is something that we will capture as part of the review of the agency workers regulations. However, the point that he makes is one that

you could make for all employees. There is an ongoing need to inform all workers, whether permanent staff or agency workers, of their employment rights. Indeed, I highlight the Labour Relations Agency as a useful source of advice to people.

## Universities: Protestant Students

3. **Mr Dunne** asked the Minister for Employment and Learning what action he is taking to make Protestant students feel more welcome and included in local universities and student unions. (AQO 4000/11-15)

**Dr Farry:** A number of studies have challenged previously-held perceptions that there was a chill factor for Protestants in Northern Ireland's higher education institutions. In 2008, my Department published a research report on participation in higher education, which indicated that there were very few negative perceptions of Northern Ireland's institutions among school leavers. Most respondents reported that institutions were very welcoming to all groups with respect to religion, disability, ethnicity and socio-economic status. I am delighted that our universities and further education colleges offer a genuine option for integrated education.

Participation in higher education by the Protestant section of the community is in line with Protestant representation in the school-leaving population. Each year, slightly higher numbers of Protestant students choose to study at institutions in Great Britain. Predominantly, those opting for a university in Great Britain do so not because of any perceived chill factor at home but because they believe that their preferred university is the best place to study their chosen subject or they wish to take the opportunity to study away from home.

Generally, there is no under-representation of Protestants in higher education. However, Access to Success, my Department's strategy for widening participation in higher education, identified young Protestant males from areas of deprivation as being among the under-represented groups. The key to increasing the uptake of university places from the Protestant working-class community is to raise aspirations and attainment levels while young people are still at school. Although that is primarily an issue for the Department of Education (DE) and the school sector, my Department provides funding that allows the universities to raise aspirations and attainment levels in non-selective schools in disadvantaged areas with traditionally low levels of participation in higher

education. Additional initiatives to raise aspirations and attainment among under-represented groups will be developed in the new strategy.

**Mr Dunne:** I thank the Minister for his answer. However, there are genuine concerns among unionist students about equality of opportunity. One example of that is the display of Irish-language signage within the Coleraine university students' union. Will the Minister outline his views on that? What actions will he take to address the issue?

**Dr Farry:** I am opposed to any actions, in any of our colleges or universities, that would create a chill factor. That said, you should not automatically jump to the conclusion that the erection of an Irish-language sign in a students' union will lead to that. Those matters are, of course, for the universities and the students' unions to address.

I want to stress the point that there is no hard, solid evidence of a chill factor within our universities. We should be very proud of them, in that, in this still-divided society, our universities alongside our colleges offer a genuinely integrated form of education at the tertiary level. We should celebrate that rather than undermining it by whipping up tensions in the system when they do not exist.

**Mr Hazzard:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Gabhaim buíochas leis an Aire. Given that the question relates directly to universities and students' unions in particular, will the Minister give us his response to the overwhelming rejection by students at Queen's University, in a referendum last week, of the outsourcing of students' union jobs to private companies? Some 97% of the students took part in the referendum.

**Dr Farry:** The Member has rather diverted us from the subject of the question. However, I will say this: that is not a matter for me to intervene on; it is an issue for the universities themselves to manage. It is important to remind ourselves that the universities are not non-departmental public bodies; they are autonomous institutions, albeit heavily funded by the public sector. They do not, however, receive the majority of their funding from the public sector. Universities have to manage those issues.

## 2.45 pm

It is also important to remember that, within Northern Ireland's current Budget, all publicly funded bodies have to meet savings targets. I

appreciate that some Members may disagree with Queen's University's actions, which is their right. Ultimately, the universities must make decisions themselves. As the Minister, it is not my place to seek to micromanage what happens.

**Mr Dallat:** I thank the Minister for his answer and particularly for clearing up the myth, once and for all, that there is a chill factor for young Protestants attending universities in Northern Ireland. What steps will the Minister now take to stop the rumours, which do a disservice to those from the Protestant community who may be put off by the rumours that are constantly peddled by Members on the Benches opposite?

**Dr Farry:** It is incumbent on all of us, including me, to talk up the fact that our universities are genuinely shared and integrated facilities and to encourage people from all backgrounds that they can attend such institutions without any fear for their safety or of their identity being disrespected.

It is important to recognise that there is under-representation of young Protestant males from deprived areas. That under-representation is not based on a perceived chill factor in the institutions but is a feature of lack of attainment and aspiration. The widening access strategy seeks to address that issue.

## Economic Inactivity

4. **Ms McCorley** asked the Minister for Employment and Learning for an update on the Programme for Government 2011-15 commitment to develop a strategy to reduce economic inactivity through skills, training, incentives and job creation. (AQO 4001/11-15)

**Dr Farry:** Further to my statement to the Assembly last month on the outcomes of the baseline analysis of economic inactivity, my Department and the Department of Enterprise, Trade and Investment have continued to develop a draft strategy to tackle the high levels of economic inactivity in Northern Ireland.

Work is under way to take forward the recommendations of the baseline analysis, most notably on the expansion of the scope of the strategy to include other Departments and public bodies in its development and implementation. To date, the key addition to the interdepartmental working group has been the Department for Social Development (DSD); the expertise of officials from this Department will be crucial in addressing the barriers that prevent inactive individuals from finding work.

As the Member is aware, the baseline analysis highlighted two key inactive groups for the strategy to target: individuals with health conditions or disabilities that limit their ability to work; and individuals with family commitments, in particular lone parents who would be better off in work but are unable to make the transition into employment. Individuals in those groups are directly affected by the work of the Department for Social Development in tackling poverty and disadvantage, and are among the groups most in need of support to manage the upcoming changes to welfare. As such, I welcome the involvement of that Department in the development of the strategy.

A draft strategy will be presented to my Executive colleagues in the coming months for discussion and agreement. Following that, there will be a period in which the proposals can be informed by public consultation. The final strategy document will then be presented to the Executive for agreement, and measures designed to tackle inactivity will begin to be implemented by 2014.

**Ms McCorley:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Gabhaim buíochas leis an Aire as a fhreagra. I thank the Minister for his answer. The Committee for Employment and Learning recently received a briefing on the strategy that the Minister spoke about, and I have been informed that it is light on proposals for job creation. Will the Minister comment on that?

**Dr Farry:** I am happy to clarify that. The Committee received a briefing on the baseline analysis, not the strategy itself, which is under development.

The baseline analysis gives us very clear information on what our current starting point would be. It is important that the Committee engages with that at a very early stage and begins to give my officials its ideas about and input into the emerging strategy.

Of course, the strategy is part of a much wider suite of policies and strategies by the Executive, virtually all of which have job creation at their heart. So, a lot is happening in job creation. The purpose of the economic inactivity strategy is to encourage people who are outside the labour market to move into that market and, in due course, into employment by addressing the employability skills and any barriers that prevent them from engaging with the labour market. It is not a job creation strategy per se, but it will interface with the

other actions that the Executive are taking on that matter.

**Mr Campbell:** The Minister outlined what he termed the "baseline analysis" of economic activity. Will he give us an outline of the assumption of the number of people under his own youth employment scheme and under the scheme that the First Minister and deputy First Minister announced whom he anticipates would come under a combination of both schemes in, say, two years' time?

**Dr Farry:** Again, the Member moved away slightly from economic inactivity. I will address his two specific points in a moment. However, I think that it is useful for Members to see our current categories in three different ways. First, we have those who are in employment; secondly, we have those who are unemployed but actively seeking work; and, thirdly, there are those who are inactive and are, essentially, outside the labour market.

This strategy is aimed at addressing those who are outside our labour market. However, we are not simply looking to shift them into unemployment — in essence, to move them from one category to another without their actually being in work. Ultimately, through this scheme, we want to increase the economic participation rate in Northern Ireland, which is currently in the mid- to high-60% range. However, if we are to have a healthy competitive economy, it should be at least 70%. That would certainly be in line with the minimum standards that are set by the European Union.

The youth employment scheme is there to address young people who, if it were not for the current situation in our economy, should really be in work and who maybe just lack the experience to compete with more experienced workers for scarce opportunities. That scheme is being rolled out across Northern Ireland, and the numbers are building momentum as we go.

The announcement that was made last week is a much more far-reaching measure. I do not regard it as something that is a matter solely for my Department. It has its genesis in the Office of the First Minister and deputy First Minister (OFMDFM), and it is part of a very clear narrative about increasing contact among young people. So, it is primarily a community relations initiative. However, it clearly has an element that is aimed at encouraging people into meaningful activity.

I think that it is important that that forms part of a hierarchy of interventions, and that is there to address people who are most marginalised.

Nevertheless, I should not undermine the existing work on the youth employment scheme, Training for Success, which is our current training programme that is available to all 16- to 18-year-olds, and the work that we are doing on apprenticeships and youth training. So, it should be complementary and fit into our wider structures.

**Mr Swann:** Unemployment is at its highest level since 1998, and youth unemployment is at its highest level since 1995. Your Department claims that it has exceeded the Programme for Government target by over 6,000 and that those people are no longer economically inactive. Will the Minister confirm whether that figure is realistic, whether it is real time, whether it is an achievement, or whether it is just a manipulation of the figures?

**Dr Farry:** I think that the Member and the Chair of the Committee is jumping ahead a little bit on to the issue in question 5 that deals with our targets for placing people into employment. So, it might be best if I respond at that point.

## Employment

5. **Ms Fearon** asked the Minister for Employment and Learning how many people moved from unemployment benefits into work during the 2012-13 financial year. (AQO 4002/11-15)

**Dr Farry:** I thank the Member for her question. Hopefully, my answer will formally address the issue that Mr Swann raised.

In the 2012-13 financial year, 38,871 people moved from unemployment into work. That is 29.6% above target for the year. The Programme for Government target for moving people from unemployment into work in the programme period — that is, from April 2011 to March 2015, and signed off in April 2012 — is 114,000. We are now two years into that period, so it is worth looking at progress against the target across the first two years. In total, my Department has helped 76,841 people move from unemployment into work against a two-year target of 65,000. We have, therefore, exceeded the two-year target by just over 18% and are well on course to exceed the four-year target.

Those figures indicate that there are jobs available and that people are finding those jobs in spite of the ongoing difficult economic conditions. I encourage all those who are claiming benefits and who wish to return to work to take advantage of the full range of



programmes and services available through my Department's employment service.

There has never been a more comprehensive range of support available to help people to make the transition back to work. There are mainstream programmes such as Steps to Work, Pathways to Work and a suite of specialist programmes for people with disabilities offered by the Disability Employment Service. In the past year, I have also added the youth employment scheme, First Start and Step Ahead 50+. In addition, the schemes and initiatives funded under the umbrella of the not in education, employment or training strategy Pathways to Success are helping to address worklessness among young people. I encourage Members, in turn, to encourage their unemployed constituents to take full advantage of the support that is on offer. There should be something available to meet everyone's needs.

**Ms Fearon:** Go raibh maith agat, a LeasCheann Comhairle. Gabhaim buíochas leis an Aire. I thank the Minister for his answer. Is he fully satisfied with the performance to date? Does he intend to bring any policy changes to improve on it?

**Dr Farry:** It is difficult to say that you are satisfied with performance to date in the context of the current levels of unemployment. We can never be complacent in that regard, but the point of the figures and what we are showing is that there is considerable churn in the labour market.

We are not in a static situation. Jobs are being filled, and my employment service is actively helping people into work. We are seeing people coming off jobseeker's allowance and moving into employment. At the same time, other people are losing their jobs and moving on to the register of those who are unemployed. Therefore, we are seeing considerable movement in the job market. That should be encouraging, but we need to be cautious about overstating it. We are also seeing an increase in the number of vacancies that are being advertised, which is an encouraging sign.

I appreciate, and I think that this is where the Chair of the Committee is coming from, that, in the context of ongoing unemployment, saying that we are ahead of target in placing people into work may sound to some people as being slightly counter-intuitive, but, to be clear, the targets are based on the performance of the employment service in actively moving people from unemployment into work. In that respect, yes, we are ahead of target. People seem to think that those targets were too low, but when

we set them, we were criticised in the Assembly for setting unrealistic targets. I stress that the targets are an increase on the targets that were there in the previous Programme for Government period.

**Mr Byrne:** Will the Minister outline to the House what number or proportion of young people who have employment have gone into self-employment? What are his Department and Invest Northern Ireland doing to create young entrepreneurs who are anxious to start their own business?

**Dr Farry:** I do not have the precise figures available for Mr Byrne, but I am happy to write to him. It is worth stressing that my Department, the Department of my colleague the Minister of Enterprise, Trade and Investment, and Invest Northern Ireland are very keen to encourage young people to consider going into self-employment. If the Member thinks back to last autumn, when the Executive announced their job and economy initiative, the increase in support for enterprise allowances was one of the key themes.

Although self-employment will not be to everyone's taste, it is something that we need to encourage. As we look to a much more dynamic, private sector-based economy, it is something that we need to warmly embrace and encourage as many young people as possible to consider.

3.00 pm

## Enterprise, Trade and Investment

### US/Northern Ireland Investment Conference 2008

1. **Mr Lunn** asked the Minister of Enterprise, Trade and Investment for her assessment of the outcomes of the 2008 US/Northern Ireland investment conference. (AQO 4013/11-15)

**Mrs Foster (The Minister of Enterprise, Trade and Investment):** There is no doubt that the US/NI investment conference in May 2008 was an unqualified success. It was the largest delegation of senior US business executives to visit Northern Ireland and it gave us a tremendous platform to showcase our region as a great place in which to do business.

The most notable achievement in investment arising as a direct result of the 2008 conference

was the announcement by NYSE Euronext project in October 2009, promoting an additional 325 jobs. In addition to securing first-time visits to Northern Ireland, the US/NI conference provided the opportunity to advance or accelerate a number of projects that were in the pipeline prior to the event; for example, projects involving Bombardier, B/E Aerospace and CyberSource.

Invest NI's US sales team continues to pursue and develop key accounts as a result of the May 2008 and October 2010 conferences.

**Mr Lunn:** I thank the Minister for her answer. How do the outcomes compare with the expectation of the targets set in 2008 and how will the lessons learned over those five years inform the next US/NI conference?

**Mrs Foster:** Our first US/NI investment conference was in May 2008 and the global recession kicked in around October/November 2008, so the progress that we made was substantial and was something that we should be proud of. Little did we know at that time that that was going to be the case. As I indicated, we have progressed a number of projects that were in the pipeline.

It is always difficult to assess how much longer such projects would have taken had we not had the US/NI investment conference. However, we can safely say that it had a major impact in bringing attention to Northern Ireland at that time and providing us with a platform to talk about the things that we intend to talk about when the G8 comes here in June, namely that this is a good place in which to do business, to work and to visit. We hope that we get those messages across.

**Mr McGlone:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Gabhaim buíochas leis an Aire as a freagra go nuige. I thank the Minister for her response. She touched on the G8 meeting in County Fermanagh. There are rumours that the Executive will try to showcase the North and use that to piggyback further economic investment here. What organisation has been put in place to facilitate that?

**Mrs Foster:** I can confirm to the Chair of the Committee that it is much more than a rumour. It is absolutely a fact that we will use the G8 summit to give us a platform, because there will be global attention on our little part of the world between 17 and 18 June, and before that, because a lot of journalists and delegations will have arrived. We had many delegations from the countries involved sending their

ambassadors to see what it is all about in Northern Ireland and in County Fermanagh.

My Department, Invest Northern Ireland, the Executive Information Service, the Tourist Board, the Northern Ireland Office, No 10 and other partners, including Fermanagh District Council, have been developing proposals to maximise the opportunity. They are looking at short-term and longer-term benefits in particular to raise the profile of Northern Ireland, encourage investment, build trade links, create awareness, change perceptions, drive visitor numbers and stimulate that all important measure of civic pride.

I say to the Chair of my Committee that it is all about partnership and working together to make the most of that huge event. We saw how we worked together over a short period in the run-up to the Irish Open just last year. The announcement was in January, the event happened in June and through partnership working we made the most out of it. I hope that is what happens in Fermanagh in June.

**Mr Frew:** Would the Minister care to comment on the Barclays report on the benefits of the G8 summit?

**Mrs Foster:** The report is timely. I thank Barclays for putting it out before Question Time today. The report underlines what we have been talking about in connection with the G8, namely that it will have a significant impact on Fermanagh, of course, and across Northern Ireland. The report estimates spend of £40 million, and media coverage worth £70 million of advertising in the shorter term, rising to a massive figure of half a billion pounds over a longer time frame. Those are very significant figures that have come not from my Department but from an independent report that was published today. Of course, we will do our own assessment after the event to establish exactly the actual benefits to Northern Ireland. However, as far as that report goes, it is a very welcome addition to the discussion.

**Mr Brady:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. Can the Minister outline what consideration has been given to facilitate, request or stimulate demand from councils to take part in specific trade missions where those councils have particular strengths that could be attractive to potential investors?

**Mrs Foster:** If the Member is asking how we will try to facilitate councils right across Northern Ireland, I very much welcome them coming forward to Invest Northern Ireland with

particular ideas for their own areas. Indeed, I have encouraged that as I have gone around Northern Ireland. Some councils have taken up that opportunity and have put forward their own propositions to Invest Northern Ireland.

I encourage that because people ask me about the visits to different areas of Northern Ireland. I put the question back to them about what they have put forward to try to entice people to come to their parts of Northern Ireland. I am pleased to say that, when it comes to the G8 summit, Fermanagh District Council is putting together an app for iPhones, iPads, and what have you, so that people can establish what we have to offer in that part of the world. I encourage all other councils to do likewise.

## **Electricity: Security of Supply**

**2. Mr Beggs** asked the Minister of Enterprise, Trade and Investment what action she is taking to ensure that there is sufficient long-term security of electricity supply. (AQO 4014/11-15)

**Mrs Foster:** I have held ongoing discussions with the Utility Regulator and the System Operator for Northern Ireland (SONI) to ensure a sufficient future conventional generation capacity margin for Northern Ireland. In addition, renewable generation now accounts for almost 14% of our overall electricity generation capacity. It is also important to progress the new North/South electricity interconnector to help to meet future demands. I have encouraged Mutual Energy to restore the Moyle electricity link with Great Britain to its full capacity as soon as possible.

**Mr Beggs:** In three years, Northern Ireland is scheduled to lose 510 megawatts of electricity generation from part of Ballylumford power station. On top of that, there is a degree of uncertainty about the Moyle interconnector. New generators have come online in the Republic of Ireland, but there is no such significant generating capacity in Northern Ireland. Given the apparent market failure and the degree of uncertainty about security of supply, what action is the Minister taking to ensure that Northern Ireland will not suffer any electricity outages?

**Mrs Foster:** I thank the Member for his question. As I indicated, I have had ongoing discussions with the regulator and, indeed, with SONI. Just last week, I met the board of the Utility Regulator. It will not surprise him that security of supply was one of the issues that we discussed.

Obviously, this all comes from the recent statement about supply that indicated that there would be difficulties in 2016. Obviously, we are looking at that issue and what we need to do to ensure security of supply after that time. We know that the reason for that pressure, particularly on Ballylumford, relates to the EU industrial emissions directive, which limits power station emissions. That, in turn, will curtail the operation of some of the older parts of Ballylumford power station. All the options are being discussed between the Department and the regulator. We hope that we will have clarity on those issues within the next month to six weeks.

**Mr Flanagan:** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. I am fairly confident that a solution to that problem will be found. Specifically on security of supply, will the Minister outline her Department's efforts to encourage community energy projects to help towns and villages to become self-sufficient through combined heat and power plants that use renewable energy generation?

**Mrs Foster:** We have had discussions on that matter, particularly with the Fermanagh Trust, which raised the issue with the Department. As a result of that, we are speaking to a number of renewable energy companies to see how they look at community benefit. Indeed, I know that there is a very good example of community benefit in, I think, the Scottish Highlands, where a community has been able to have its own renewable energy facility. I do not think that that is the answer, if I may say so, in relation to security of supply at a Northern Ireland level. It may, of course, help individual little communities around Northern Ireland, but as the Minister in charge of energy policy for the whole of Northern Ireland, I have to be concerned with what happens at that level.

One of the issues that we really must get to grips with is the constraints on the system at present. Those constraints are caused by the Moyle interconnector only working at half capacity and the fact that the North/South interconnector has not become a reality. Not having the North/South interconnector is costing the consumer in the Republic of Ireland and in Northern Ireland £25 million a year. I think that everybody in the House should be concerned about that. We often talk about the cost of electricity and energy right across the piece, from domestic consumers to our manufacturers, so there should be concern right across the House about that constraint on our system.

**Mr Hilditch:** I was going to touch on the issue of the North/South interconnector. I am not sure whether the Minister has any further detail on how important that is to our energy needs.

**Mrs Foster:** It is very important for us to have that interconnector. We are moving towards a system of European regulation in the north-west of Europe, as it is called. So, instead of having a single electricity market across the island of Ireland, we, along with the rest of the United Kingdom, are working towards a system that connects the two islands. If we are to have true market openness, we must have interconnection between all the different constituent parts. I am aware of the interconnection between Wales and the Republic of Ireland. We really must have interconnection between Northern Ireland and the Republic of Ireland, so that we can trade electricity and make sure that there is the lowest possible cost for our consumers.

**Mr A Maginness:** Given the seriousness of the lack of interconnection between North and South, has the Minister had any recent discussions with the Minister responsible for energy supply in the Republic?

**Mrs Foster:** On Friday, I had the privilege of sharing a platform with Minister Rabbitte in Belfast at a very good conference on all the challenges coming to us in relation to market integration and how we intend to deal with all those issues. Of course, the energy regulators on both sides of the border have a key role in all this. They are independent of government and sit on the single electricity market committee. We will, of course, continue to set the policy for Northern Ireland, which is very clearly set out in the strategic energy framework. We intend to push ahead with our renewable energy targets, but if we are to do that we have to have the grid to support those renewable energy installations. Somebody said to me recently, "If you love wind, you also have to love wires", because you need to have the grid there to deal with all the renewable energy. However, sometimes people who advocate renewable energy do not make the connection that you have to have the grid in place as well.

## **Belfast International Airport**

3. **Mr Kinahan** asked the Minister of Enterprise, Trade and Investment what work is ongoing in relation to further airline route development at Belfast International Airport. (AQO 4015/11-15)

**Mrs Foster:** My Department, in conjunction with Tourism Ireland, is in regular dialogue with

Belfast International Airport and Northern Ireland's other airports to help bring new air services to Northern Ireland and to promote demand for existing services. However, while under development, those discussions are of a commercially sensitive and, indeed, confidential nature.

In terms of future prospects, I am keen to see improved access to all markets that offer the business and inbound tourism links that are important to the Northern Ireland economy. In particular, I believe that there is real potential to reinstate direct air services from Northern Ireland to Germany and Canada.

**Mr Kinahan:** I thank the Minister for her answer. I know that she would agree that direct access from airports positively helps our economy and tourism, but many feel that we are not getting our fair share. What mechanisms is she considering putting in place to attract airlines or to provide more slots at our airports?

**3.15 pm**

**Mrs Foster:** I thank the Member for his question. He will know that we are quite constrained in what we can do financially given the fact that the European Union is very zealous about state aid rules in connection with supporting particular airlines and air routes. In the past, we did have the air route development fund, but we are not allowed to do that under state aid at present.

We have engaged in co-operative marketing activity. Indeed, last year, we put £1 million into a co-operative marketing campaign with our air and sea carriers. That leveraged in another £1 million from the private sector, from the air and sea carriers. Therefore, we had a £2 million pot to deal with. We were, of course, very successful in achieving the reduction in air passenger duty, and have the consent of the Chancellor to reduce band B to zero. I hope that will assist Tourism Ireland, and indeed the airports, to make the case that Belfast is a very good place to have a base within the United Kingdom because we do not have that air passenger duty.

Just last week, along with the Member's colleague, the Minister for Regional Development, I met Sir Howard Davies, the head of the Airport Commission, to talk about the all important issue of Heathrow as a hub for Northern Ireland, both to bring visitors to London and to stretch out to the rest of the

world. We need those important slots into Heathrow and must maintain them.

**Mr G Robinson:** What are the priority new routes for Northern Ireland?

**Mrs Foster:** For me, the priority routes are, as I think I indicated at most recent Question Times, Canada, Germany and the Middle East, which I believe are very doable. More than that, they would be very important to us for economic development and through bringing visitors from the rest of the world to Northern Ireland. Those are the three priority areas that we are currently looking at.

**Mrs Cochrane:** Given the economic importance of the international airport, will the Minister outline any discussions she may have had with the Minister for Regional Development about improved road and rail networks to the airport?

**Mrs Foster:** As I indicated, we had a meeting just last week with Sir Howard Davies. It was he who made mention of the way in which the new airport at Southend has a good rail link to Liverpool Street station. Undoubtedly, if you have an airport, it is important to have connectivity to the areas where people want to go when they use that airport. So, it is vital that we have good connectivity, in this case to the city of Belfast, from the international airport. As I understand it, we do have good connectivity through bus transport, but unfortunately do not as yet have a rail connection to Belfast International Airport. One would hope that we will in the future. When you land at an airport, it is always very easy, if you like, to then make a train journey, if that is available to you.

## Unemployment: All-Ireland Strategy

4. **Mr Ó hOisín** asked the Minister of Enterprise, Trade and Investment to outline how she will work with her counterpart in the Dublin Government to develop an all-Ireland strategy to address unemployment. (AQO 4016/11-15)

**Mrs Foster:** I co-operate with my counterparts in the Republic of Ireland where it is beneficial to the Northern Ireland economy. However, both economies face very different challenges. The Irish Government have almost double our unemployment rate, operate in the euro zone and are subject to a severe fiscal regime imposed by the bailout from the European Union. I have, therefore, no plans to develop an all-Ireland strategy, but I remain committed

to delivering actions detailed within our own Northern Ireland economic strategy and the more recent economy and jobs initiative. I believe that implementation of those activities will deliver growth, prosperity and jobs, and rebalance the local economy in the longer term.

**Mr Ó hOisín:** Go raibh maith agat a Phríomh-LeasCheann Comhairle, Gabhaim buíochas leis an Aire as ucht an fhreagra sin. I thank the Minister for her answer. Given that routine approaches seem to have failed to deal with unemployment, should the Minister not explore all approaches to dealing with unemployment on this island?

**Mrs Foster:** I am unsure where the Member gets his figures from, because last week, Invest NI posted all its figures for last year. It hit every target, including in job creation, and exceeded them in most cases. Just today, I was absolutely delighted to make the announcement of 179 new jobs in Dungannon, a well-deserving constituency, if I may say so. Those jobs have been supported by the jobs fund, a mechanism brought into place at the start of the recession to assist companies to bring forward jobs. Those jobs are very welcome and are at a different level from the jobs that we have made announcements about recently. We have had quite a few jobs in the technology sector, and I am pleased to make that announcement today of jobs in the agrifood sector.

**Mr Campbell:** Instead of trying, as was alluded to in the question, to hitch our wagon to an exceptionally high unemployment rate in the Irish Republic, does the Minister look forward to further developments; for example, from the international sales representatives from Invest Northern Ireland who were in the north-west last week? Hopefully, we will see some significant progress in creating employment for all parts of Northern Ireland, particularly the west and north-west.

**Mrs Foster:** I welcome that question. When we had our sales conference here last week, I was very pleased to meet our teams from across the globe. I was particularly pleased to see the members from the Boston office, I have to say, who have an office quite close to where the explosion took place during the Boston marathon. I was delighted to see the team here, to see them all well and to welcome them back home, if you like, to Northern Ireland.

I was pleased to see the sales conference take place in the north-west. They will all now be aware — I was asked the question earlier — of the regional differences and the regional

opportunities that there are in Northern Ireland. I hope that MLAs across the Chamber will take the opportunity to encourage businesses and councils to put forward a proposition for their own area so that Invest Northern Ireland is fully aware of what it has to offer.

**Mr Dallat:** I am sure that the Minister would agree that the curse of emigration among our young people is now affecting the four corners of this island. Does the Minister not believe that a common strategy between the Republic and ourselves might well bring solace and hope to those young people who have to go to Australia and other places to find work? Sometimes while they are there, they end up in tragic road accidents and so on.

**Mrs Foster:** I am sorry to say that I do not understand the logic behind that question. I do not understand why we would hitch up with the Republic of Ireland simply because our young people are deciding to go overseas. What we need to do for our young people is to give them opportunities to stay here in Northern Ireland. Surely that should be the focus of what we are trying to do. If they do decide to go overseas, we should try to bring them back to Northern Ireland. That is one of the key elements that I have been engaged in, particularly with the legal services sector. I am pleased about the fact that young people who perhaps went away to wherever in the world after their initial degree are now coming back to Northern Ireland because there are opportunities in their particular field that allow them to come back.

In relation to the point about people leaving Northern Ireland, when I was at Linden Foods today, I was told that they struggle to get local people to apply for the jobs in their factory. Why is that the case? When there are jobs available for local people in the agrifood sector, why are people not applying for those jobs? That is a job of work that we really need to drill down into to find out the answers.

## **Planning Application M/2011/0126/F**

5. **Mr Milne** asked the Minister of Enterprise, Trade and Investment whether she has raised the delay in processing planning application M/2011/0126/F with the Minister of the Environment. (AQO 4017/11-15)

**Mrs Foster:** My Department and Invest Northern Ireland recognise the importance of companies such as DMAC Engineering Limited to the materials handling sector in Northern Ireland and, indeed, to mid-Ulster. I met DMAC's management team on 16 November

2011 to view the company's facilities and to be briefed on its long-term growth strategy.

I wrote to Minister Attwood on 15 February 2012 and 6 March 2012 to ask for an update on the planning application and a prompt resolution of any planning issues. I have spoken with Minister Attwood on many occasions, and it is my understanding that the planning application is progressing.

**Mr Milne:** Go raibh maith agat. I thank the Minister for her answer. As the Minister acknowledges the success of the engineering sector, will she continue to pursue the successful outcome of the job opportunities presented in this application?

**Mrs Foster:** As I indicated, I have been aware of the job opportunities relating to this planning application for a number of years. I have met the applicants on many occasions to discuss the issue, as have other colleagues, including the Member's predecessor. However, the decision is one for the Minister of the Environment. I can tell him how important I believe this sector is, particularly to mid-Ulster, but, on the heels of the hunt, it is really an issue for him to resolve.

**Lord Morrow:** This application has now been kicking through the system for some 18 to 20 months. Does the Minister accept that this is an unduly long time? It seems that Minister Attwood, for reasons best known to him, does not see the importance of pushing this application on. Minister, is there anything further that you can do to encourage Minister Attwood to make a decision? I suspect that there are jobs hanging on the end of it.

**Mrs Foster:** I am as keen as the Member for the application to be brought to a conclusion, which I hope, as I am sure he does, will be positive. When I asked for input from the Department of the Environment, I was told that the Minister is giving careful consideration to all the matters, that he has facilitated both applicants and objectors with an opportunity to represent their views — apparently, the objectors met the Minister recently — and that he will speak further with planning officials.

Regardless of the outcome — I said that I hope that it is positive — we really need to speed the process up and bring this to a conclusion. This company has been waiting around for a decision for quite some time, and it has growth plans. Is it not good to see companies with growth plans that want to move forward? That is particularly the case in this sector, which Lord

Morrow will know is tremendously important to the south Tyrone and mid-Ulster area. Indeed, in mid-Ulster alone, over 20 companies provide employment for more than 1,000 workers in this sector. It is a very important sector, we are competitive in it, and I would very much like a decision to be made in the very near future.

## Prospecting Licences

6. **Mr McMullan** asked the Minister of Enterprise, Trade and Investment to outline the rationale for her Department's decision to award prospecting licences for oil and gas when the safety of emerging techniques such as high-volume fracking has not been established. (AQO 4018/11-15)

**Mrs Foster:** Of the four existing petroleum licences issued by my Department to date, three have indicated their intention to target conventional oil and gas, not shale. As such, high-volume fracking is not relevant to these licences. Similarly, a further application that is being processed by my Department indicates an intention to target conventional oil and gas resources. Moreover, the issuing of a petroleum licence does not, of itself, give the licensee permission to undertake any substantial engineering works, such as drilling, without further consents from my Department, including the Health and Safety Executive (HSE), and others such as the Northern Ireland Environment Agency (NIEA).

Prospecting for oil and gas onshore in the UK is constrained by exacting industrial standards and intensive UK and European Union regulation. Any techniques such as fracking or hydraulic fracturing are subject to detailed scrutiny and research, and permits are tailored and adapted to militate against associated risks. I am confident that the process will be appropriately assessed and regulated before any deployment in Northern Ireland. I am content to proceed on this basis, given my Department's responsibility to the people of Northern Ireland, who expect government to facilitate a secure energy supply for their homes, transport and industry.

**Mr Principal Deputy Speaker:** That concludes Question Time. The House will take its ease while we change the top Table.

3.30 pm

*(Mr Speaker in the Chair)*

## Executive Committee Business

### Marine Bill: Further Consideration Stage

*Debate resumed.*

**Mr Speaker:** We now come to the Questions on the amendments.

#### **Clause 10 (Validity of marine plans)**

*Amendment No 1 proposed:* In page 7, line 36, at end insert

*"(c) that the document, or part of the document, is irrational;*

*(d) that the document, or part of the document, is incompatible with any of the Convention rights."— [Mr Agnew.]*

*Question, That the amendment be made, put and negatived.*

*Amendment No 2 proposed:* In page 7, line 38, at end insert

*"(5A) Notwithstanding the generality of subsection (4), applications under that subsection may be made by—*

*(a) a natural or legal person affected or likely to be affected by, or having an interest in, the relevant document;*

*(b) a non-governmental organisation promoting environmental protection."— [Mr Agnew.]*

*Question, That the amendment be made, put and negatived.*

**Mr Speaker:** I will not call amendment Nos 3 or 4, as they are consequential to amendment No 1, which was not made.

#### **Clause 22 (General duties of public authorities in relation to MCZs)**

*Amendment No 5 proposed:* In page 16, line 7, at end insert

"(8A) Where the authority has given notice under subsection (5), it should only proceed with the act if it is satisfied that—

(a) there is no other means of proceeding with the act which would create a substantially lower risk of hindering the achievement of conservation objectives stated for the MCZ,

(b) the benefit to the public of proceeding with the act clearly outweighs the risk of damage to the environment that will be created by proceeding with it, and

(c) where possible, the authority will undertake, or make arrangements for the undertaking of, measures of equivalent environmental benefit to the damage which the act will or is likely to have in or on the MCZ.

(8B) The reference in subsection (8A)(a) to other means of proceeding with an act includes a reference to proceeding with it—

(a) in another manner, or

(b) at another location.".— [Mr Agnew.]

Question, That the amendment be made, put and negatived.

**Mr Speaker:** I will not call amendment Nos 6 or 7, as they are consequential to amendment No 5, which was not made.

**Clause 25 (Failure to comply with duties, etc.)**

*Amendment No 8 proposed:* In page 18, line 12, leave out paragraphs (a) and (b) and insert

"(a) if the achievement of the conservation objectives stated for an MCZ is hindered as a result of the failure, a public authority is, unless there was a reasonable excuse for the failure, guilty of an offence and is liable on summary conviction to a fine not exceeding £20,000 or on conviction on indictment to a fine; and

(b) in all other cases the Department must request from the public authority an explanation for the failure and the public authority must provide the Department with such an explanation in writing within the period of 28 days from the date of the request or such longer period as the Department may allow.".— [Mr Agnew.]

Question, That the amendment be made, put and negatived.

**Mr Speaker:** That concludes the Further Consideration Stage of the Marine Bill. The Bill stands referred to the Speaker.



## Social Security Benefits Up-rating Order (Northern Ireland) 2013

**Mr McCausland (The Minister for Social Development):** I beg to move

*That the Social Security Benefits Up-rating Order (Northern Ireland) 2013 be approved.*

The uprating order is an annual order that sets out the rates of contributory and non-contributory benefits, together with the various allowances and premiums that make up the income-related benefits. The new amounts from April each year are generally based on the increase in the general level of prices over the 12 months ending in September 2012. They are measured using the consumer price index (CPI), the measure of price inflation considered most appropriate for this purpose by the Westminster Government.

I am aware that there has been some debate in the past about whether the CPI or the retail price index (RPI) should be used as the measure, and some argue that using CPI will cost less. Clearly, there is no perfect measure of inflation, but uprating by CPI ensures that, at the very least, benefit levels maintain their value against inflation. In addition, some commentators consider that it better reflects the inflation experience of pensioners and benefit recipients.

This year, however, because of the national economic situation, the Secretary of State for Work and Pensions decided that some benefits will be increased by a lesser percentage. I should stress that my Department has no power to uprate benefits by a different percentage in Northern Ireland. Basic state pension is increased by 2.5% to £110.15, which is an increase of £2.70 a week. The minimum guarantee in state pension credit is increased by the same amount, taking a single person's weekly income to £145.40. For couples, the increase will be £4.15, taking their new total to £222.05 a week.

Those facing additional costs because of their disability and who have less opportunity to increase their income through paid employment have seen their benefits rise by the increase in CPI. Therefore, disability living allowance, attendance allowance, carer's allowance and the main rate of incapacity benefit have all risen by 2.2%, as have the employment and support allowance support group component and those disability-related premiums that are paid with pension credit and working-age benefits. Other benefits have been increased by 1%.

As a result of the Up-rating Order, we will be spending an additional £101 million on social security in 2013-14, which is money that will go into the local economy. I fully appreciate that many of us wish that we could do more, but, as already stated, my Department is empowered only to set the same rates as those in Great Britain. I am sure that all Members will wish to ensure that people in Northern Ireland, including some of the most vulnerable in our society, can continue to receive those new rates of benefit and will therefore join with me in supporting the order.

**Mr Maskey (The Chairperson of the Committee for Social Development):** Go raibh maith agat, a Cheann Comhairle. On behalf of the Committee, I confirm that the Committee considered the SL1 on this matter on 14 February 2013, and, at our meeting on 21 March, we agreed that the statutory rule should be made.

As the Minister pointed out, there was a discussion on CPI as opposed to RPI. I will just put on the record that members of the Committee were concerned that the switch from RPI to CPI would, in effect, mean a reduction in the uplift of the benefit. In saying that, the Committee took the view that, given that it was one of those fundamental arguments on parity, we are not in a position to formally reject the provision. So, reluctantly, the Committee agrees that the statutory rule be made.

**Mr Copeland:** I empathise with the comments of the Chair of the Social Development Committee. I would like to make a few comments for the record. Starting with the positive, my party and I warmly welcome the 2.5% increase in the basic state pension. That is a given. I am also pleased to see that the coalition Government continue to honour the triple-lock guarantee to increase the basic state pension by the greater earnings prices or 2.5%. I also very much welcome that those who face additional costs because of their disability and who have less opportunity to increase their income through paid employment will see their benefits increase by the full value of the CPI.

Disability living allowance, carer's allowance, attendance allowance, the main rate of incapacity benefit in the employment and support allowance support group component and disability-related premiums that are paid with pension credits and working-age benefits all increased only by the statutory minimum of 2.2% from April 2013. As the Chair alluded to, that is the minimum rate that could have been expected. It would be incorrect to say that that

is anything more than the absolute minimum of what could have been expected. However, again because of parity, apart from commenting on them, those things lie outside our direct control.

Although the Up-rating Order may help pensioners, which I welcome, it will only just maintain support for people with disabilities or for whom the ability to work is medically limited. It is a cut for huge swathes of working-age people who claim the main rate of jobseeker's allowance or income support, as well as those on the main rate plus the work-related activity component of employment and support allowance and housing benefit.

We all know that the rationale for that decision is financial. However, when we consider that, across the UK, these regulations will see an increased spend of £2.8 billion in 2013-14, of which £2.1 billion is being spent on pensions, just under £500 million on people with additional needs and £300 million on people who are in receipt of work-related support, it is clear to see who has benefited most, and least, from them.

The Minister will be aware, no doubt, that the 1% cap also applies to tax credits, maternity allowance, maternity pay, sick pay and other means of support. All these benefits are, of course, claimed by working people, and I am sure that the Minister knows that the majority of children who are in poverty in Northern Ireland live in low-paid working households. Again, today's decision will have yet another negative impact on such households.

As the Chairperson said, we raised our concerns genuinely. They were cross-party, and I accept and concur with the views expressed by the Chairperson of the Committee for Social Development.

**Mr McCausland:** I welcome the contributions from the Chairperson of the Committee for Social Development and from Mr Copeland. The point has been made, and has been acknowledged in the past by Mr Copeland, that, indeed, we are bound by the principle of parity, and he referred to that this afternoon. We are, therefore, tied to a decision that was made by the Conservative and Liberal Democrat coalition Government at Westminster.

Nevertheless, having acknowledged the concerns that are shared across the community in Northern Ireland, I am pleased with the consensus of support across the Assembly for the uprating order. I thank Mr Maskey and his colleagues for the positive way in which they

dealt with the order. I am certain that we all welcome the fact that the uprating order makes increases to benefits. I commend the order to the House.

*Question put and agreed to.*

*Resolved:*

*That the Social Security Benefits Up-rating Order (Northern Ireland) 2013 be approved.*

## Child Support Maintenance Calculation Regulations (Northern Ireland) 2012

**Mr Speaker:** The next three items of business are motions to approve statutory rules that deal with matters related to child support. There will be separate debates on each of the statutory rules, but the Minister and Members will be allowed some latitude during the first debate to address the broad policy issues that are common to all three sets of regulations. I hope that the House will find that helpful.

**Mr McCausland (The Minister for Social Development):** I beg to move

*That the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 be approved.*

The next three items of business are motions to approve statutory rules that deal with matters related to reform of the child maintenance system. I welcome the opportunity to address some of the broad policy issues that are common to each set of regulations.

The regulations were made on 3 December and 6 December 2012 and came fully into operation on 10 December 2012. They are required in order to implement the new 2012 child maintenance scheme as provided for by the Child Maintenance Act (Northern Ireland) 2008.

Child maintenance legislation is based on the general principle that all parents should take financial responsibility for their children. The main objective is to maximise the number of effective maintenance arrangements for children who live apart from one or both of their parents. The current child maintenance systems, which date from 1993 and 2003, need to change as they are no longer fit for purpose. Family-based arrangements will always be the best option for children. Research shows that children who receive support from both parents throughout their childhood enjoy better outcomes in later life.

In summary, I will now deal with each set of regulations in turn. The main set of regulations sets out the rules and procedures for the new scheme, with the aim of making it easier for parents to budget, giving them greater financial security and promoting financial responsibility. The second and third sets are designed to aid the resolution of difficult cases and to make the scheme simpler to administer and easier for claimants to understand.

3.45 pm

The regulations are made under the Child Support (Northern Ireland) Order 1991. They set out how child support maintenance under the new statutory 2012 scheme will be calculated, and the rules and procedures for that scheme. I will outline briefly the purpose of the regulations. Under the 2012 scheme, the majority of maintenance calculations will be based on the non-resident parent's gross weekly income, as provided by Her Majesty's Revenue and Customs (HMRC). Using income information provided by HMRC will ensure that maintenance payments are kept up to date and accurate, and provides for a faster calculation. Therefore, money will get to the parent with care and to children quicker.

Currently, cases are reviewed only when a parent contacts the Department to report a change in circumstances. Some cases have not been reviewed for many years, and the change in circumstances is sometimes minimal. Instead, the new system will not vary the maintenance calculation unless the non-resident parent's gross income changes by at least 25%. That means that, apart from major changes such as the addition of another child or the loss of a job, the maintenance liability will remain largely stable throughout the year. This will offer greater certainty to parents about what they should expect to pay or to receive.

The new scheme will simplify decision-making in relation to shared care. Where parents agree that there is shared care but cannot agree on the number of nights, an assumption equivalent to one night per week will be made. Any assumption made will continue until the parents reach an agreement or an order is made by the court as a result of family proceedings. This, too, will support our aim of getting money to parents with care quickly, rather than cases remaining undecided indefinitely while agreement between parents is awaited. There will also be more equitable treatment of parents where there is a 50:50 split in childcare. Those parents will no longer be required to pay maintenance through the statutory scheme.

The new statutory scheme will bring about changes to the types of variation that parents with care can claim. Those changes will focus on capturing a non-resident parent's actual unearned income, such as income from property, savings and/or investments declared to HMRC. That will be more meaningful for parents than the current method of using a notional income to calculate unearned income. Children supported outside the statutory

scheme will be acknowledged in the same way as qualifying children in the maintenance calculation. In such cases, non-resident parents will be required to provide evidence of a formal or informal agreement.

In conclusion, the regulations will make the scheme simpler to administer and make it easier for clients to understand how a maintenance liability is calculated. The use of HMRC information will result in a more straightforward system that will get money flowing to children quicker.

**Mr Maskey (The Chairperson of the Committee for Social Development):** Go raibh maith agat, a Cheann Comhairle. I thank the Minister for bringing these regulations forward. The Committee considered the regulations at its meeting on 20 September 2012 and, at its meeting on 13 December, agreed that the statutory rule be made.

Given the fairly extensive deliberations that the Committee has had in co-operation with the agency and the Department over recent times, suffice it to say that we all recognise that this is a difficult and complex area. I am speaking generally about the three sets of regulations. While people understand that there is complexity around this issue, they realise that it is much more effective and beneficial for the children involved when there is a mutual agreement between resident and non-resident parents. The intention of these regulations is to simplify and speed up the process when there is no such agreement. As the Minister said, they also give greater certainty to both sides in that situation. The Committee agrees that the regulations be made and wishes the agency and Department well in trying to resolve what are sometimes very difficult circumstances between parents who happen to have split but still have to meet the needs of their children.

**Mr McCausland:** I am pleased by the comments from the Chair. I thank Mr Maskey and his colleagues on the Committee for the positive way in which they have dealt with this. I am glad that there was a consensus in the Committee. Therefore, I am pleased to commend the motion to the House.

*Question put and agreed to.*

*Resolved:*

*That the Child Support Maintenance Calculation Regulations (Northern Ireland) 2012 be approved.*

## **Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations (Northern Ireland) 2012**

**Mr McCausland (The Minister for Social Development):** I beg to move

*That the Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations (Northern Ireland) 2012 be approved.*

These regulations are made under the Child Support (Northern Ireland) Order 1991. The regulations make provision for the recalculation of basic rate and minimum maintenance amounts. I will outline briefly the purpose of the regulations.

The regulations make changes to the way in which the basic rate of child maintenance is calculated by reducing the percentage by which the non-resident parent's gross income is reduced to take account of relevant other children, that is, children usually living in the non-resident parent's household. They also set out the minimum amount of liability where the non-resident parent is party to another maintenance arrangement.

I remind members that the regulations are not concerned with the amount of flat-rate maintenance paid by those non-resident parents who are on a weekly income of less than £100 a week or are in receipt of certain benefits, which remains at £5. The regulations will, first, reduce the percentage levels for children in the current household of a non-resident parent from 12% for one child, 16% for two children and 19% for three or more children to 11%, 14% and 16% respectively. The intention is to get a more equal allowance between children in first and second families.

Secondly, they temporarily maintain the £5-a-week minimum amount of liability of child maintenance payable by a non-resident parent who is party to another maintenance arrangement.

**Mr Maskey (The Chairperson of the Committee for Social Development):** Go raibh maith agat, a Cheann Comhairle. I thank the Minister for bringing forward the regulations. The Committee dealt with the SL1 at its meeting on 20 September 2012. We confirmed that we would support the statutory rule at the meeting on 13 December.

As the Minister said, this is essentially about trying to ensure that child maintenance rates are shared fairly between the children who are subject to such calculations. On that basis, the Committee agreed that the regulations should be made.

**Mr McCausland:** Again, I thank the Chair and the Committee for the positive way in which they have dealt with this. I welcome the consensus across the Assembly and commend the motion to the House.

*Question put and agreed to.*

*Resolved:*

*That the Child Support Maintenance (Changes to Basic Rate Calculation and Minimum Amount of Liability) Regulations (Northern Ireland) 2012 be approved.*

## **Child Support (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2012**

**Mr McCausland (The Minister for Social Development):** I beg to move

*That the Child Support (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2012 be approved.*

These regulations are made under the Child Support (Northern Ireland) Order 1991. The regulations do not represent a significant change in policy, but they will aid in the resolution of a minority of cases in which it is unlikely that the full amount of arrears will ever be collected.

The purpose of the regulations is to provide for the writing off of arrears in certain limited circumstances; to provide a realistic approach to the collection of arrears, as not all arrears are collectable; to prevent a level of historical debt from moving across to the new 2012 scheme; to ensure it operates as efficiently as possible; and, most importantly, to encourage parents to communicate and co-operate with each other.

The regulations will enable a more efficient management of arrears by implementing two new powers, namely the power to accept part payment of arrears in full and final satisfaction and the power to write off arrears. The first power will enable the Department to negotiate with both the non-resident parent and the parent with care in order to agree on a lump sum payment that is less than the total child maintenance arrears owed. That will be considered to be full and final satisfaction of the debt in cases where the Department is unable to collect the full amount owed.

The intention of the power is to enable money to flow to children, even where the non-resident parent is unable or unwilling to pay the full amount of arrears outstanding. The power is intended to be used where no suitable enforcement route is available or to enable a quick resolution in cases where the parent with care is willing to accept a lesser payment in lieu of the full amount. The agreement of both parents is crucial. The written consent of the parent with care is required before any offer of part payment of arrears in full and final satisfaction is accepted. The outcome of accepting an offer of part payment of arrears in full and final satisfaction will be explained to the parent with care when seeking their written consent. If the non-resident parent fails to

adhere to the terms of the agreement, they will remain liable to pay the full amount of any outstanding arrears.

The second power, the power to write off arrears, is limited in nature and can only be used in certain circumstances; for instance, when one parent has died, the relevant children are grown up or perhaps where there has been a reconciliation. The power will be used as a tidying-up provision for the small number of cases where the arrears are very unlikely ever to be collected or where they are no longer wanted.

**Mr Maskey (The Chairperson of the Committee for Social Development):** Go raibh maith agat, a Cheann Comhairle. I thank the Minister for bringing forward the motion on the regulation. I confirm that the Committee dealt with the SL1 at the meeting of 20 September 2012 and agreed to confirm the rule on 17 January.

As the Minister pointed out, it is about trying to resolve a fairly limited number of outstanding cases, some of which have been outstanding for quite some time. The crucial thing for the members of the Committee was that it could not be implemented without the full agreement of the resident and non-resident parent. It is essentially designed to try to bring to a speedy conclusion some of the cases that are outstanding and will likely remain outstanding for a number of years unless there is a resolution. The regulation provides the means to do that. On that basis, the Committee supports the rule being made.

**Mr McCausland:** I thank the Chair and his colleagues on the Social Development Committee for their consideration of the regulations. I can reassure members that the regulations do not in any way undermine the determination of the child maintenance service to pursue parents who refuse to live up to their responsibilities. However, I am certain that we will all welcome the regulations, which will help to ensure that uncollectible historical debt is not taken on to the new scheme and will mark the start of a realistic approach to the collection of arrears. I commend the motion to the House.

*Question put and agreed to.*

*Resolved:*

*That the Child Support (Management of Payments and Arrears) (Amendment) Regulations (Northern Ireland) 2012 be approved.*

## Private Members' Business

4.00 pm

### Child Poverty Targets

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

**Mr Eastwood:** I beg to move

*That this Assembly notes the Office of the First Minister and deputy First Minister's report 'Improving Children's Life Chances - The Second Year', which details that 93,000 children are currently living in poverty, and the report by the Joseph Rowntree Foundation 'Monitoring Poverty and Social Exclusion in Northern Ireland 2012', which details that 120,000 children are currently living in poverty; acknowledges that further welfare cuts will only act to exacerbate this situation; and calls on the Office of the First Minister and deputy First Minister to bring forward legislation to ensure that we have our own child poverty targets separate from those of the Westminster Parliament.*

Thank you very much, Mr Speaker, for giving me the opportunity to speak on the motion.

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

For us, it is a fairly simple one. I will have to remember to say "Mr Deputy Speaker" now that there has been a change at the top Table. We are awash with different reports into child poverty in Northern Ireland, but none of them make for very good reading. We are aware that there is an international crisis in the economy and that nowhere has escaped the issues of poverty, particularly child poverty. However, all the reports show that Northern Ireland in particular is very badly hit by child poverty.

The reports by the Joseph Rowntree Foundation, which talked last year of around 120,000 children living in child poverty in the North, Save the Children and Barnardo's and the recent work that was carried out by the Institute for Fiscal Studies make for fairly depressing reading. Whether you come from a constituency such as Derry, as I do, or whether you represent West Belfast or other places, those figures are very stark indeed.

Our attempt to bring this issue to a head is not about political point scoring or anything else but about trying to ensure that this Assembly and this Executive begin to take responsibility for the things that go on in this part of the world. Our view is very strongly held: we need independent, statutory child poverty targets for Northern Ireland. We think that the only way that we can really begin to tackle the very real difficulties that child poverty presents to us and our children is by beginning with targets that are specific to Northern Ireland, because we recognise that Northern Ireland has specific problems and specific challenges. The only way to deal with those is to have specific targets.

Whether you call it child poverty, poverty or fuel poverty, the issues are the same. Educational achievement is affected. Entrepreneurial aspiration is affected. Even societal cohesion is affected. They are all fundamentally stifled by the gripping nature of poverty. Poverty becomes one of the greatest impediments to equal opportunities and social mobility for our people, and that should tell us that we are in the middle of a crisis and one that demands our urgent attention. Minister Bell will tell us that the Executive are doing all that they can to address the issues of child poverty, and I have no doubt that the Executive are attempting to address the issues of child poverty. I have no doubt whatsoever that every one of the 108 Members in the Assembly is committed to dealing with the issues of poverty. We all come from constituencies, and we all understand the issues facing our constituents.

The very sad fact is that we have failed to address the issues of child poverty. I accept that figures differ, but the recent figures from the Institute for Fiscal Studies are that 26.3% of children in Northern Ireland are living in relative poverty compared with 20.5% in the UK. In Northern Ireland, 28.5% of children live in absolute poverty compared with 23.1% in the UK. That study also said very clearly that we face a sharp increase in child poverty in Northern Ireland. We need to be very concerned about that. The Institute for Fiscal Studies also said that it seems impossible that the targets set out in the UK Child Poverty Act 2010 could be met. Recently, one of the Department's own reports talked about remaining realistic about meeting the target. That strikes me as not a very optimistic outlook to tackle and reach the goals that are set out in the Child Poverty Act.

Our position is that, unless we take responsibility for the issues that are relevant to us and which the Assembly has been elected to tackle and unless we decide for ourselves that we have to tackle the issues of child poverty and that we should be held to account if we do not tackle those issues, we will never get to where we need to be. That is why we believe very strongly in the need for independent child poverty targets. We do not underestimate the challenge that lies ahead to eradicate child poverty. We know how difficult it is, and we know that there is a world economic crisis. We know also, as some of my colleagues will talk about, that we are facing the real, scary prospect of some of the welfare reform proposals and the impact that those will have. However, we should sit up and listen when the Institute for Fiscal Studies says that rather than eradicating child poverty by 2020, we will be faced with relative poverty of 29.7% or absolute poverty of 32.9% by then. We are going in the wrong direction. We are not reducing child poverty; in fact, we are looking at a very sharp increase in Northern Ireland. We need to be very concerned about that. It is a crisis and demands urgent action. We can all talk — maybe this is not the day for it — about what exactly we can do to get there. The fundamental point is that, unless you decide to set targets for something, you will never do it. Unless you decide to hold yourselves responsible and to account, you will never get the desired outcome. We believe very strongly that we need to get there.

The Institute for Fiscal Studies says that, even if there were unprecedented changes in the labour market, welfare policy and the amount of redistribution attempted by the state, we still would not be able to eradicate child poverty. That is a very scary statement. Given that Derry and Belfast are numbers four and five in statistics showing the top 20 local authorities for child poverty, this issue is of particular concern to the House. Therefore, we should be prepared to address it.

I do not think that the Assembly is here just to nod to what Westminster says or go along with everything that it does. Of course, we should be held responsible for UK targets, but why not sit down and create targets for ourselves and take responsibility for the things that go on in this jurisdiction? I do not see what the problem is. Let us ensure that, if we are not to meet the targets set out in the UK Act, we get together and try to figure out realistic targets for Northern Ireland and hold ourselves to them.

There is no greater indictment on society and government than the fact that child poverty is

increasing and will increase even further by 2020. It is incumbent on all of us to decide now that we really want to tackle this issue and that we will not simply rely on the UK targets, even when we are told that we will not meet them. Let us put ourselves under pressure. In every single constituency in the North of Ireland, people are under immense pressure to decide whether to heat their home or feed their children. We must not shirk our responsibilities. We need to do all that we can to change the pattern of poverty and underinvestment in our communities. I hope that the Assembly will support the motion.

**Mr Nesbitt (The Chairperson of the Committee for the Office of the First Minister and deputy First Minister):** First, I will make a few comments in my capacity as Chair of the Committee, which has taken a keen interest in this issue since devolution in 2007. Indeed, the Committee undertook a substantial inquiry, the report of which included 47 recommendations for the Executive to take forward. The purpose of the inquiry was to establish consensus on child poverty in Northern Ireland and to ensure that eliminating it was a priority for all Departments. The main thrust of the report was that failure to tackle child poverty would limit the aspirations and expectations of our children and, therefore, the growth and development of our economy.

In the report, the Committee highlighted the importance of a joined-up approach across Departments. In relation to the motion before us and the specific call for legislation with Northern Ireland-specific targets, I inform the House that the Committee's 'Report on the Executive's draft Programme for Government 2011-2015 and draft Investment Strategy for Northern Ireland 2011-2021' stated:

*"the Committee would like consideration given to producing Northern Ireland specific targets, which would allow monitoring of progress here and contribution towards meeting the targets in the UK Child Poverty Act. These targets could then be incorporated into the PfG."*

There was considerable discussion about the issue, and members expressed concern that although the UK as a whole might reach its target by 2020, this could happen without the level of child poverty here being reduced at all, simply because of the relative size of Northern Ireland compared with GB. For that reason, the Committee was keen to see Northern Ireland-specific targets, which could be placed in the Programme for Government and monitored accordingly.



On 24 April 2013, the Committee was briefed on the latest child poverty annual report; I will return to that in a moment. It was alarming to hear that the latest figures show that 93,000 children in Northern Ireland are living in relative poverty. The figures for Foyle and West Belfast are as high as 43%, which equates to almost half of all children living in those areas. The briefing also highlighted that the numbers and the percentage of children in poverty are, in fairness, at their lowest; in 2010-11, they were the lowest they had ever been. However, as Mr Eastwood pointed out, the measure is attached to the UK median wage, which has gone down in the past number of years. Mr Eastwood posed this question: are people less poor, or are we measuring against a dropping indicator?

In the Committee's recent response to 'Towards a Childcare Strategy', it highlighted the need for the strategy to address the needs of the most vulnerable families and children with disabilities, and reinforced the need for cross-departmental co-operation. From memory, 40% of the £12 million allocated for a childcare strategy has already been allocated and earmarked, which would suggest that as that comes ahead of the publication of the strategy, it is not a strategic allocation of funds.

The Committee also welcomes the work being done on a child poverty outcomes model. We recently heard from the National Children's Bureau about its work to develop an outcomes model, aiming to use the data that Departments are collecting to measure the actual impact of departmental actions on reducing child poverty as opposed to measuring the actions taken. The Committee looks forward to hearing how that work progresses over the coming months.

I will now say a few words as an individual MLA and as the leader of the Ulster Unionist Party. We will support the motion. We were somewhat disappointed by the late delivery of the annual report last year. I would not be so concerned if it was a one-off, but there seems to be a consistent pattern between the Department and the Committee for the Office of the First Minister and deputy First Minister of late delivery of papers and late cancellations of briefings by officials.

I acknowledge the cross-cutting nature of the issue and how challenging it is. The annex to the report has some puzzling claims; for example, on the first page, with regard to preschool nursery places, it states:

*"At the conclusion of the 2012/13 admissions process 99.8% of children whose parents engaged fully with the two*

*stage process received the offer of a funded pre-school place".*

Unfortunately, that happens only if you engage fully, and you could end up with a place somewhere else.

**Mr Deputy Speaker:** Could the Member draw his remarks to a close, please?

**Mr Nesbitt:** Bizarrely, much is made of the fact — not once but twice — that, technically, child poverty can be reduced through the provision of concessionary angling licences for children and young people up to the age of 19. Perhaps the Minister could address that in his response and show its correlation to a reduction in child poverty.

**Mr Moutray:** This debate certainly resembles the one that was brought to the House in November. I imagine that the outcome and the discussion may be very much in the same vein. I question the need for the debate, given that work is being done at all levels of government to tackle child poverty. However, it is important that we continue to keep child poverty to the forefront of our minds, and to that end, I welcome the opportunity to highlight what is being done and what is being planned for the future.

It is no surprise that the issue is before the House again, given the concerted attempt by our colleagues in the SDLP to scaremonger and attack on the welfare reform element. Everyone in the House knows exactly what is happening with welfare reform. Furthermore, they know exactly the attempts that Minister McCausland is making to try to have different rules and regulations on matters that will affect the most vulnerable in our society. Minister McCausland continues with that battle, and I have faith that he will negotiate the best deal for Northern Ireland. It is time that all in the House realised that and put their shoulder to the wheel to ensure that we get the best deal for the most vulnerable.

#### 4.15 pm

Additionally, Members are very well aware that work is going on to develop a household income administrative database, which will allow more accurate assessments on the impact on specific groups. Unfortunately for us all, however, we do not have to look too far in our constituencies before we find a child who is suffering as a result of poverty. Indeed, it is a known fact that child poverty is often linked to family poverty. I know that every Member of

the House is endeavouring to tackle that day and daily in their constituency.

I made this point in my previous contribution, but I believe that it must be made again: when poverty is involved, children's expectations of their own life are greatly reduced. That can lead to a cycle in which poverty is repeated from generation to generation. Barnardo's has raised, and continues to raise, that point when discussing child poverty issues. Moreover, when children move from childhood to adulthood, they are more likely to find it difficult to obtain employment, and they may suffer ill health, possibly face homelessness or become involved in offending, drug and alcohol abuse and abusive relationships. Therefore, it is vital that local and national efforts are made to tackle child poverty and eradicate it from our society.

We all know that we are bound by the Child Poverty Act 2010, which undoubtedly has very ambitious targets, and the main targets require eradication of child poverty in the UK by 2020. However, it is important to note that that is an Executive target. When we say "Executive", it is something that every Department must contribute to collectively. I believe that the Office of the First Minister and deputy First Minister (OFMDFM) has shown leadership in that regard. The most recent report, brought forward by OFMDFM in March 2013, is visionary. It looks at doing things differently, and undoubtedly that is needed. It is also important to note that the report clearly highlights that relative child poverty has fallen, and that is a testament to the work that the House and the Department are leading on. However, it is important that we continue to measure that consistently and not take a scattergun approach when looking at the figures. Indeed, we must take heart from the figures provided, because, after housing costs, Northern Ireland has the lowest poverty levels in the UK. Part of the reason why before-housing costs show us to be at higher levels is due to the fact that the UK median was used. We all know that the UK median is London and the south-east, which is considerably higher than that in Northern Ireland. However, if we used a Northern Ireland median, child poverty levels would drop significantly, as they are measured relative to the median. To that end, I believe that it is important to note that, under the Delivering Social Change framework, there is a clearly sustained effort to reduce poverty and associated issues across all ages, as well as improving health, well-being and lifelong opportunities for young people and children. That, coupled with the work of the National Children's Bureau to develop a child poverty

outcomes model, which will inform and empower the Departments of the key objective of the child poverty strategy —

**Mr Deputy Speaker:** Will the Member bring his remarks to a close, please?

**Mr Moutray:** — will all aid the process of tackling and eradicating child poverty. Our party would not support legislation to separate child poverty targets from Westminster. Consequently, we intend to oppose the motion.

**Ms McGahan:** Go raibh maith agat. Our party will not support the motion. We are not convinced that bringing forward another child poverty Bill will make a difference. As most people in the House know, the children and young people's sector wants action on the issue, and that has been stated in various consultations that have been carried out. However, bringing forward legislation to have our own child poverty targets, separate from those at Westminster, is not something that we will rule out in the future. I recognise and welcome the work done to date on the development of a child poverty strategy for the North of Ireland. In March 2010, the issue of child poverty was placed on statute under the Child Poverty Act, and that requires the Executive to develop a strategy to achieve their overall goal to eradicate child poverty by 2020.

I have to say that, in the scheme of things, that is quite a radical goal. The first strategy by the Executive was published in 2011, and OFMDFM is in its second year of reporting on that strategy. There are four statutory measures: relative poverty; absolute poverty; persistent poverty; and relative poverty and material deprivation combined. These legal obligations are being carried out by the Executive. It is recognised that we in the North are at a disadvantage due to our mean income being lower than the UK mean income.

International research shows that there is no one model of best practice to eradicate persistent poverty. Although a lot of good work goes on, it is still a very difficult nut to crack.

The Delivering Social Change framework is a new approach endorsed by the Executive. It involves an integrated approach, which is critical to a child poverty strategy. Organisations often operate in isolation when resources could be maximised through a joined-up approach. This framework recognises a holistic approach in which early intervention in one area could reduce costs in another; for example, early intervention and

child development and longer term issues such as antisocial behaviour and crime prevention. The legal obligation for reducing child poverty falls on all Ministers, and it is OFMDFM's duty to report progress of the child poverty strategy. There was an announcement of the six signature projects, in addition to funding coming from the social investment fund, which is integrated into the Delivering Social Change framework and will assist communities in meeting their priorities to tackle disadvantage.

It is critical that the child poverty strategy ensures that funding is focused and targeted at the most vulnerable groups, with targets, outputs and outcomes, and that it should be a real driver for the allocation of what is an already limited resource.

Although west of the Bann and rural areas such as Dungannon, which is in my constituency, remain high in relation to child poverty, there remains a focus on the main urban areas and cities when responding to statistics or delivering pilot initiatives. That perception needs to be altered.

We need to ensure that what is being done is having a positive effect. Child poverty is a result of many problems; for example, the need for adequate provision of social housing stock. The Welfare Reform Bill, and changes to child benefit payments, will leave many parents with no choice but to cut back on vital necessities. We need to ensure that children are protected as much as possible within that.

There is the need for affordable childcare and adequate, accessible preschool provision in areas of disadvantage. Fuel poverty is another major issue. We need good education for all and the targeting of funding to the disadvantaged. We need economic development, good training opportunities for our young people to break the cycle of unemployment, and the transition of children with disabilities from special education to further mainstream provision.

As you can see, it requires the co-ordination of key actions by all the Departments to tackle child poverty. In all that, we face challenges, including the Welfare Reform Bill and the economic downturn.

Finally, I believe that there is a genuine attempt to make an impact through the Delivering Social Change framework, which is designed to tackle deprivation and exclusion, but it is important that funding is spent effectively and efficiently. Go raibh maith agat.

**Mr Lyttle:** I rise on behalf of the Alliance Party to support the motion and to reaffirm our commitment to tackling poverty and social exclusion and protect the most vulnerable in our community. Child poverty and the situation where the location in which a child is born influences his or her life expectancy must be completely unacceptable to the Assembly and to our community. Alliance recognises that a shared and integrated society can only be achieved if those economic and social inequalities are addressed.

Despite the work of OFMDFM to tackle these issues, around 90,000 children in Northern Ireland live in relative poverty, and a significant number of households do not have adequate basic necessities such as food and clothing. Indeed, food banks are now required in many of our constituencies.

Poverty has a wide impact on the life of a child. Without a proper diet, a warm home or access to computers and the internet, the education of a child can also suffer, and the chances of breaking the cycle of poverty become increasingly more difficult. We also know that there is a correlation between disadvantage, disengagement and conflict, which has to make addressing child poverty one of the most important challenges to building a shared society in Northern Ireland.

I agree with the proposers of the motion that there needs to be a more transparent and comprehensible approach to the measurement of child poverty and the outcome of government interventions in Northern Ireland. Northern Ireland-specific targets could assist in that process. I also agree that the work to protect the most vulnerable is now an even greater task, given the potential impact of welfare reform initiated by the UK Government. The Executive must ensure that any changes in welfare structures are matched by targeted support for individuals and families in Northern Ireland.

Welfare reform in Great Britain has taken place in the context of a resourced childcare strategy, including a statutory duty on local authorities to ensure that adequate childcare provision is in place. A transformation fund was established in England to invest in high-quality, sustainable and affordable childcare. In contrast, in Northern Ireland there is no agreement on a lead Department, no statutory duty, and limited resources. As a result, there is a woefully inadequate level of childcare provision. Addressing the desperately overdue delivery of an effective childcare strategy and adequate childcare provision has to be one of the most

important priorities for OFMDFM in any fight against child poverty.

The Department for Employment and Learning (DEL) must continue to work with OFMDFM to address the barriers to employment and examine the support required to enable parents to make the transition to employment, which could include consideration of an earnings disregard. Creating jobs and tackling low wages are also central to addressing child poverty, given that one third of children in severe poverty are in households where at least one adult works.

Alliance believes that investment in early intervention and prevention initiatives will be central to tackling poverty and exclusion, as all evidence suggests that intervening early achieves better outcomes and, ultimately, costs less. The Executive must address the underfunding of children and young people's services, relative to the rest of the United Kingdom, and support the incorporation of the United Nations Convention on the Rights of the Child.

Most importantly, perhaps, a cross-party and cross-departmental joined-up approach must be at the heart of any response to the complex challenges facing children and families. The Assembly has to scrutinise the work of the Northern Ireland Executive's Delivering Social Change framework and the child poverty outcomes model — a task that I take very seriously in my role as Deputy Chair of the OFMDFM Committee and deputy chair of the all-party group on children and young people.

The OFMDFM social investment fund and the six signature programmes outlined by the Delivering Social Change programme board must be robustly monitored and must lead to Departments actually reducing child poverty. The Assembly must work together to hold the Executive to account on the implementation of the child poverty strategy if we are to achieve what has to be the joint aim of the Assembly to provide equal opportunity and hope to all children and young people in Northern Ireland.

**Mr G Robinson:** First, I want to point out that welfare reform is the result of legislation not from this House but from Westminster. My party opposed it because it was aware that one of its consequences was that child poverty levels could creep up here. It must also be noted that Westminster cut our Budget, limiting the approaches that we have available to address the fallout of welfare reform on the most vulnerable. We cannot spend what we do not have, which could mean a direct impact on

child poverty in Northern Ireland. However, it would be a great support to the Social Development Minister, who has to oversee welfare reform, if other Ministers donated some of their budget to help to mitigate the impact on child poverty.

I am sure that every Member could tell of instances of child poverty in their constituency. Poverty and social exclusion coincide. It does not matter where it occurs. Sadly, it does happen. How the Assembly goes about measuring those indicators can be argued all day. Different strands of research use different indicators. Look at the difference in the total numbers of 120,000 from the Joseph Rowntree Foundation and 93,000 from OFMDFM's figures. I am not convinced that beginning to establish a set of targets that are unique to Northern Ireland is the best way to go forward. As long as the Assembly knows what the problems are and can try to address them, that is to me much more important and cost-effective.

#### 4.30 pm

The most important thing is how we deal with the problems that pertain to child poverty, which are, at present, critical. Although welfare reform may have side effects on child poverty levels, it is worthwhile noting that all parties are working along with the Minister to ensure that any impact will be lessened. That is a more sensible use of time and money than trying to develop new indicators, which may well not be operational for up to 18 months.

We should all continue to support the Minister of Enterprise, Trade and Investment in her job of trying to create employment opportunities, attracting inward investment and supporting firms to expand or secure current jobs, as well as rebalancing the economy, which will all have a greater impact on child poverty targets than the politically motivated call for Northern Ireland targets. I urge all Members to concentrate on dealing with the real problems that surround child poverty. I do not support the motion.

**Ms Fearon:** Go raibh maith agat, a LeasCheann Comhairle. I want to start by apologising for missing the beginning of the debate. I welcome the opportunity to talk about child poverty. It is an issue of huge importance to the Assembly. The stark reality is that one in four children live in poverty. Some of the most deprived areas in Europe are right here in the North. I know that the growing issue of poverty is keenly felt across the island. I represent a constituency where it is a reality for too many

people. It is unacceptable that in 2013, so many children and families live in poverty. Child poverty cannot be separated from overall deprivation. Over half of the children who live in poverty in the North are from working households.

I welcome the motion's reference to the fact that welfare cuts will only make it even more difficult to tackle child poverty in the North. The working poor will be harshly attacked under the banner of welfare reform. The false narrative that child poverty is a result of the dependency culture is completely absurd. That is not about reducing the deficit or tackling poverty: the clear dogma behind all of this is to tackle the poor. We have the bizarre situation in the Assembly where one Department is rolling out the child poverty strategy and the Child Poverty Act 2010 while another Department holds responsibility for implementing legislation which will only make the situation worse for families who hover above the breadline and those who are already below it.

The 2010 Act places a statutory duty on each and every Department to describe the progress that it is making in contributing to meeting the target to eradicate child poverty by 2020. Recently, I wrote to all Departments asking what actions they had taken in working towards meeting that target. I received responses from almost all Departments. However, it was, for the most part, signposted back to OFMDFM projects. I know that it holds policy in relation to children and young people. However, it is time that all Departments took their responsibility seriously to tackle child poverty. What is important is that we work with a targeted approach that is based on objective evidence and need. That is what Delivering Social Change is all about; a cross-cutting framework that is designed to tackle deprivation, poverty and social exclusion. A hugely important factor in delivering social change is the working together of Departments and a joined-up approach to tackling child poverty and the issues that I raised previously.

I welcome the commitment of £26 million that was made available to support education, health, training, employment and other issues, to which my colleague Bronwyn McGahan already referred. All of them have the potential to impact positively to address child poverty. There is also the commitment of an additional £80 million of ring-fenced funding to support the most disadvantaged communities. The only target that we should be working towards is the total eradication of child poverty. The current target is just that.

One child living in poverty is too many. The job of work now is to focus on the child poverty strategy and its implementation along with the 2010 Act. Given that there are two further strategies to come from OFMDFM, which is a legal requirement from the 2010 Act, I am not convinced that bringing forward a piece of legislation at this time is what is needed. That will only add another layer of bureaucracy. What we need is to press ahead with the tools that are already at our disposal and make sure that they are working in tandem and are delivering something that has been made clear to us by many organisations that work in that sector.

We all have responsibility to work collectively to eradicate child poverty and to break the poverty trap that generations of families get caught up in, and to ensure a better and brighter future for the most vulnerable in society. I cannot support the motion.

**Mr Spratt:** I am pleased to be able to speak on this motion. As has been said a number of times, poverty and child poverty affect all constituencies right across the board. I have to say that I am somewhat disappointed that the proposer of the motion has not recognised the many excellent initiatives, led by the First Minister and deputy First Minister, to tackle child poverty.

**Mrs D Kelly:** I thank the Member for giving way. A number of contributors mentioned the initiatives by OFMDFM. Perhaps Mr Spratt is intending to illustrate some of those in his contribution. If not, perhaps he would do so.

**Mr Deputy Speaker:** The Member has an extra minute.

**Mr Spratt:** Yes indeed, because I know that the opposition from your side of the House will not.

I have to say that a number of programmes have benefited disadvantaged families. For example, the freezing of water rates, free prescriptions, the warm homes scheme and the free school meals scheme. The Department for Social Development has also invested heavily in neighbourhood renewal areas, and the Department of Culture, Arts and Leisure (DCAL) continues to invest in sports facilities. All that helps to tackle the systemic issues that lead to child poverty, and the list goes on. It is a shame that all that excellent work has not been recognised in the motion before the House.

It is a well-known fact that poverty is linked to income and employment. I also want to highlight the excellent efforts of the First Minister and deputy First Minister, and the Minister of Enterprise, Trade and Investment in securing jobs and investment for Northern Ireland. Those achievements are often downplayed by the media, but we should never underestimate the huge benefits to a family of obtaining employment.

Although I acknowledge that welfare reform will have an impact, it is not a stand-alone issue. I know that my colleague Nelson McCausland is doing all in his power to minimise the impact of welfare reform issues, and it must be said that a number of key initiatives will run alongside welfare reform to enable people to return work, thereby reducing or eliminating the impact on disadvantaged families.

As Members are aware, OFMDFM has recently launched two initiatives, the first of which brings all the Departments in the Executive together. Delivering Social Change places a responsibility on all Departments to tackle child poverty and, for the first time, offers a joined-up approach. That is chaired by the junior Ministers.

The second initiative is the social investment fund, which is targeted at deprived areas to eradicate child poverty in the long term. It is necessary to provide assistance programmes for issues such as educational underachievement; family support; health and well-being; dereliction; employability; youth services; and social enterprise. A total of £80 million has been allocated to nine investment zones, four of which are in the Belfast area. Clearly, it is the First Minister and deputy First Minister's intention that that will make a significant difference to the lives of people living in those areas. So, it is clear that much work has already been done to tackle child poverty and that OFMDFM has recognised that it is a high priority.

In my constituency office in South Belfast, I see, on a daily basis, the difficulties faced by families living in poverty. I, therefore, look forward to seeing the results of the initiatives that I outlined today. I sincerely hope that they lead to fewer and fewer children growing up in disadvantage and that poverty will eventually be totally eradicated.

I suppose that some of the parties and Members opposite who continually bring this up simply to have a go at the Office of the First Minister and deputy First Minister see themselves as the opposition.

I oppose the motion.

**Mr Maskey:** Go raibh maith agat, a LeasCheann Comhairle. Like my two colleagues who spoke, I want to say that Sinn Féin will not support the motion. In saying that, it is obviously important that we continue to debate the issue of child poverty, including in the Chamber, notwithstanding the fact that we have a child poverty strategy and have been working towards an Act for a number of years.

It is very unfortunate that the Member Dolores Kelly comes into the Chamber and asks a question, having not had the courtesy of being here for the debate. That gives you an indication of where the Member is coming from.

The Member who moved the motion made it very clear that child poverty is an issue that all of us are committed to eradicating. Megan Fearon made very clear our party's point of view. Our target, and, I would say, that of every Member of this House, is the total eradication of child poverty. In moving the motion, Colum Eastwood made the point that child poverty cannot be separated from fuel poverty, overall poverty and disadvantage. Therefore, it is incumbent on all of us and all Departments to do our utmost to create employment, to break the cycle of unemployment and to make sure that we target it through intervention and other Government initiatives throughout the Programme for Government. It is important that we target the communities and areas that are most disadvantaged. When we lift communities out of disadvantage, we lift more children out of child poverty.

I think that the tenor of the debate has been very constructive and positive so far, with the exception, as I said, of one attempt to score political points in a very childish manner, no pun intended. We are still listening to cackling from the side here.

I believe that all the parties are committed to eradicating child poverty. We are not just trying to meet a target. The target is the total eradication of child poverty. The SDLP's Colum Eastwood is a member of the OFMDFM Committee. He routinely listens to the Department and challenges the Department, and rightly so. We have the benefit of listening to a wide range of stakeholder organisations that repeatedly tell the Committee that they do not want to hear about any more consultations or strategies. They want to see action plans, implementation dates and the delivery plans for all these objectives, which would include, clearly, totally eradicating child poverty. Therefore, we should continue in all our

collective works, and OFMDFM should continue on behalf of the entire Assembly, to target child poverty.

**Mrs D Kelly:** You will know that I was in for most of the debate, despite the comment made by Mr Maskey. Unfortunately, I had some urgent business to attend to. I note that in Mr Maskey's contribution he did not actually attempt to address my question, which was this: what has OFMDFM done?

**Mr Maskey:** You were not here for all of it.

**Mr Deputy Speaker:** Order.

**Mrs D Kelly:** Is that cackling I hear, or just cack?

If he really wants us to have a go at OFMDFM, let us have it. OFMDFM is the one Department that is shutting down any debate around freedom of information. Now, it does not want us to ask questions. I thought that the role of the Assembly was to hold the Executive to account, not to be cheerleaders for colleagues. I thought that Members were here to represent their constituents, not to uphold a lack of vision by OFMDFM. All the research points out, as did all the contributors to this debate on tackling child poverty, the glaring omission of this Executive to agree a childcare strategy. That is a fact. We are now into the third year of the second term of the OFMDFM, DUP/Sinn Féin-led Executive, and we still do not have agreement around a childcare strategy.

One point often glossed over in the debate about child poverty is that it is not just about people who find themselves out of a job. It is also about the working poor. Mr Spratt made some attempt to highlight some of the initiatives, as he said, that OFMDFM has achieved. However, some of those were already standard practice, such as free school meals, and some of the other measures that people are looking for have not been addressed. We are looking for greater flexibility across all Departments. For example, in the Department of Enterprise, Trade and Investment (DETI) and the Department for Employment and Learning, there are opportunities for policy initiatives that do not penalise people wanting to be reskilled, to retrain or to enter into employment.

There is no provision of childcare for parents who want to enter the labour market. Furthermore, it is a well proven statistic that some working families pay up to 44% of their joint income on childcare — their joint income,

Mr Deputy Speaker, because one wage is now no longer enough, given the low-wage economy in which we now live in the North of Ireland. So 44% is spent on childcare.

**4.45 pm**

As other Members have recognised, there is also work to be done by other Departments. The Department of Education (DE), for example, could widen its extended schools programme and its sustainable schools policy to assist with the childcare strategy, and DETI could work alongside DEL to meet the needs of working parents for greater flexibility. I understand that the Scottish Administration have a working families fund. The Minister for Social Development may well want to examine that to see whether there could be some greater flexibility with the social protection fund, which might help people living in poverty.

Poor housing is also a major contributor to poor health outcomes for families across all age groups. Yet we have a Minister for Social Development who has handed back £15 million in the past few monitoring rounds —

**Mr McGlone:** Will the Member give way?

**Mrs D Kelly:** I will, indeed.

**Mr McGlone:** The Member referred to £15 million being handed back. Does she accept that that £15 million could have been invested in construction, which could have kept people in work? She referred to the major issues being faced by people who are out of work, but those in work also face them. Above all, we have to get meaningful employment for people, and construction was a ready-made opportunity for them. It is pitiful that we handed back that £15 million.

**Mr Deputy Speaker:** The Member has an extra minute.

**Mrs D Kelly:** Thank you, Mr Deputy Speaker. I understand that the figure has now gone up to closer to £18 million, but I take the Member's point. My constituency relies heavily on the construction industry, and that money would have had wider ramifications than directly providing labour in the construction industry.

There are also measures to support families and voluntary and community groups.

**Mr Spratt:** Will the Member give way?

**Mrs D Kelly:** I will give way.

**Mr Spratt:** I note that the Member has mentioned most Departments. She has not yet mentioned the Department of the Environment (DOE). Is there anything that it could do?

**Mrs D Kelly:** I would be happy to hear some further suggestions on that. Given that the DOE has responsibility for local government, we may want to look at its reorganisation and reform. Currently, it is not a statutory function of local councils to provide, for example, childcare or play facilities, but help could be given to councils by the Executive to assist with that function.

I believe that further support across the community and voluntary sector is required, as is, in particular, support for parents.

What we want is a very wide remit of measures, initiatives and suggestions, which, in some areas, already form part of good practice. There is a wealth of information: good research papers from the Joseph Rowntree Foundation and Save the Children and other suggestions. Our plea to the Executive, and particularly to OFMDFM, is to look at those and start to implement some of them.

We are somewhat suspicious —

**Mr Deputy Speaker:** Will the Member draw her remarks to a close, please?

**Mrs D Kelly:** — that OFMDFM does not want to set its own targets because it does not want to set itself up for failure.

**Mr Cree:** I commend the SDLP on tabling a motion on child poverty, a topic that I believe must be kept on the agenda of the House.

I believe that the annual child poverty report should be presented by way of an oral statement by the First Minister and the deputy First Minister to allow Members the opportunity to pose questions on the Department's performance. This is not the case and, on the previous two occasions, the annual report was submitted to the Assembly in written form. Although the Child Poverty Act is not prescriptive about this, given the importance of this topic, the Ministers should have taken questions from the Assembly.

There is certainly a feeling that OFMDFM is abdicating its responsibility, given that the child poverty figures have generally worsened year on year. I am pleased that the motion gives us

a chance for debate, and I ask the First Minister and the deputy First Minister to give some thought to how they present this important work to the Assembly in the future.

I remind the House — a Member referred to it — that the Ulster Unionist Party tabled a motion on child poverty on 19 November 2012. During that debate, we expressed our disappointment that the first annual report on child poverty showed that OFMDFM was falling far short of its statutory targets for tackling the problem. My party also called for an action plan to stem from the child poverty strategy, and I repeat those sentiments.

The second annual report was published on 29 March 2013, and I am pleased that it was delivered on time this year, given the delays that were evident until June of last year. As the motion points out, the report highlights that 93,000 children currently live in poverty in Northern Ireland. That figure is, of course, too high. Indeed, research by the Joseph Rowntree Foundation puts it even higher, at 120,000. We must, therefore, look carefully at what is being done to combat those concerning statistics.

Much has been made of the £26 million six signature projects that were announced by OFMDFM in October last year. I am sceptical of how quickly those projects are getting under way. Take, for example, the improving numeracy and literacy signature project: we are yet to see any newly qualified teachers providing extra support for children in primary or post-primary schools to help those struggling to attain grades in English and mathematics. I am also unaware of any additional health workers being engaged in the two signature projects for which the Department of Health has lead responsibility.

Another signature project entails the Department for Social Development (DSD) and DETI collaborating to create 10 social enterprise incubation hubs. The deputy First Minister was able to confirm at Question Time on 7 May that:

*"no jobs or businesses have yet been created", — [Official Report, Vol 84, No 7, p29, col 1].*

because no hubs have actually opened.

The social investment fund and childcare strategy also remain vastly behind schedule in the Office of the First Minister and deputy First Minister, with combined funding in the region of £90 million tied up as a result. Therefore, it should come as no surprise that the DUP and



Sinn Féin want this mandate to run for an extra year, perhaps in order to try to deliver on some of those commitments. If we are serious about tackling child poverty, we must get those types of projects up and running and making a difference.

The motion specifically mentions welfare reform and the effect that it will have on child poverty. The current delay by the Social Development Minister in bringing the Welfare Reform Bill's Consideration Stage, as well as the inability so far to in any way alter the Bill to be Northern Ireland-specific, does not fill me with confidence that the needs of children in poverty are being adequately taken into account. I think specifically of single parents working longer hours on low pay, who will be substantially worse off under universal credit. I have heard the Minister claim that the introduction of universal credit will lift up to 10,000 out of poverty —

**Mr Deputy Speaker:** Will the Member draw his remarks to a close, please?

**Mr Cree:** I will conclude by addressing the final part of the motion, and that deals with the question of legislation. I am glad to see Mr Bell here, and I see that, on 24 April 2012, he said about child poverty:

*"The Northern Ireland-specific target would come if we were to look at the figure" —*

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

**Mr Cree:**

*— "of the Northern Ireland median income, through which we can show a significant reduction." — [Official Report, Bound Volume 74, p125, col 1].*

**Mr Agnew:** My compliments to the proposer of the motion for tabling it. I was viewing from upstairs, so I have heard most of the debate even if I was not in the Chamber for it all.

It is fair to say, and the tone of the debate clearly states, that we will all say that we are, rightly, against child poverty. Nobody will deviate from that. However, we differ on how we tackle it. If we in the Chamber are going to be really mature, there has to be broad acceptance that the Executive have been ineffective to date in tackling child poverty and that devolution has not yet delivered for children in Northern Ireland. If we start from that point, we may have a productive discussion. We could get defensive and say, "But we are doing this, that and the other", which is fine, and I

have no problem with people giving reasons in context as to why we might have failed. However, to start an effective debate, we must acknowledge that we have not sufficiently tackled child poverty. The key question is this: are the measures that we are taking effective?

Mr Spratt outlined the things that the Executive are doing and have done, but a number of the things that he outlined are, and have been independently judged to be, regressive measures — ie, measures that have taken money away from the most vulnerable in society. We — the Assembly and Executive — have taken decisions that have seen cuts to public services and cuts to provisions across the board, which will impact most on the most vulnerable in our society, and, indeed, will have a significant impact on child poverty. That has been the direction of travel. Probably the best example I can give of that is the cap on rates, whereby we ensure that those in million-pound mansions do not pay more than those in reasonably sized homes, something that I still find incredible today. What we have are the rates from people in working class housing estates going to subsidise those in million-pound mansions. When we take decisions like that as an Assembly, I think we are right to be critical of some of the decisions that have been taken to date.

We can also be critical of the things that are not being done. Some have made reference to things that are being done, but what has not been done? The childcare strategy has been mentioned. I do not think there is anybody saying that they do not want the childcare strategy. I do not think it is being held up in the Government because there is somebody in there who does not want it. I think it is like a lot of things that go into OFMDFM — they go in and do not come out. Nobody here is going to say that they do not care about child poverty or it is not something that we should tackle, but I do not think we are giving it ample priority. There is an argument that cuts through government that, if we seek to boost the economy, child poverty will take care of itself. I think that attitude is one of the reasons why we are failing.

We have seen things go into OFMDFM that do not come back out. We saw the SOS call on a shared future — by SOS I mean Secretary of State, but it could have been save our soul, because it looked like we were never going to get a shared future strategy. However, as soon as there was an economic threat as opposed to a societal threat, all of a sudden we see a knee-jerk policy coming out of OFMDFM, so it can act fast when it has to, but unfortunately, it

sometimes needs that kick, which is one of the reasons why I support the motion and putting those targets into legislation to give that kick that we need to drive the issue forward.

Welfare reform is mentioned in the motion and has been mentioned in the debate. Again, it is an example of us heading in the wrong direction. It is right that we use the global economic context, the UK economic context and whatever else, but welfare reform is something on which we have power, and I think we are refusing to do what we can.

Finally, another strategy that we are yet to see — it does not lie with OFMDFM, but I think it is a fundamental example of the heart of the problems that we have in government and with silo mentalities — is an early years strategy. When we originally had an early years strategy, early years being from age 0 to six, it sat in the Department of Education, which intervenes in children's lives at age three. So we almost had an early years strategy 0 to six —

**Mr Deputy Speaker:** Will the Member draw his remarks to a close, please.

**Mr Agnew:** — that started at age three, which is why I am working on a private Member's Bill to ensure that we have better joint working across government and so that I do not just criticise but play my part in trying to tackle some of those problems.

**Mr Bell (Junior Minister, Office of the First Minister and deputy First Minister):** I am grateful for the opportunity to respond and speak on this issue on behalf of the Executive. Addressing child poverty is something that is crucially important to this Administration and to which we have given a significant priority. The Executive are committed to making people's lives better. We know that there are families who are struggling to make ends meet. We see them in Newtownards, in Moneyreagh, in Portavogie and in the constituency office. All of the evidence demonstrates that poverty has a negative impact on outcomes, educational achievement, health and life opportunities. We want to tackle poverty and improve outcomes for everyone in Northern Ireland. We measure poverty levels here and across the UK in relation to family income. Child poverty is directly linked to and is a result of family poverty. We cannot tackle one and not the other.

**5.00 pm**

Family income is influenced by two key issues: how much is coming into the family, and the household costs to the family. We are committed to addressing both issues, particularly through our new Delivering Social Change agenda. The Executive have sought to support families on both of those issues by supporting economic growth and educational achievement. We want to ensure that there are jobs and that the barriers to getting those jobs are removed. In addition, we have made sure that we have kept household costs down.

Northern Ireland has the lowest poverty levels across the UK, after housing costs. Are we clear on that? We will continue to focus on these issues.

I turn to our current requirements. Our obligations are set out in the Child Poverty Act 2010, and they apply to all Departments. I heard Mr Lyttle, who is not in his place, make a silly point that this is to do with OFMDFM. No; the Child Poverty Act and its obligations apply to all Departments and require us all, individually and collectively, to work towards reducing child poverty in all its guises and, just as importantly, to tackle the issues that give rise to child poverty. Those issues are many and they have an impact on our work right across the board.

In the second annual report on delivering the child poverty strategy, to which the honourable Member refers in his motion, the Executive set out a wide range of actions that Departments are taking to address the factors that give rise to the problem. However, I should point out that this year's report builds on the success of other work that has been led by OFMDFM to develop a child poverty outcomes model.

Let me be clear: we are fit to set whatever targets we want here, and we can do that without legislation. We are happy to discuss and take the views of Members on Northern Ireland-specific targets. However, we do not believe that separate legislation is a necessary or desirable step at this stage.

The motion acknowledges that the number of children who are living in poverty in Northern Ireland differ depending on the yardstick that is used. Is it 93,000 or 120,000? I have to point out that the honourable Member has compared two reports that use the same official source but which use data from two different years. The current and most recent official measure confirms that child poverty in the Province sat at 93,000 in 2010-11, which was a reduction from 120,000 in 2009-2010. The figure of 120,000 to which the honourable Member refers was taken

from the Rowntree report on child poverty here, which is one year out of date — hence the difference in the figures. The yardstick, however, is the same in that both reports use the official headline measurement of child poverty that is outlined in the Child Poverty Act.

There was a silly contribution from Mr Agnew. He was the one who asked me — Hansard will reflect it — not to change the legislation and the target measure that we use, only to talk six months later about kicking people with a completely different strategy.

The honourable Member who proposed the motion does not appear to have picked up that the two reports relate to different years. The evidence shows that relative child poverty in Northern Ireland is falling and that lower wage levels in London and the south-east of England have reduced the UK median income. Therefore, relative child poverty has fallen. However, we very much understand how difficult it can be for those who are living in poverty.

I can assure the House that the targets contained in the Child Poverty Act are very challenging and have the aim of achieving the elimination of child poverty. Let us be clear that, although the target is for the United Kingdom as a whole, our aim will be to eliminate child poverty in Northern Ireland. The target is made even more difficult by what any objective observer will note and can see, namely the global economic downturn. Addressing the problem of poverty will, therefore, require a concerted effort over a period of time. Changing the measurement or moving the goalposts is not the answer.

The motion before the House is also silent on whether local targets should be set against local norms. Should we measure local poverty rates against local mean incomes? Should we measure relative poverty or absolute poverty? Should we measure income, or should we measure against the real cost of living? Should we measure against the levels of poverty across the United Kingdom or across Europe? Should we compare poverty in Larne with that in Omagh? As I have already mentioned, our poverty rates are set against the UK median income, which is significantly impacted by the higher wages in London and the south-east of England. As I outlined to the House on a previous occasion, if we used a Northern Ireland median income, our poverty levels would fall dramatically. Those are intriguing options, but the real question remains this: what are we doing tangibly to address the

causes and consequences of this social scourge in Northern Ireland?

The Executive have agreed the Programme for Government. That is our road map towards building prosperity and tackling disadvantage. The latter heading encompasses a range of initiatives, including the child poverty strategy. Over the past year, working with all Ministers in the Executive, junior Minister McCann and I have led the development of a range of interventions under the banner of Delivering Social Change. We have held bilateral discussions with virtually all our ministerial colleagues to press them on the areas in which their Departments could intervene meaningfully to address and reduce child poverty. Those meetings have been constructive and encouraging. As a result, and as set out in the Executive's child poverty strategy, we have identified a range of areas that we believe will identify the actions that will work most effectively.

Our approach is two-pronged. In the short term, we aim to improve interventions that will improve children's education, those that will improve children's health and those that will support families as they face up to the problems of low pay, unemployment, a legacy of low educational achievement, poor health and significantly higher levels of disability, especially mental disability. To make a start on achieving that, in October, the First Minister and deputy First Minister announced a range of signature programmes under Delivering Social Change: those are worth £26 million.

Through those programmes, we will address the historical issue of poor literacy and numeracy, generate new family support hubs and stimulate local enterprise to give families more meaningful and better-paid jobs. To date, the Executive childcare fund has allocated significant funds to additional childcare projects addressing a range of needs including after-school clubs, children with disabilities and the childcare requirements of vulnerable families. We will make further announcements about those before the summer recess.

Secondly, we aim to develop a range of measures that will point the way to delivering a difference in the long term. Our efforts to support communities as they build resilience, develop entrepreneurship and reap the benefits of the economic development strategy, will offer dividends that can, and will, be counted in the scale of the reduction of child poverty, such as improved services for children and better environments with more play and leisure facilities.

I notice that the Chair of the Committee raised the issue — apparently in ridicule, although I hope not — of the angling licences. You should acknowledge that play and leisure is a critical part of a child's development. Many children miss out on those things because of a limited number of life opportunities.

**Mr Nesbitt:** I thank the Minister for giving way. The point that I wanted to make is that it is not a concessionary rate for children who are suffering from poverty.

**Mr Bell:** We are saying that many children do not have the access to play and leisure facilities that other children have. Mr Nesbitt, you may have a party that has members who live in castles and pay for their children to be privately educated elsewhere, but you should acknowledge that there are many children who do not get the opportunity to have the likes of angling licences. You should not ridicule that, and you should not take that away from them.

The work that the Office of the First Minister and deputy First Minister has been leading to develop a child poverty outcomes model illustrates how the Departments have been given a new focus and improved tools, allowing them to recognise the role that each of them can play and giving them the means to measure the extent to which their interventions are having an impact. Much work has already begun. We expect to see more results pronounced as Departments begin to use the model on a more consistent basis. Minister McCann and I will continue to hold the Departments to account through the Delivering Social Change programme board for the actions that they take.

We now have a clear strategy endorsed by all Ministers. We have clear arrangements in place to develop measures of departmental impact, and we are delivering specific programmes that will make a meaningful difference to the immediate and to the longer-term needs of children and young people.

I am grateful for the opportunity to put on record the catalogue of focused interventions that has been put in place by this Government. I am happy, in conclusion, to dismiss the suggestion that changing how we measure child poverty will make any real difference to the lives of the children and families living in those conditions. What this Executive are about, what every Minister has endorsed and what we will continue to lead and drive forward in OFMDFM is a strategy that delivers real and meaningful change for our young people who are living in poverty. Improving their lives, not changing

statistics, is what we are focused on. I, therefore, urge Members on all sides of the House to oppose the motion.

**Mr Durkan:** Today's debate has brought up several issues. While there may be disagreement on some issues, it is fair to say that all Members who spoke and all parties here want to see a reduction in, and ultimately, the eradication of, child poverty. Why then, the SDLP is asking, do we, as an Assembly, and OFMDFM, as the Department responsible for tackling this scourge, not do more?

We are calling on OFMDFM and the Executive to take responsibility and set Northern Ireland-specific targets for tackling child poverty rather than continue to abdicate responsibility to Westminster and use the 2010 Child Poverty Act as an excuse rather than an aid. The reasons why we should do so have been outlined well today. This is an epidemic that has been widespread and is more severe here than in other parts of these islands. Therefore, its treatment here should be more concentrated and more sustained.

The statistics that evidence the extent of child poverty are no secret, and a few reports from the Joseph Rowntree Foundation, Save the Children and our universities have been cited today. Mr Eastwood, who proposed the motion, referred to such statistics and the fact that the constituency that we share features regularly at the top of tables of deprivation and poverty. He said:

*"we have failed to address the issues of child poverty."*

He then verified that with statistics. I do not think that anyone here can, hand on heart, say that he is wrong. For the Assembly to best be able to tackle child poverty, we need to make it accountable for doing so. Colum outlined external factors beyond our control — the global economic situation for one — that contribute to child poverty and quoted a chilling opinion from the Institute for Fiscal Studies that even a radical change in the labour market will lead to little improvement in the situation here.

#### 5.15 pm

Mr Nesbitt quoted a report and said that failure to tackle child poverty will ultimately limit the growth of our economy. He then gave us a highlights reel from the Committee for the Office of the First Minister and deputy First Minister, of which he is Chair. All I can say after hearing that is that I am glad that I am on the

Committee for Social Development. Like Mr Eastwood, Mr Nesbitt questioned the methodology or the yardstick being used to measure poverty, and I questioned that previously when the Minister for Social Development was heralding a reduction in pensioner poverty in the face of unprecedented costs for heating and eating.

Mr Moutray referred to a previous recent debate similar to this one and questioned, therefore, the need to revisit it. I would have thought that the need is fairly obvious. We need to act together — I agree with Mr Moutray — to tackle this ever-growing problem. He spoke about a recent OFMDFM report that looks at doing things differently. We are saying that we must stop looking and start doing. He also referred to scaremongering and accused us of doing so around welfare reform. We are aware of the work being done by the Minister for Social Development on welfare reform, but it is a pity that he did not start it earlier when we asked him to.

Ms McGahan spoke, and it is unfortunate that Sinn Féin is unable to support the motion. She proceeded to extol the vision and strategies of the Executive to tackle poverty, and that made me think of the quote:

*"fine words alone will not put food in the stomachs of our most vulnerable children."*

That was from Mary Lou McDonald, vice president of Sinn Féin, in September.

Chris Lyttle outlined the role of poverty and division in our society. He spoke of the correlation between poverty and conflict and agreed that the Executive's attempts to tackle child poverty should be more measurable. Mr Lyttle spoke of inadequate childcare provision and the continued absence of a childcare strategy, which are both barriers to successfully addressing child poverty. Like many other Members, he referred to the need for a more joined-up approach. We often hear about that in this place but, unfortunately, rarely see it.

Mr Robinson spoke. His party told us that it opposed welfare reform in Westminster, and that makes us wonder about the vigour with which it attacked parties here for opposing the same.

Ms Fearon outlined the stark realities of child poverty and displayed a good understanding of the problem.

Mr Spratt outlined some of the initiatives of OFMDFM and then spoke about initiatives from

various Departments on tackling poverty. He referred to the social investment fund and the £80 million allocated. Unfortunately, we have not seen much of that rolled out yet, but we look forward to doing so. We also need to look at how successful or otherwise the schemes are at tackling poverty and to see whether we are targeting money as well as we should be.

Mr Maskey was the next contributor. He said that we cannot separate one form of poverty from another. That is true, but we cannot allow this poverty of performance to continue.

Mrs Kelly joined the debate long enough to make some valid points on the working poor and, again, called for more cross-departmental work. There was a very good intervention from Mr McGlone stating how the Executive could work to create employment and tackle poverty in that old-fashioned style.

I welcome the support for the motion from Mr Cree and Mr Agnew, who called for maturity and honesty. The Executive have failed in tackling child poverty.

The junior Minister responded, and I was glad to hear about the importance of the issue to this Administration. I may have picked this up wrongly, but I think that he said that we have the lowest poverty rates in the UK. I mentioned a few reports, and there are a lot of reports and statistics, but I must have missed that one. He then started splitting hairs over statistics in various reports, and, to me, that is, unfortunately, typical of the DUP tactic of attack being the best form of defence. Sorry, but, for us, the failure to tackle poverty and the lack of ambition to do so are indefensible.

Given the impact of the recession and the cuts that are expected to come with welfare reform, if the Bill passes, there will be an increase in child poverty. There does not seem to be the same urgency on the opposite Benches to get the Welfare Reform Bill through as there was a few months ago. At that time, when we were proposing the establishment of an Ad Hoc Committee to look at the Bill and ensure protections for vulnerable groups such as children, the Members opposite were warning of huge financial penalties and, indeed, 1,600 job losses, including a few hundred in my constituency. I recall taking an intervention from the junior Minister on that exact issue in that debate. We were accused of scaremongering, but there is little doubt about who was doing the scaremongering then. We have been accused again today of scaremongering, but there is little doubt in my mind that welfare reform will push more families

and, therefore, more children into poverty. This is a view shared by just about every organisation and individual who responded to the call for evidence by the Committee for Social Development on the Welfare Reform Bill. That is why, regardless of the passage of the Bill, more must be done by OFMDFM to meet its obligations under the Child Poverty Act 2010 and, indeed, to match the pledges in our Programme for Government. In that document, however, the initial commitment to eradicate child poverty, which had appeared in the draft, was watered down to reducing or alleviating it, as flagged up by the SDLP when voting against it. We said that this commitment was not good enough, and we are now witnessing the reality of an Executive driving policy based on modest targets. In fairness, it seems that we are incapable of meeting even those.

We must also look at what can be done to mitigate the negative impact of welfare reform on children. Last week, during Question Time, I was heartened when junior Minister McCann, in response to my supplementary, indicated that she supported making the payment of universal credit to the primary carer in a household. I was already aware that that was Ms McCann's party's position, but I would like clarification on whether that it is OFMDFM's position as well.

**Mr Deputy Speaker:** Will the Member draw his remarks to a close, please?

**Mr Durkan:** On that issue, it is vital that we ensure a mother's access to benefits so that she can feed and protect her children.

In conclusion, we call on OFMDFM to accept its responsibility to protect the children of this region. We need it to introduce legislation —

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

**Mr Durkan:** — to allow us to set our own child poverty targets. Our children cannot afford to wait for another failed strategy.

*Question put.*

*The Assembly divided:*

*Ayes 28; Noes 56.*

## **AYES**

*Mr Agnew, Mr D Bradley, Mr Byrne, Mrs Cochrane, Mr Cree, Mr Dallat, Mr Dickson, Mrs Dobson, Mr Durkan, Mr Eastwood, Mr Elliott, Mr Gardiner, Mrs D Kelly, Mr Kennedy, Mr Kinahan, Mr Lunn, Mr Lyttle, Mr McCarthy, Mr B*

*McCrea, Mr McDevitt, Dr McDonnell, Mr McGlone, Mr A Maginness, Mr Nesbitt, Mrs Overend, Mr P Ramsey, Mr Rogers, Mr Swann.*

*Tellers for the Ayes: Mr A Maginness and Mr McGlone*

## **NOES**

*Mr Allister, Mr Anderson, Mr Bell, Mr Boylan, Ms P Bradley, Mr Brady, Ms Brown, Mr Buchanan, Mr Campbell, Mr Clarke, Mr Craig, Mr Douglas, Mr Dunne, Mr Easton, Ms Fearon, Mr Flanagan, Mrs Foster, Mr Frew, Mr Girvan, Mr Givan, Mr Hamilton, Mr Hazzard, Mr Hilditch, Mr Irwin, Mr G Kelly, Mr Lynch, Mr F McCann, Ms J McCann, Mr McCartney, Mr McCausland, Ms McCorley, Mr I McCrea, Mr McElduff, Ms McGahan, Mr D McIlveen, Miss M McIlveen, Mr McKay, Ms Maeve McLaughlin, Mr Mitchel McLaughlin, Mr McMullan, Mr Maskey, Mr Milne, Lord Morrow, Mr Moutray, Ms Ní Chuilín, Mr Ó hOisín, Ms S Ramsey, Mr G Robinson, Mr P Robinson, Mr Ross, Ms Ruane, Mr Sheehan, Mr Spratt, Mr Storey, Mr Weir, Mr Wilson.*

*Tellers for the Noes: Ms Fearon and Mr G Robinson*

*Question accordingly negatived.*

## Assembly Business

### Extension of Sitting

**Mr Deputy Speaker:** Before we move to the next item on the Order Paper, I wish to advise the House that the Speaker has been given notice by members of the Business Committee of a motion to extend today's sitting past 7.00 pm under Standing Order 10(3A). The Question on the motion will be put without debate.

**Mr Weir:** Mr Deputy Speaker, I make myself the most popular Member of the House by begging to move

*That, in accordance with Standing Order 10(3A), the sitting on Monday 13 May 2013 be extended to no later than 7.30 pm.*

Question put and agreed to.

Resolved:

*That, in accordance with Standing Order 10(3A), the sitting on Monday 13 May 2013 be extended to no later than 7.30 pm.*

## Private Members' Business

### Energy Costs

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

**Mr Frew:** I beg to move

*That this Assembly recognises that energy costs are of concern to businesses and consumers; congratulates the Minister of Enterprise, Trade and Investment and the Minister of Finance and Personnel for successfully negotiating a derogation from the carbon price floor for Northern Ireland; notes that this negotiation prevented an increase in local energy bills of between 10 and 15%, which would have had a detrimental impact on households and businesses; and calls on the Minister of Enterprise, Trade and Investment to continue to work with industry to keep energy affordable.*

The first line of the motion recognises that energy costs are of concern to business and consumers. That is certainly the drive behind the motion before us today.

First of all, I commend the Minister and her colleague the Minister of Finance and Personnel for delivering on a result on the carbon price floor. It will not have been lost to this House that both those Ministers are DUP Ministers, but credit should be given where credit is due. The carbon price floor and the decision that has been taken that we will not be liable to this tax is one of the most important decisions for the future of electricity supply and pricing in Northern Ireland.

The Minister has been in detailed discussions with Treasury for about two years on this very matter, setting out the consequences for consumers, our generators, our industry, our business, the economy, our manufacturers and our large employers if this tax were applied in Northern Ireland. This tax measure would have undermined the competitiveness of energy generators in the all-island market. Not only would that have put jobs in that sector at risk, but it would have produced higher bills for energy consumers in Northern Ireland, which would have left large employers with hard decisions to make, and it would have meant

that there could well have been job losses. So the Minister has delivered for our generators, the Ministers have delivered for householders, and the Minister has delivered for small businesses and large employers and for this economy, in a sphere where we do not have a direct influence, and that is the cost of energy.

Members of this House will recognise that this is a DUP MLA speaking, but do not take my word for it or the DUP's word for it. Nigel Smyth, who is the Northern Ireland director of the Confederation of British Industry (CBI), commented on 20 March that:

*"Today's budget statement has gone some way to building business and consumer confidence with a number of measures being of key note.*

*The agreement to exempt Northern Ireland electricity generators from the Carbon Floor Price effective from 1 April is something CBI has lobbied hard for. This tax would have cost Northern Ireland £175 million over the next 5 years which would have had a detrimental impact on commercial and domestic energy prices."*

The CBI is the UK's leading business organisation, speaking for some 240,000 businesses around the UK. It communicates the British business voice around the globe. Those are not our words but the words of the CBI.

**Mr Flanagan:** I thank the Member for giving way. When he labours the fact that the CBI speaks for industry, he will also note that the CBI speaks for those who generate the electricity, who would have been hit by this tax, so there is a bit of conflict of interest there that needs to be noted.

**Mr Frew:** OK. I thank the Member for his intervention. The fact still remains that the generators in Northern Ireland could not have competed in the all-island single market, so this had to happen. I am glad to be able to say that our Ministers delivered on that commitment. This is something that had not affected our people. It had not come in. It is something that we were able to stave off. They do not know the impact that it would have had on business and employers.

No doubt, corporation tax powers are the biggest and best tool that we could possibly have in order to attract new overseas business, but I believe that after that, energy costs are the next big factor that business and, in particular,

manufacturing have to consider when deciding where to place their plant and their site. It is a big factor that needs to be considered.

I must express my gratitude to the Minister. Any time that I have asked her down to north Antrim, she has come down. She has listened and spoken to and met large employers of manufacturing plants in north Antrim, she has taken away their concerns, and she acts on it. She does something.

#### 5.45 pm

Why do our businesses pay so much for electricity? Why is it so complicated? How best can the Government influence prices and cost? Those are some of the questions put to me and the Minister by large employers in north Antrim who punch well above their weight in manufacturing. North Antrim, and Ballymena in particular, has a great track record of manufacturing, and that is something that we want to retain in north Antrim.

I realise that responsibility for this issue lies with the Utility Regulator, but we as a Government must influence where we can to make it easier for businesses to grow. We and our businesses face a complicated scenario. An electricity bill is made up of several factors. The charge for the electricity consumed is only one small part, and is, depending on where you go, about 50% of the bill. The other factors are the capacity charge, which includes the generator's operating costs; infrastructure costs, including the public service organisation (PSO) levy, market operator's and distribution use of system (DUOS) and transmission use of system (TUOS) charges. The next thing is supplier costs and margins, and, to top it all off, we have taxes.

It is true to say that Northern Ireland seems to be paying the most when it comes to electricity, and, if not the most, we are right up there. That is a threat to our manufacturing plants if it is a global company and we are top of that league. Global companies are competing with not only rival manufacturers but with other plants within their own brand, structures and make-ups. That is of major concern, and should be of major concern to all of us.

We can talk all we want about fuel poverty and try to do all we can to reduce the numbers in fuel poverty, but if a large employer was to leave the Northern Ireland scene, that would throw thousands of people into fuel poverty overnight. It would be devastating if any town or area, not least north Antrim, Ballymena or Ballymoney, were to lose a large employer,



because some of those manufacturing plants have 700, 900 and 1,000 employees, which would mean thousands of families being thrown into fuel poverty. That is vital, and the House should focus on that.

There are some things that we need to focus on and push through to help us even though some are not our direct responsibility. There is no doubt that we need to get the North/South interconnector up and going as quickly as possible. I do not understand sometimes: I live in the east, of course, in north Antrim, and we have lived with pylons all our lives. I do not have two heads; we live with them OK. However, we have to be realistic that we need power lines and pylons to generate and distribute power.

Not having the North/South interconnector is costing consumers — householders, families, businesses and large employers — £25 million per year. The scheme is stuck in planning and legal processes when we should be getting on with the job of interconnection, which is as vital a piece of the jigsaw as generation. The Moyle interconnector is running at 50% volume at the minute. I know that the companies involved are going through insurance difficulties, but we need to get another cable laid to get back up to full speed. Another neutral cable would, I believe, resolve the issue quicker, and they should be doing that as quickly as possible to get us back up to full speed.

What we desperately need, especially for the companies in the west of the Province, to give them a choice, is gas extension. Those towns in the west deserve gas as much as the towns that I represent. I would like to see the gas extension going forward as quickly as possible.

**Mr Deputy Speaker:** Would the Member to draw his remarks to a close, please?

**Mr Frew:** I could talk on about this for a lot longer, but I will leave it open now. I plead with the House to focus its mind on this major issue for businesses and unite ourselves to the task of trying to make energy costs much more affordable.

**Mr Flanagan:** Go raibh maith agat, a LeasCheann Comhairle. I thank Mr Frew for bringing the motion to the House and proposing it. He spent a good part of his 10 minutes paying tribute to Minister Foster and Minister Wilson. I will take the opportunity to pay tribute to Mr Frew for all his efforts in this regard and to all those who are involved in the negotiations. I encourage the Minister, as part of her 15-

minute response, to pay tribute equally to Mr Frew. *[Laughter.]* You give a little, you get a little. That is the way the world works.

Before I start into my contribution to the debate, it is only right that I pay tribute to the chief executive of the Utility Regulator, who, today, announced his decision to step down from his post in October. In all my dealings with him, I have found that he has made his best efforts to protect consumers. In the absence of any form of effective competition here, he seems to have done what he can to protect consumers. I wish him all the best and thank him for his efforts over the past few years.

I welcome the motion's being tabled today. It is disappointing that, once again, when we talk about such an important issue, there is a fairly poor turnout among MLAs. However, that is the quality of the debate that we are going to have. We will proceed with it.

It is a timely debate. It is right to note the recent successes that the Executive have had with the derogation from the carbon price floor. That is very welcome. There was unanimous cross-party support backing Ministers on that. We are all very glad to see that it was successful.

By the way, we support the motion and will not be voting against it. However, the bit at the end of the motion says, "to keep energy affordable". Energy is not exactly affordable at present, although we realise that things could have been a whole lot worse. At present, we are in a situation where more than 40% of households are still in fuel poverty. Much more could be done through the Executive. Even more needs to be done that cannot be done because it is outside the Executive's control.

As a representative of a rural constituency, I know that one of the big issues that faces every household is the weather. At this time of the year, anybody who is thinking of bringing turf home would have had it turned and footed. With the bad weather, there has been no turf cut in the country at all. Later in the year, that will be problematic, particularly for rural dwellers who rely on turf to heat all or part of their house for some of the year. If the Minister has any influence on the weather, I encourage her to bring that pressure to bear where it matters. Not only will that impact on people who live in rural areas and rely on turf, but it may impact on coal prices as the demand for it may well rise — I was going to say when the winter comes, but last winter has not left yet.

With regard to the carbon price floor, if the tax had actually been applied, it would have completely undermined local electricity generators in the single electricity market. One ongoing issue that is currently being dealt with by the Minister and the Utility Regulator is security of supply. Mr Frew spoke eloquently about the lack of interconnection. That needs to be resolved. How that will be resolved is a different matter. I, for one, am confident that a resolution will be sought with the power plants that are there. I do not think that either the Minister or the Utility Regulator will simply allow it to happen that we will face blackouts in two, three or four years' time. I am hopeful that that situation will be resolved.

As regards how we can actually get cheaper electricity for people, I asked the Minister about that during Question Time. I think that she may have picked me up wrongly, so I will use this opportunity to reiterate my point. We need to see much more emphasis on community generation of electricity, whereby an anaerobic digester or combined heat and power plant of some other sort is put into a small town or village. It would then generate enough energy to heat and power all the homes in the area. Of course, it would be much easier if there were a single large user or multiple large users in that area to make it more sustainable. That is one option that we need to look at in future.

Obviously, it would not be the only source that we would get energy from. However, I think that it would be attractive to do that in some places. Not only would it, hopefully, reduce the price of energy in those areas, but it could have local spin-offs, with people supplying woodchip or biomass or using waste to generate energy. That is one alternative.

I am keen to hear the Minister's response on such initiatives and encourage her to use the energy policy unit —

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

**Mr Flanagan:** — in the Department to bring some of those schemes forward and to look at some of the good work that has been done by Community Energy Scotland.

**Mr McGlone:** Go raibh maith agat, a LeasCheann Comhairle. Gabhaim buíochas le moltóirí an rúin seo. I thank the proposer of the motion. I was going to start by referring to a recent report on fuel prices commissioned by the Utility Regulator, but my colleague on the Enterprise, Trade and Investment Committee

Mr Flanagan referred to the breaking news that he will leave us come October, so I would like to wish him well. I always found that the regulator was well apprised of his brief and particularly interested in drilling down into the details, some of which I will refer to today. I wish him well in whichever course he chooses to take in his life and occupation.

That recent report is titled 'Orphans in the Energy Storm', and for good reason, as many of our most vulnerable householders have been left out on their own. The problems are exacerbated here in the North because of our dependence on home heating oil and the supply restrictions in getting fossil fuels here. The recent Housing Executive house condition survey estimates that up to 42% of households are in fuel poverty. The current weather conditions are creating more and more difficulties, not just for people on income-based benefits but — this is an important point — for many on lower incomes who have to make the choice between heating and eating. So we are in a very difficult situation. To that end, the derogation from the carbon price floor tax, forthcoming as part of the London Budget 2013, is welcome. Although today's motion is somewhat sycophantic in its praise for the Minister, the SDLP will support it.

Although the derogation is welcome, it is but a small part of the jigsaw, some of which Mr Frew and Mr Flanagan referred to. It is essential that this routine piece of ministerial business be viewed as one step in the process to reduce energy costs. It is essential that the Executive up their game in the important fight to lower fuel costs to the consumer. The derogation is akin to the one-off fuel payments so trumpeted by the First Minister and deputy First Minister in December 2011. Yes, it is very welcome, but it masks the fact that, in the long term, our householders will still be "orphans in the storm".

It is vital that we in the North continue apace the development of green energy solutions. Recently, I met NIE to discuss the issues that it faces in the connection to and enhancement of the grid. It is clear that quite a bit of work is required, particularly on enhancing the grid and upgrading substations. Some work with the regulator will be required to ensure that any investment is not only in the interest of big companies but protects and regulates fuel costs for consumers.

In the long term, we do not want to be the sole European region dependent on environmentally damaging fossil fuels. As the Minister for Communications, Energy and Natural Resources, Pat Rabbitte TD, states at the

beginning of the Irish Government's strategy for renewable energy:

*"The development of renewable energy is central to overall energy policy in Ireland. Renewable energy reduces dependence on fossil fuels, improves security of supply, and reduces greenhouse gas emissions creating environmental benefits while delivering green jobs to the economy, thus contributing to national competitiveness and the jobs and growth agenda."*

As we all know, the jobs that renewables could create are sorely needed as the Executive continue to oversee rising unemployment. With an unemployment rate higher than at any time in the past 15 years, it is important that we recognise that the one way to lift families out of fuel poverty is to ensure that they are able to earn a living wage. For many families, particularly those with young children, it is back to that clear choice between heating and eating.

The House has just finished discussing child poverty. According to Save the Children, fuel poverty rates in the homes of children and young people in the North are among the highest in the developing world. When my colleague Alex Attwood was Minister for Social Development, the SDLP pushed to tackle fuel poverty. In March 2011, we published a new fuel poverty strategy for Northern Ireland, Warmer Healthier Homes, but, since the Assembly election, the Northern Ireland Executive have failed to push that agenda.

The derogation has bought us time.

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

**Mr McGlone:** It is now essential that the Northern Ireland Executive use that borrowed time to redouble their efforts in order to ensure a sustainable energy future.

**6.00 pm**

**Mr Deputy Speaker:** I remind Members to make sure that their mobile phones are not interfering with the sound system.

**Mrs Overend:** We all know that energy costs are one of the major concerns that businesses, families and individual consumers across Northern Ireland have. I am sure that I am not the only Member who hears that on a weekly or even daily basis from constituents. For that reason, I welcome the motion tabled today by the DUP, even though I suspect that its main

purpose is to broadcast the carbon price floor exemption and the achievements of the DUP Ministers in that regard. However, I note that it also calls on the Minister of Enterprise, Trade and Investment to:

*"work with industry to keep energy affordable."*

That is perhaps the most important aspect of the motion.

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

Simply put, the carbon price floor is a tax on fossil fuels used in the generation of electricity. It, therefore, affects UK generators of fossil fuels, including combined heat and power operators and auto-generators, the suppliers of those generators and electricity utilities. It was first announced during the 2011 Westminster Budget. The idea is that it will provide an incentive to invest in low-carbon power generation by providing greater support and certainty to the carbon price in the UK's electricity generation sector. Although it came into effect for the rest of the UK on 1 April, it had already been outlined in the Chancellor's autumn statement in December 2012 that Northern Ireland would be exempt. According to HMRC, Northern Ireland is exempt because of concerns about the impact on energy security due to the different market conditions as a result of the single electricity market. The outcome is that generators in Northern Ireland will not be at a competitive disadvantage to those in the Republic of Ireland. That is obviously desirable. A further positive is that individuals and households will be better off, as the indirect costs of the carbon price floor will not be passed on to them through increases in electricity prices. This is not an insignificant move on behalf of the Treasury, as it must be remembered that it comes at a cost to the Treasury of approximately £150 million between now and 2018. I commend the Treasury for the sensible position that it has adopted. Credit where it is also due to the Finance and Enterprise Ministers for their involvement.

However, although we should recognise success, we should not dwell on it. It is important that we put into context the cost of energy in Northern Ireland. A recent report published by the Utility Regulator concluded that the largest 30% of industrial and commercial consumers face some of the highest electricity prices in Europe. That is one of many issues that I have discussed with the Utility Regulator. At this stage, I would like to add my good wishes to those expressed for

Shane Lynch as he moves on in October following today's announcement. Those high prices are regardless of any carbon price floor changes that have been secured; they are crippling for our economy and hardly act as an incentive for overseas investment. The Utility Regulator suggested that market size, economy of scale issues, fuel mix at the wholesale level, energy policy, including taxation, and regulation may be drivers of regional price variations. Although a number of those issues are beyond our control in this devolved Administration, I would welcome clarification from the Minister on the action that she has taken as a result of this alarming report.

**Mr Flanagan:** I thank the Member for giving way. She raised the report from the Utility Regulator that shows that large users here pay more than in most other European countries, apart from Italy. Does the Member think that the solution to that problem is for consumers to pay more or for NIE to take less of a profit from large users?

**Mrs Overend:** I was going to get onto that. Further research needs to be done on how the electricity price is set in Northern Ireland and comparisons made before we can answer that question.

Individuals and households are struggling on a weekly and monthly basis with the rising costs of living, and high energy costs are a huge part of that. One example came to the fore recently as the Consumer Council stated that the cost of home heating oil in Northern Ireland has risen by 60% in the past three years, with 68% of homes reliant on it. That is pressure that, unfortunately, disproportionately weighs on the most vulnerable. The uncertainty created by the ongoing disputes between the Utility Regulator and various utility companies damaged confidence amongst consumers, although I accept that there is a limited role that the Minister can undertake in solving that. The motion ends with a call to the Minister to work with industry to keep energy costs affordable, and we would of course support that call. The current status of the North/South interconnector is a particular concern to the security of electricity supply, and we must continue to engage with industry on that. Likewise, the Moyle interconnector is another concern that needs to be resolved. During her contribution, the Minister will no doubt outline what action she is taking. I also ask her to update the House on the discussions that she has had with the Utility Regulator about the ongoing disputes that I mentioned.

Finally, it is also the case that more research is needed to inform fully the debate on how energy prices are negatively affecting business. I ask the Minister to outline whether she has plans to commission further work in that area.

**Mr Lunn:** I support the motion. Like others, I begin by congratulating the Minister in obtaining the derogation to which the motion refers. I also congratulate the Minister of Finance and Personnel.

The last thing that we need in Northern Ireland at the moment is any action that would cause an increase in energy costs to business or domestic customers. I have heard the discussion about the price differential for large users, and I really do not understand why large users would have to pay a much higher rate than small users. It is usually the other way around. It is supply and demand, but that is by the way.

The reality of the single electricity market — something that my former colleague Sean Neeson advocated very staunchly — is that Northern Ireland power generators will have to compete with generators in the Republic of Ireland as well as those in GB. That will be even more the case if the much-talked-about interconnector ever comes about. I agree with Mr Frew that we should have got used to pylons by now, and I think that the argument about underground or overground has gone on for far too long. It would make it quite easy for Republic of Ireland generators to make inroads into our market for no reason other than geographical location. I repeat that the derogation is sensible and that the two Ministers deserve credit. However, a bit like Mrs Overend, I doubt that it was the most difficult negotiation that the Minister has ever had to conduct.

The aim of the carbon tax is to promote low carbon generation and limit reliance on fossil fuels. It is often stated that its purpose is to meet the UK's carbon emission targets, which it is. However, the truth is that climate change has almost been forgotten about during the economic depression that we are in. Indeed, the recession has inadvertently diverted us from that discussion. Nevertheless, the Members who tabled the motion should be in no doubt about climate change and its impact. If they do not want to hear about it from me, they can always talk to their colleague Jim Wells, who, if he were here, would be nodding his head. Study after study has shown that climate change is having a material effect on people's standard of living across the globe. Therefore, we should do all that we reasonably can to slow

it down. That is the case, targets or no targets. There was no point in seeking to amend the motion to make it relate to climate change, as that would have moved it away from its core point.

Although the derogation was correctly negotiated for the reasons that we have agreed on, we need to hear from the Minister now and in future — I know that we have heard in the past — what her plans are for how Northern Ireland will help the UK to meet its carbon emission targets and, more importantly, help to alleviate its worst effects worldwide. We will of course support the motion.

**Mr Moutray:** As a member of the Committee for Enterprise, Trade and Investment, I support the motion that stands in the name of my three colleagues. The motion goes to the heart of one of the most important and challenging issues that confronts modern society. The energy debate will continue for many years to come, and many views will be expressed. However, a pressing, immediate and alarming reality is that the cost of our energy has risen to unprecedented levels.

I think that the whole House would agree that energy costs are a major concern to us all: to businesses and to domestic consumers. There really is no debate about that. Businesses have faced many pressures in recent years, and high energy bills have inevitably taken their toll. Such soaring costs have an adverse impact on profitability and, even more starkly, on the viability of businesses. Of course, with high energy costs, there is a knock-on effect on the rate of inflation, and we then get caught up in a vicious circle. We must do all in our power to peg back these increases in prices.

I stress that I am completely committed to all efforts to promote alternative sources of energy. Doing that is crucial. My Committee has done considerable work on the further growth of the sustainable energy sector, and I spoke on that in the House in February. I know that my colleague the Minister takes a similarly positive view of the need to develop alternative energy resources. However, to put it mildly, I have doubts about some of the arguments that are put forward by the green lobby. We must be careful about getting too carried away with scare tactics about the continued use of fossil fuels and global warming. The whole issue is not as simple as some would make out.

The DUP has held the Enterprise, Trade and Investment portfolio since devolution was restored in May 2007. In those six years, we have developed a clear strategy and given

energy issues a high priority. Above all, we must continue to follow an energy strategy that is right for Northern Ireland. We have unique economic pressures and energy needs, and we need to proceed with all due care and consideration. That is why I commend my colleagues Arlene Foster and Sammy Wilson for standing firm against the Treasury and ensuring that we are exempted from the carbon price floor that came into effect in Great Britain last month.

To some extent at least, I understand the rationale behind the carbon price floor initiative. It is an environmental levy designed to stimulate investment to replace ageing generating plant in the GB electricity market. It is an important element of the UK's climate change policy. However, we in Northern Ireland are part of a single electricity market, which means that our generators compete for the market share with those in the Irish Republic. If our three power stations — Ballylumford, Kilroot and Coolkeeragh — had to include carbon tax, they would be at a major competitive disadvantage with generators in the Republic of Ireland that are not subject to the tax. In that context, we would be hard-pressed to survive. We have to buy from the cheapest provider on the island of Ireland, so we would end up buying from suppliers in the Irish Republic first.

As the motion spells out, the new levy could have added up to 15% to our electricity bills, which would amount to some £25 million a year, a figure that would have risen sharply in the following years. Further, and worryingly, it could also have compromised our energy security. The impact on our already hard-pressed households and businesses could have been severe; indeed, it does not bear thinking about.

In conclusion, I encourage the Enterprise, Trade and Investment Minister to look at all options available to us to keep our energy affordable. However, in encouraging her along those lines, I know that I am preaching to the converted. I support the motion.

**Ms S Ramsey:** Go raibh maith agat, a LeasCheann Comhairle. The Minister will be delighted to know that I also support the motion. I think that Paul, in moving the motion, has probably successfully moved up the ranks of the DUP by now. It may be that you are in line for a ministerial position. I just hope that this does not mean that Minister Foster could be moving on anytime soon.

All joking aside, it is important to give credit where it is due. For a lot of the time in this Chamber, we are quick to criticise, and rightly so. However, we are not very quick to give credit, and we should recognise where that is due as well. I want to thank the people in the Research and Information Service for the work that they have put in for this debate. They also provide us with a lot of information.

In moving the motion, Mr Frew talked about fuel poverty. A number of other Members have mentioned fuel poverty, and I think that they were right to do so. It is an issue that people, not only in business but in their homes, are struggling with the cost of energy. Some Members touched on the cost, and evidence suggests that energy is one of the biggest costs in households and businesses. Paul touched on that. So, we need to move the whole argument around dependence on fossil fuels to a place where we look at the issue of renewable sources.

#### 6.15 pm

I do not know whether this is an issue, but I want to mention that the Department for Social Development (DSD) has responsibility for alleviating domestic fuel poverty. I think that its current target is to assist around 9,000 homes a year. An additional scheme was to deliver 40% of the measure to vulnerable people in rural properties. Poor Nelson did not even get a mention in the opening address. He will be glad that I mentioned him. If the Minister has time in her contribution, will she let us know what officials at the Department of Enterprise, Trade and Investment (DETI) and DSD have done so far to look at the issue of fuel poverty? The topic of energy prices is being debated right across this island. We are talking about targeting a number of issues, and we have the opportunity with the DSD scheme to target fuel poverty.

The Muldoon report stated that the balance of risk and reward between electricity generators and customers needs to be reviewed. There has been a multitude of reports over the past number of years, and we need to look at them. When you take on board that the Executive's strategic aim is for a more sustainable energy system where much more of our energy is from renewable sources and energy efficiency is maximised, moving away from the dependence on fossil fuels must be a key priority. I am not trying to be negative about this, but I think that, when we are talking about the good work that has been done to date by the Enterprise Minister and her officials and the Finance Minister and his officials, we need to work out

how DSD fits into this. We debated a motion earlier on child poverty. The impact of fuel poverty plays a big part in child poverty. There is also the impact that prices can have on businesses, as the Member who moved the motion mentioned. We are dependent on small to medium-sized enterprises, so we need to look at how it all fits together so that, on the one hand, we are doing all of that good work but, on the other, we ensure that other Departments play their part.

**Mr Frew:** I thank the Member for giving way. I must agree with her: we think Arlene is a brilliant Minister, too. It is right that we move in the direction of renewable energy, but that comes at a cost, which could be very hard for our businesses to take if we go too far in one direction too quickly. It has to be a balancing act. Does the Member recognise that?

**Ms S Ramsey:** Yes, I do. Anything that we do needs to be done properly. I said that a lot of good work has been done — I did not say that the Minister is brilliant. Give us a break, will you? He said it.

**Mrs Foster (The Minister of Enterprise, Trade and Investment):** Flattery gets you nowhere.

**Ms S Ramsey:** That is what I like to hear. The Minister is embarrassed now.

On a serious note, I agree with Paul, but the point I am making is that the Executive have priorities. We accept that two Ministers working together has moved us along. There is another Minister who can play his part, and it is about how we take that Department into the process and look at strategies right across Europe and, indeed, Britain. It is not about lifting what is there and putting it in place here. We should just lift what we think is good and design it to suit our needs, so I agree with a lot of the comments that were made. We should focus on the issue. DSD can play a key part of all of this. What are we doing at that level so that we can have more involvement in what DSD can do? I am not in any way being negative; I am just trying to move it on a wee bit further. I support the motion.

**Mr A Maginness:** I agree with Mr Moutray's analysis of the carbon floor tax and its application to Britain. It is an appropriate tax for Britain, given its size, scale, and so forth, and the fact that they want to replace ageing generators. That is a perfectly sensible approach to take, but to apply that tax here would be nothing short of disastrous, because it

would certainly increase the price of electricity here. It would have undermined the single electricity market, of which we should be very proud. It would have led to a competitive disadvantage for generators in Northern Ireland and an advantage for those in the South, and it would have caused a serious disruption of the single electricity market. Therefore, it is appropriate that the Chancellor of the Exchequer and the Westminster Government have decided to exempt Northern Ireland from that tax.

That is a very sensible decision, and I want to pay tribute to the Minister. I do not want to embarrass her with more praise; the poor Minister of Finance and Personnel has not received as much praise as she has. In fact, judging by his remarks in Parliament, he seemed to take it as a great victory for himself. *[Laughter.]* I am sure that he did not mean it that way, because he is so modest a gentleman that he would want to share that with his ministerial colleague.

In any event, it is a sensible decision. Of course, having the single electricity market is something that we should be proud of. It will lead to a greater electricity market in northern Europe, including Britain and other countries throughout the European Union. That is something that, I believe, will ultimately stabilise prices and allow them to be decreased.

The Utility Regulator's report on pricing here indicated that prices for bigger businesses are on the high side. I presume that the answer to our colleague from the Alliance Party about why prices are higher is that, at that level, they are not regulated. If that is the case, there may be other measures that could be taken to assist bigger businesses.

Certainly, as the Minister will probably acknowledge, it does not help us to attract big business here, which we need to attract, if energy prices are so high in relation to our European competitors. We have to look at that. Prices for domestic consumers and for smaller businesses are on a par with other European countries and are akin to the average throughout the European Union, so that is good news.

There are many issues that we could look at in relation to energy prices. The outstanding issue is that we are losing between £18 million and £25 million a year because we do not have the North/South interconnector. We have to remedy that, and consumers have to know that they are losing out because of the delay in having the interconnector and that they will

continue to lose out as long as the delay continues. As far as I know, that is the yearly amount that we are losing out on.

We have to educate the public on that matter. I know that there are local difficulties, and I sympathise with people. There is a process to be gone through, but it must be gone through efficiently. Local people's concerns must be taken into consideration.

**Mr Deputy Speaker:** The Member's time has expired.

**Mr A Maginness:** Nonetheless we have to solve this problem in order to get an efficient and effective supply of energy throughout Ireland.

**Mr Allister:** Of course it is right to acknowledge and commend the derogation on the carbon floor issue, which is beneficial. However, this superficial and largely self-congratulatory motion speaks only to a very small part of the energy story in Northern Ireland.

The truth, which the motion does not address, is that the cornerstone of the Minister's policy, namely the single electricity market, is failing. It was introduced on the premise and with the promise that, through competition, it was going to level and reduce prices and create an altogether better consumer situation in Northern Ireland.

Indeed, before the single electricity market was introduced, the trajectory of electricity prices in Northern Ireland was towards coalescence with the lower prices in GB. Since it has been introduced, the trajectory is towards coalescence with the higher prices in the Republic of Ireland and away from the lower prices in GB. That speaks failure not success. In my opinion, it is down, in large measure, to the fact that, under the single electricity market, we have seen wholesale electricity prices not fall but rise to far too high a level. That has happened because of a mix of two things. First, competition is not working; it is not even there effectively. Secondly, there has been a lack of investment in new, efficient power stations for Northern Ireland.

The House would do well to remind itself of some of the monopolies that were created under the single electricity market. There was a time when NIE, before it was owned by the ESB, was forced to sell Systems Operator Northern Ireland to prevent NIE having a potentially dominant position in the Northern Ireland market. Who did it sell it to? It sold it to

EirGrid, the state-owned system in the Republic of Ireland. Who then bought NIE? It was the Republic of Ireland state-owned ESB. So, we end up with precisely the monopoly situation that was meant to be stripped put of Northern Ireland, and yet we are surprised that from monopoly does not flow competition or a lowering of prices. The single electricity market has proved to be a monopolist's charter controlled from the Irish Republic.

Things are set to get worse. At the end of 2015, Ballylumford B has to go out of production. In 2016, Kilroot has to drop its production by 50%. There is no sign of any indigenous replacement of generation capacity in Northern Ireland, only more dependence on the ESB generation of the Republic, where, of course, focus and attention is on building the generation capacity of the South. What is the Minister's response? It is to help them by putting all our eggs in the North/South interconnector so that they can better sell their electricity to us. Let us happily ignore the fact that the other interconnector, the Moyle interconnector, is largely redundant at times. It breaks down and is not being replaced or renewed. The consumer will most likely have to pay the repair costs because of the insurance problems that have emerged.

Where is the Minister's vision and focus on getting us properly interconnected to GB? The Moyle interconnector is not doing the job adequately. I say respectfully to the Minister that, if she put half the focus on improving the Moyle interconnector that she puts on the North/South interconnector, she would begin to bring an opportunity of balance to the market and begin to tackle and attack the monopoly that exists under the single electricity market. I remind the House —

**Mr Deputy Speaker:** Will the Member to bring his remarks to a close?

**Mr Allister:** — that Lord Whitty's report recognised that we are not getting a fair deal under the single electricity market. It is time that the Minister recognised that and acted on it.

**Mrs Foster:** I thank the Members for the bouquets and, latterly, the brickbats that have been fired towards me. I will deal with all those issues in due course in my response.

There is no doubt that energy prices present a real challenge for homes — we have heard a lot about fuel poverty today — and indeed for businesses in Northern Ireland. As Minister for

the economy, I have engaged with businesses right across Northern Ireland and heard how uncertainty in energy prices impacts on their competitiveness. It is important to recognise that we are not the only ones facing rising energy prices: it is obviously a global issue, although some people do not recognise that. Our position is complicated by the relative size of our market and our position at the end of the supply line. Retail energy prices are influenced by a number of factors, but primarily by wholesale energy prices on the world energy market.

### 6.30 pm

So, in summary, drivers for prices are largely outside the remit of the Department and the Assembly. However, the carbon price floor measure is an example of a policy measure that we were in a position to challenge and reshape to our advantage. That is a very good example of the complexity of the whole energy policy environment. I recognise fully the merits of establishing a floor price for carbon, which Mr Maginness mentioned. The measure was designed to drive investment in cleaner generating plants. Of course, that is admirable, and it has been necessary in Great Britain. However, as I said, it was designed principally for the British electricity trading and transmission arrangements (BETTA), and the single electricity market that operates in Northern Ireland and the Republic of Ireland is legally, structurally and operationally different.

Analysis commissioned by the Department showed that there would be adverse, albeit unintended, consequences of a floor price. It is important to say that the floor price was not intended to be a tax that made our generators uncompetitive, but that is exactly what would have happened if it had been introduced here. Consumers and the economy in Northern Ireland would have suffered if it had been implemented here. So, we worked hard to make that case and secure the derogation. Critically, that was done at no cost to the Northern Ireland block — that was part of the negotiation. It would have led to increased costs to our consumers, businesses and domestic users totalling £25 million a year.

Our analysis has shown that Northern Ireland-based generators would have become increasingly uncompetitive in the single electricity market and that, by 2020, would have been displaced fully. That raised issues around security of supply and loss of jobs. I have taken the opportunity to meet the members of Ballylumford B in connection with the other issue that we have talked a lot about today,



including at Question Time. If Mr Allister had been here for Question Time, he would have heard me talking about the Moyle interconnector. I was asked about interconnectiveness, and that is exactly what I talked about.

I talked about the North/South interconnector, the Moyle interconnector and the connection between Wales and the Republic of Ireland. We are moving in the direction of a market, not just on this island but on the two islands. Of course that is good news, because it is going to bring more people into the market. So, of course I am talking about the Moyle interconnector: there is little point in having connectivity between Northern Ireland and the Republic of Ireland if we cannot share that connectivity with the rest of the United Kingdom. So, really and truly, I wish that he would read Hansard, even if he has not got time to come to the Chamber and listen to what I have to say.

**Mr Allister:** Will the Minister give way?

**Mrs Foster:** I will certainly give way.

**Mr Allister:** The Minister might like to start by acknowledging that I was here during Question Time. I sought to be called during those very questions about electricity, so the Minister might be more careful with her facts.

As for the Moyle interconnector, can she tell us when her policy is going to deliver a real, working, durable interconnector to GB?

**Mrs Foster:** I said, "If the Member was not here" not, "He wasn't here." He was here, and he was not listening to what I had to say in relation to the Moyle interconnector, the GB and Republic of Ireland interconnector or the North/South interconnector. So, it is for the rest of the House to know what I said.

I have been delighted with the success of our work with Treasury. Unfortunately, Treasury is likely to keep the decision under review, so we need to be ever alert to all of that. That is an example of local energy policy delivering in the interests of our consumers. I believe that it will support the continued operation of our power stations in Northern Ireland and send out clear investment signals to the market. Of course, this is a market issue, and if there is to be new generation in Northern Ireland, that is a market issue as well.

If there is a security of supply issue that is not being dealt with by the market, I have the

power, through DETI, to say that we need more generation.

If there is a need to use that power, I will, but I hope that the ongoing negotiations between the Utility Regulator, the Department and the generators will find a solution without the need for me to intervene in that way.

The debate also raises important issues about energy costs, and the regulator's recent information paper shows that electricity prices paid by our industrial and commercial sector are among the highest in Europe.

At this juncture, I want to pay tribute to the Utility Regulator, Shane Lynch, who has said that he will leave his post in October. We worked closely with Shane during his time, first, in the electricity sector and then as the regulator, and we wish him well in whatever he intends to do after October.

I welcome the publication of the paper in the interest of creating transparency in pricing. Of course, I am extremely concerned about the initial findings, and, because of that, I have written to the regulator asking for further analysis to be given priority status and saying that I would very much welcome the formation of a working group, including representation from the Department, to carry forward a next steps analysis. It will be important for that analysis to examine regulatory practices and policy positions in other jurisdictions to identify whether options such as cross-subsidisation deliver a better outcome for particular groups of consumers. There have already been calls for action to be taken in the interests of our manufacturing sectors, but, as I said, there are complex issues, and, in the first instance, government measures in support of business inevitably mean that there are state aid considerations to be addressed.

A number of Members around the Chamber raised the issue that 42% of our population are recognised as being in fuel poverty. Any action to skew costs in a manner that alleviates pressure experienced by businesses has a significant potential to drive more domestic customers into fuel poverty, so it is a balancing act. If we are to look at all of this, we have to realise that consumers, whether domestic or business, will pay at the end of the day. That is part of the difficulty. As Mrs Overend said, it is very important that the regulator undertakes further analysis of the underlying drivers of prices, the cost of transmission, distribution and the single electricity market, and then examines the extent to which pricing is cost reflective for all consumers.

The best way to ensure fair and affordable energy pricing is to create the appropriate market conditions, and the single electricity market, despite what Mr Allister said, has brought more competition. He may not like it, but the facts speak for themselves. More companies have been coming in and providing electricity to the single electricity market (SEM). It has also provided greater transparency and resulted, as I said, in newer and more efficient generators, as well as new suppliers entering the market.

The regulator reports that we have now have five active domestic electricity suppliers and eight active suppliers of industrial and commercial consumers. Two of those suppliers entered the market as recently as 2012, which suggests that it continues to evolve and mature. As I said, Europe is driving us towards further integration, and work is under way to adapt the SEM to meet the requirements of the new European-wide target market. My position, which I have made very clear to the regulatory authorities in Northern Ireland and the Republic of Ireland tasked with driving this forward, is that any change required to deliver compliance with the target market must be subject to a robust cost-benefit analysis.

I want to mention briefly other ongoing issues in energy policy, such as our work to develop the gas market. Until recently, the price of oil has steadily increased. Although oil prices have fallen in recent weeks, gas remains a cheaper option. The price of natural gas will, of course, fluctuate like any other fuel, but even after the Airtricity tariff increase earlier this year, gas prices remain lower in Northern Ireland than in Great Britain and around 4% lower than retail prices in the Republic of Ireland.

Gas supply competition is now well established in greater Belfast and commenced in October 2012 for the large energy users in the gas market just outside Belfast. My Department, along with the regulator, will continue to create the appropriate market conditions and encourage new gas suppliers to enter the market, but it is up to consumers to make the choice to switch fuel or, indeed, suppliers. We will continue to work with energy companies and the regulator to keep energy costs as low as possible by encouraging competition and appropriate market conditions.

The extension of the natural gas network in Northern Ireland can contribute to the improved management of energy costs and forms part of a diverse energy mix, and that is why the Executive are fully supportive of extending the gas network to the west and north-west of

Northern Ireland. That will provide a fuel choice for businesses and households, help with fuel poverty, create short and long-term employment opportunities and support the competitiveness of existing businesses, especially the large energy users, as well, of course, as reducing greenhouse gases. It is vital that the impact of gas network extensions on tariffs for all gas and electricity consumers is minimised, hence our support for this initiative comes with financial backing, and that is welcomed by people right across Northern Ireland.

On renewables, we have ambitious targets for both electricity and heat, and we are ahead of schedule in delivery against those: on electricity, against a 2012 target of 12%, we are sitting close to 14%. Although we do not yet have a substantive figure to hand, I am confident that, given the introduction of the renewable heat premium and the recent launch of the renewable heat incentive, there is potential for significant progress to be made in that regard.

Briefly, I will say something about the grid. There is no doubt that grid upgrading will be required to facilitate the increased renewable generation, particularly in the west, where some of the better wind energy resources are found. Once again, we see elements of the complexity of the operations of energy markets, and we must be mindful to balance necessary investment in infrastructure against the cost to consumers.

I was a little amused by Mr Flanagan's reference to cutting turf in Fermanagh. Of course, if he were across the border, he would not be allowed to cut turf at all. I thought that that was quite amusing. I was also a little worried about his carbon footprint from cutting turf, but that is a matter for him. We need to be careful to consider the impact that restrictions have —

**Mr Flanagan:** Will the Minister give way?

**Mrs Foster:** Yes, I will give way. Why not?

**Mr Flanagan:** I am not allowed to burn turf at home because of the mess that it leaves from ashes not because of carbon emissions.

**Mrs Foster:** That is a great clarification, and I thank him for it.

Interconnection is a vital piece of the jigsaw for a modern energy infrastructure. As we heard at the beginning of my response, we have limited interconnection at present as a consequence of

faults on the Moyle interconnector. We continually meet Mutual Energy to push it in that direction, but, ultimately, as Members know, it is a matter for the regulator to ensure that we have that in place. It is important also to have the North/South interconnector in place, as interconnection will become increasingly important, both from a security of supply perspective and also in addressing prices. We have heard that the delay in the North/South interconnector adds £7 million a year to consumer bills in Northern Ireland alone and adds considerably more in the Republic of Ireland. There is a pressing need to deal with that issue.

The second issue is, of course, consequences for pricing, and we have to ensure that we have critical infrastructure in the most cost-effective, reliable and technically achievable manner. I could address the issues that Ms Ramsey brought up in relation to the Department for Social Development. We are working very closely with DSD in a number of areas, and I was very pleased when we recently announced the innovation that the Quantum heater will bring.

**Mr Deputy Speaker:** The Minister's time has expired.

**Mrs Foster:** I am, of course, happy to give that information to the Member after the debate, as my time is now up. It is a challenge, but one that we are addressing.

**6.45 pm**

**Mr Dunne:** There is no doubt that energy costs are consistently cited as one of the main challenges for businesses in Northern Ireland. They are also a challenge for many domestic customers. It is vital that the Assembly and Executive do all that they can to minimise energy costs.

I thank all the contributors to the debate — those who have stayed to the end. We all recognise that this has been a useful debate, and I am glad that everyone in the House recognises the importance of reducing energy costs for businesses and consumers.

I also commend the Minister of Enterprise, Trade and Investment, Arlene Foster, for her work to date on energy. That the derogation comes at no cost to the Northern Ireland block grant is very significant and something that needs to be recognised fully. I also recognise the work of our Finance Minister, who is not here but who obviously had a significant input

into it. I know that the Minister of Enterprise, Trade and Investment will continue to do all in her power to work with industry and others on keeping energy affordable.

Affordable energy is vital for economic growth, and that is something that we must continually work on. The carbon price floor would also have had an adverse impact on the cost of electricity generation, and it would have made local generation totally uncompetitive with electricity generation in the Republic of Ireland. Alternative sources of energy, such as renewable energy, also have a role to play in the future of our energy sector. Not only is a strong, indigenous, sustainable energy sector vital to the creation of jobs and security of supply, it is also in the best interests of the consumer. Supporting further growth in the sustainable energy sector will mean that Northern Ireland is much less reliant on the importation of fossil fuels and thus much less exposed to volatile international fuel prices.

We must also continue to work on the extension of the gas network. Gas continues to be a more cost-effective source of heating and energy supply for householders and businesses. There is clear evidence that our leisure centres and hospitals and major consumers in industry such as Bombardier all use gas as their main energy source. The uptake of gas should be encouraged, particularly in the greater Belfast area, where the network exists. The uptake at present varies considerably, with some areas running from 27% up to 50%. There is room for improvement.

I will now consider the contribution of other Members to the debate. My colleague Paul Frew, in proposing the motion, recognised that, with the significant impact of the proposed carbon price floor increase, the cost of electricity generation would have been excessive. His major concern as usual was the cost to major manufacturers in north Antrim. The impact on major employers — Mr Frew often cites Michelin — could have been very significant. It would have left them competing under very difficult circumstances, and that would have been a risk to future business.

Stephen Moutray mentioned that our three local power stations would have been at a significant competitive disadvantage had they been included in the carbon tax. He made the point about renewable energy that balance is important. Renewable energy is good as an alternative, but it comes at a cost that can often be excessive, so the balance must be right.

Patsy McGlone obviously had green energy solutions. That would not surprise me at all. He mentioned the high level of dependency on home heating oil, and he reckoned that 40% of people are in fuel poverty. That is very significant and something that we must all be aware of. Again, however, we have almost 70% of people depending on home heating oil, so we must be mindful of that and do everything that we can to try to encourage the use of alternatives.

Phil Flanagan mentioned the cost of turf. The fact that no turf had been cut yet is something that I fully recognise, and I trust that Phil will get the turf cut long before the G8 summit, because we do not want our visitors to be in a cold house in Fermanagh. *[Interruption.]* I know that it is not a cold house, but I do not want that to be the case for all the visitors who are coming to the G8 conference.

He also mentioned his pet project of community generation of cheaper electricity. He reckons that local communities can generate electricity much more cheaply under renewables and that doing so will be more cost-effective. We must wait and see.

Sandra Overend recognised the efforts of the Enterprise, Trade and Investment Minister and registered her concerns about the increase in the carbon floor price, which she reckoned would cost the Treasury some £150 million. She also mentioned the Utility Regulator's report on the ongoing costs of energy and the importance of our being competitive with the rest of Europe.

Sue Ramsey, as usual, had concerns about fuel poverty. She mentioned the Muldoon report and the cost of generation in relation to the cost to consumers.

Alban Maginness mentioned the North/South interconnector and rightly reckoned that the lack of progress was a cost to consumers. He also pointed out that had the carbon tax initiative gone through, it would have been disastrous for businesses and consumers in Northern Ireland.

Jim Allister did not congratulate the Minister. He had concerns about the risk of competition not working and the lack of investment in power stations and so on. However, the Minister addressed all those issues, and Mr Allister has gone home satisfied — obviously. *[Laughter.]* It has been a very useful debate. A lot of issues have been covered, from turf to all sorts of power and energy. The contribution from Members has been good and genuine. We put

on record our thanks to our two Ministers for their efforts. It is significant that these savings will be transferred to businesses and consumers, who are hard-pressed on energy issues.

*Question put and agreed to.*

*Resolved:*

*That this Assembly recognises that energy costs are of concern to businesses and consumers; congratulates the Minister of Enterprise, Trade and Investment and the Minister of Finance and Personnel for successfully negotiating a derogation from the carbon price floor for Northern Ireland; notes that this negotiation prevented an increase in local energy bills of between 10 and 15%, which would have had a detrimental impact on households and businesses; and calls on the Minister of Enterprise, Trade and Investment to continue to work with industry to keep energy affordable.*

*Adjourned at 6.52 pm.*





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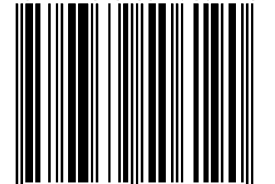
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