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Northern Ireland Assembly

Tuesday 15 February 2022

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

Members observed two minutes' silence.

Assembly Business

14 February 2022

Mr Speaker: The first item of business in the Order Paper is the consideration of business not concluded on Monday 14 February. However, as all business was disposed of last night, we will move on.

Standing Order 20(1): Suspension

Mr Allister: On a point of order, Mr Speaker.

Mr Speaker: Just a second.

I was advised this morning that the Minister of Education is unwell and unable to respond to questions today. I will ask the Business Committee, when it meets this afternoon, to reschedule her Question Time slot. To allow business to continue at 2.00 pm today, the Business Committee has agreed to issue a revised Order Paper, which will include the suspension of Standing Order 20(1), and I will take that item of business now.

Mr Allister: On a point of order, Mr Speaker.

Mr Speaker: Just a wee second, Mr Allister. I will call you in a second. *[Long pause.]*

Mr Allister: Mr Speaker, now that the last of the COVID regulations are to be lifted, when will the House return to normality in terms of full membership being able to attend and restoring our normal voting patterns? When will that happen?

Mr Speaker: The Business Committee and the Assembly Commission will consider that in due course. Like everybody else, they will be looking for clarity around the guidance. We have always worked within the context of guidance as well as regulations, whether compulsory or enforceable. We will return to that as quickly as possible and advise the House accordingly.

I call Robbie Butler to move the motion.

Mr Butler: I beg to move

That Standing Order 20(1) be suspended for 15 February 2022

Mr Speaker: Before we proceed to the Question, I remind Members that the motion requires cross-community support.

Question put and agreed to.

Resolved (with cross-community support):

That Standing Order 20(1) be suspended for 15 February 2022

Ministerial Statement

Public Expenditure Update on Budgetary Matters

Mr Speaker: I have received notice from the Minister of Finance that he wishes to make a statement. Before I call the Minister, I remind Members in the Chamber that, in light of social distancing being observed by parties, the Speaker's ruling that Members must be in the Chamber to hear a statement if they wish to ask a question has been relaxed. Members who are participating remotely must make sure that their name is on the speaking list if they wish to be called. Members who are present in the Chamber must also do that, but may also indicate their intent by rising in their place or by notifying the Business Office or the Speaker's Table directly.

I remind Members to be concise when asking their questions. This is not an opportunity for debate per se, and long introductions will not be accepted. I also remind Members that, in accordance with long-established procedure, points of order are not normally taken during a statement or the question period thereafter.

Mr C Murphy (The Minister of Finance): I will update Members on where we stand with a range of budgetary issues. Funding allocations are normally decided by the Executive, so the absence of an Executive following the resignation of the First Minister creates significant difficulties. Having considered the options for progressing budgetary matters and taken legal advice from the Departmental Solicitor's Office (DSO) and the Attorney General, I can now set out the approach that I intend to take.

I will start with the multi-year Budget. In December, the Executive agreed to consult on a draft Budget. That draft Budget provided Health with a 10% real-terms uplift by 2024-25, in the process funding the mental health, waiting list and cancer strategies in full. It provided a solid basis to transform the health service and bring down waiting lists on a sustainable basis. Since the resignation of the First Minister, I have considered all possible avenues that might have allowed me to proceed with a Budget, including bringing it directly to the Assembly. Unfortunately, the legal advice is clear that the Budget must be agreed by the Executive. That means that, on 1 April, the health service will not be able to plan on a three-year basis, nor will it be equipped with additional resources to invest in waiting lists, cancer services and mental health. In those circumstances, rather than improving, the health service will decline. Last week, the Health Minister apologised to people on waiting lists, because, without a multi-year Budget, the opportunity to rebuild the health service would be "cruelly taken away". Sadly, that analysis is correct, although it should be the DUP, not Minister Swann, apologising for the damage that it is inflicting on the health service.

With no prospect of a Budget in this mandate, it will be a new Executive with new Ministers that will have to agree a Budget. In that context, the current consultation is of limited value. I have therefore decided to pause the public consultation for now. A new Executive will be best placed to take further decisions on how the Budget process will proceed.

Members will be aware of my intention to carry over a significant amount of money to ease pressures faced by Departments next year. A total of £100 million of funding resulting from the recently announced council tax rebate in England can be carried forward to 2022-23. We will also receive an additional £150 million in 2022-23 following the announcement of a discount on electricity bills for consumers in Britain. The Executive can also carry over a limit of £104·3 million in unspent resource. Currently, £95 million is unspent, and I will recommend that at least £50 million is carried over. That means that the Executive, if they were still in place, could allocate in the region of an extra £300 million to Departments for next year on top of the published draft Budget position. That money could be used for various purposes, including skills, housing and the Police Service. I am particularly conscious that a number of community groups need to match-fund money from the European social fund. Those groups help around 17,000 people, including people with disabilities, back into work. At the moment, they do not have funding in place from 1 April, and the tremendous service that they provide is at risk of collapse. The Economy Minister could prioritise that within his own budget, which, under the proposed draft Budget, increases each year. However, I would happily recommend that the Department for the Economy receive additional funds to meet that need. Unfortunately, the legal advice is that that cannot happen without an Executive, so Departments cannot plan to make use of that additional £300 million in funding. Instead, the money will sit idle until such times as an Executive are re-established.

With regard to the in-year position, as I have already said, the Executive can carry over £104·3 million in unspent resource. Currently,

£95 million is unspent, leaving little headroom if further underspends emerge at the end of the financial year. In normal circumstances, I would bring a paper to the Executive recommending that £45 million be allocated now. The Departments for Communities, Education and Infrastructure have come forward with proposals to utilise the available resources, and sufficient headroom has been built into their spring Supplementary Estimates.

Having considered the matter at some length and taken legal advice, I intend to proceed to make allocations to those Departments. I wrote to Ministers to ask them for their views on that course of action, and I made it clear to them that the alternative is that funding that could be used to support local people and services might instead be lost to the Treasury.

I have also written to the Economy Minister about the community groups that need match funding for the European social fund. As I said, the Economy Minister could prioritise that from within his budget, and, if the DUP had not collapsed the Executive, additional resources from the £300 million that is being carried over could have been allocated for that specific purpose. In order to ensure the continuation of those vital services, I have asked Minister Lyons to consider another possible solution. Therefore, if the Economy Minister wishes to support those groups, there is no reason why that cannot happen.

Finally, the draft Budget consultation included a proposal to freeze the domestic and non-domestic regional rates for the next three years. That freeze was intended to help with the rising costs that are being faced by families and businesses alike. On the basis of legal advice, I can proceed with that freeze for one year only. That means that households and businesses will not have certainty on their rates for the subsequent two years.

The draft Budget also proposed a £50 million rate relief package for businesses. A Barnett consequential of £50 million arises from the removal of businesses' right to appeal NAVs on the grounds of the pandemic. That £50 million provided a three-month rates holiday for retail, tourism, hospitality, leisure, childcare, newspapers and airports — the sectors that were hit hardest by the pandemic. It also provided all other businesses, except utilities and larger food stores, with a one-month rates holiday. Having taken legal advice, I intend to press on with that rate relief package despite the absence of an Executive.

The Executive should be on the cusp of agreeing a multi-year Budget that prioritises Health, and they should be deciding how to invest an additional £300 million next year on housing, skills, the police and European social fund match funding. Due to the reckless actions of the DUP, that is not possible. Instead, public services will operate on an emergency basis, without the benefits of long-term planning or additional resources, until such times as the Executive are re-established. However, I intend to make £45 million of allocations for this year, and I have set out another approach to the Economy Minister that may provide a solution for the community groups that are seeking match funding for their vital services. I will also press on with next year's rates freeze and the £50 million rate relief package for businesses. I will continue to do my best to support public services despite the damage that is being caused by the DUP.

Dr Aiken (The Chairperson of the Committee for Finance): I thank the Minister for his statement and for meeting the Deputy Chairperson of the Committee and me earlier today in order to discuss its key points.

During the January monitoring round, I expressed some considerable surprise at the levels of reduced resource requirements and capital underspends. It looked then like the Minister might well struggle to get all the unspent moneys properly disposed of before the end of the financial year. The picture now seems to be additionally complicated by two things: the very welcome, if unexpected, additional Barnett consequentials from our nation, associated with council tax and electricity measures in England; and the less welcome and regrettable resignation of the First Minister.

It would seem that there is no shortage of capital or resource projects, including the subregional stadia programme, to which that money could be put, and the Committee understood that the Treasury is to permit a carry-over of some of the aforementioned extra Barnett consequentials. The outstanding problems would seem to be political.

I think that the Committee will welcome the decision to press ahead with the rates holidays and other allocations. I am not so sure about the decision to pause the consultation. That is a mistake. With the added work of the Statutory Committees, that consultation may have been very useful in informing the work of a successor Executive, whenever they might be in place.

My question to the Minister is this: with the amount of capital and resource that is available, particularly the £45 million that he referred to and is looking at, why are we in the position of having the announcement yesterday that the subregional stadia programme cannot go ahead, yet money has apparently been ring-fenced for the Casement Park project, which has no business case or plan and which may equally have to come back before the Executive to check its funding and any additional funds that may come forward?

10.45 am

Mr C Murphy: I will clear up some of what the Member said about additional money. We do not have capital to carry forward into next year. The Executive's latest notification, which came after the January monitoring round, included substantial changes from the previous position of which we had been notified. The changes included £8·2 million additional resource DEL, £18·1 million additional ring-fenced resource DEL, £37·4 million less capital DEL and £10·1 million less financial transactions capital. The picture, therefore, has changed in more ways than the Member outlined, and, of course, carry-over has no bearing on stadia or subregional stadia, as those are capital programmes that carry on into the next Budget. The Executive had two programmes: the regional stadia programme and the subregional stadia programme. The regional stadia programme clearly identified Windsor Park, Ravenhill and Casement Park as the three projects that they wished to bring forward. Two of those have been done and completed, and the Casement Park project was approved by the Executive. As yet, no projects have been approved in the subregional stadia programme. That may be the reason that the Communities Minister has announced that it requires further Executive approval. There is, therefore, Executive approval in one case. It will be a matter for the Department for Communities to consider the business case for whatever cost emerges, and it might be within its gift to consider how it would take that forward. There is no political issue involved. One project has Executive approval, and no identified projects in the subregional stadia programme have received Executive approval.

Mr Gildernew: Gabhaim buíochas leis an Aire. I thank the Minister. The Minister's draft Budget clearly and decisively prioritised funding for our health service over the coming three years. Our health service and health workers are under immense pressure. Multi-year budgeting is a key part of and essential to making the structural and transformational changes that are needed and are crucial to protecting our health services. What will the DUP walking away from the Executive mean for the planned transformation of health services?

Mr C Murphy: If we cannot agree a Budget ahead of the new financial year, we will get into an emergency situation in which 45% of what would have been the Department of Health's baseline is allowed to be spent in the next financial year. That would not allow the Department to access the uplift that we had planned for it or to fund in full, as we had planned, waiting list reductions, cancer treatments, the mental health strategy or transformation. It will, essentially, be operating on a care and maintenance basis for the next number of months. We will also lose the benefit of the three-year Budget. After about a decade of annual Budgets, the three-year Budget was an opportunity to plan, strategise and try to tackle one of the big public funding issues — how to fund and transform the health service — that has been an issue for all Executives in the past number of years. That opportunity will be lost, because, even if a new Executive come into place, year 1 will be lost. That gives only a two-year opportunity, which is a significant reduction, even if a new Executive were to follow through on the original plan that we had developed.

Mr K Buchanan: I thank the Minister for his statement. The Democratic Unionist Party has been mentioned four times in the Minister's statement, but, strangely, there is no mention of his party, which pulled down the entire Assembly in early 2017, when there was no Budget, no health support, no nothing. Surely that is a case of amnesia from the Members on the far side of the House, purely for political gain. Can he and other parties not see the damage that the Northern Ireland protocol is doing to this place? Are they blind to that?

Mr C Murphy: The Member mentioned amnesia: let me remind him of a few facts. The RHI scandal, which was developed and hidden from the rest of the Executive by his party, would have brought down any coalition. Within 10 months of establishing the inquiry, we had a deal on the table for these institutions to be reinstated: it was on the basis of annual Budgets, not multi-year Budgets, which provide the opportunity to plan. It took the DUP a further two years, from February 2018 to January 2020, to take the same deal that had been on offer in February 2018 and to come into the Executive. Two of those years, therefore, were lost by the internal wranglings of the Member's

party. We now have an opportunity to plan on a multi-year basis, for the first time in almost a decade, and to put significant resources into health.

His party's decision, made so that the DUP could scramble to save its seats, is having very real consequences, a lot of them apparently unforeseen or not thought through, for the communities that we represent, and his party should own that.

Mr O'Toole: I am almost speechless after the previous question. I am due to ask the Finance Minister a question, but it is worth saying that, if anyone in the DUP is serious about their position, they should go to people on waiting lists who will not be seen when they expected to be seen, and tell them that that will not happen because of the protocol.

Mr Frew: Shameful.

Mr O'Toole: No. Your party is shameful, I am afraid. Your party is the shameful one.

Mr Speaker: Order.

Mr O'Toole: Minister, can you confirm —

Mr Speaker: Sorry, Mr O'Toole. I remind Members that, as I advised, they have to stick to the issue that is under discussion this morning: the Budget and the statement from the Minister. I have advised Members not to go into long introductions. I want Members to go to their questions. Thank you.

Mr O'Toole: Thank you, Mr Speaker. I will be quick. First, Minister, can a one-year Budget be provided in the absence of a multi-year Budget — a three-year Budget — or is it just emergency funding that can be provided? Secondly, have any proposals at all been made by any Department, including yours, around further additional funding to help with the cost-of-living crisis?

Mr C Murphy: The absence of an Executive means that we cannot agree even a one-year Budget. No Budget can be agreed. I have tested this consistently over the past number of days, including up to the level of the Attorney General, and it requires Executive approval. If no Executive can sit, there can be no approval. Essentially, we get into a process where we can include in some of the Budget legislation that I will bring through in the next number of weeks a 45% allocation for Departments into the new financial year. That will be on the basis of their own baseline, so there will not be anything additional, and it will not allow them to plan beyond that. It will not allocate to Departments in the way in which we had proposed the Budget to be allocated. Indeed, it will not allocate the additional £300 million that we now have available for allocations next year, which would go a long way to easing some of the significant pressures across a range of Departments.

Mr Muir: I thank the Minister for his statement. To be honest, I feel very angry on hearing the statement. This is the impact on people's lives and livelihoods of the DUP actions. Minister, will Departments not having a budget for next year and being able to spend only that 45% allocation not mean that public services will have to look at cuts, protective redundancies and a halt in recruitment, just when we need to be rebuilding our public services, particularly our health service, whose desperate waiting lists are the worst in the UK?

Mr C Murphy: It will be a matter for each Department to try to manage its budget. If the Executive do not re-form, there will, because of the legislation that emerged through Westminster, be caretaker Executive Ministers. The ability to take significant decisions will also be inhibited and limited, so, yes, it is a bad outcome. The spending review outcome was not what we wanted for public services, but we were trying to prioritise that in a particular direction, one that repeatedly had the support of all Executive parties, going by their statements about prioritising health. The ability to do that over a three-year period will now be lost. I hope that we do form an Executive very quickly. I hope that the Executive will come back to this Budget, and I hope that they will attempt to make good use of that £300 million. The certainty, however, that Departments need now about what they can do in the next financial year is lost to them, and they are, basically, operating in a care and maintenance role.

Ms Ferguson: Thank you, Minister, for your statement on the Budget. As you are aware, many organisations in the community and voluntary sector face great uncertainty. Staff have been on protective notice since December. The sector works with more than 17,000 people, including the long-term unemployed and people with disabilities, trying to get them back into work through reskilling and training. These groups do an enormous amount of really important work, despite the reckless actions, I have to say, of the DUP. Minister, how can this difficulty and uncertainty be resolved for all the organisations and groups

that provide that service and for all the individuals who benefit annually?

Mr C Murphy: I had the opportunity in recent times to visit some of those groups and to engage with a meeting that was organised by the Northern Ireland Council for Voluntary Action (NICVA), which brought together a lot of the groups. I understand not only the great difficulty that they are in but their valuable services. One thing that I have found to be consistent any time that I have been out in the various sectors — manufacturing, retail, hospitality, services — is that everyone requires more workers. Organisations such as those will help people who are economically inactive back into work, so that is now a vital service for our potential economic growth.

The Minister for the Economy could prioritise that for next year and signal it now, even within the limitations that there are on the Budget. I have proposed another solution to him that could be met from in-year funding to those groups, and I will wait to hear from him about that. There is a case for protection against the potential for collapse, particularly of that vital service that we very much need at this time, and I will certainly do all that is in my power to assist those groups and make sure that they are sustainable into the future.

Mr Frew: This is yet another Minister who, in the past week, has been playing silly games, this time with the people's money. The subregional stadia funding for football and the Casement Park funding have both been approved by the Executive. Why have the Finance Minister and the Communities Minister made sectarian decisions to proceed with Casement Park but to halt the football stadia programme?

Mr C Murphy: Clearly, you and your party have not thought through the consequences of what you decided to do. In the scramble to defend your seats, you have not thought through what the impact of doing that would be. The impact will be very real across a range of communities. Sports stadia are one issue; waiting lists are one of the others. In your rush to get out of the Executive to try to generate some electoral support for yourselves, you have not thought through the consequences of your action. Many people will suffer the consequences of your action.

As I explained, the regional stadia programme identified three projects, two of which have already been funded and developed, while the other has been identified and supported for funding. The subregional stadia programme has not identified any specific projects and would be required to go to the Executive for further approval. The fact that you have collapsed the Executive means that all those clubs that are waiting for money will continue to wait for that money until such times as you grow up and start to play serious politics.

Ms Flynn: Minister, you have addressed part of the question that I was going to ask. It was about setting out clearly the enormously damaging implications of the DUP collapsing the Executive. You mentioned some examples, but I ask in particular about the proposed additional £255 million that could have been set aside for mental health.

Mr C Murphy: Health had identified its priorities, and, as I have said many times in the Chamber, all the parties in the Executive and practically all the parties in the Assembly have, over a number of years, consistently identified health as their priority. We have talked about big issues such as waiting lists and cancer treatment services, but, increasingly, over the pandemic in particular, mental health has very much come to the fore.

The Department of Health identified and costed a strategy, and the proposal in the draft Budget would have funded it in full. It is a matter of deep regret that that will not happen, but it is a consequence of the action that was taken to bring down the Executive. Many people will suffer as a direct consequence of that.

Mrs Erskine: Will the Minister agree that the Budget that he put out for consultation was actually a bad Budget? Others apart from the DUP have raised concerns about it. It fails to deliver on New Decade, New Approach targets such as those on policing, and it cuts huge chunks out of Education and Infrastructure. If it is a bad Budget, it will not deliver on the ground for my constituents, so would it have been approved by Ministers? It does not matter whether it is a one-year or a three-year Budget: people want delivery on the ground from a Budget that provides better roads, transforms our health service and gives proper funding for our children in schools.

Mr C Murphy: I would like to hear the answer from her and her party about how that will all be achieved. The reality is that, under the proposed Budget, every Department got an increase over the three years, but the parties decided — this was the professed priority of the DUP for many years — as the Executive had agreed and as we had discussed prior to the

Executive coming back and in the early stages of the new Executive, even before the pandemic hit, that funding transformation and the real challenges in health was our priority.

If you do that, other Departments will not get as much as they would like. However, none of them was suffering a loss; they all had an increase in their budget over the three years. You need to go away and study the Budget proposals to comment on them.

11.00 am

We also had, in effect, £300 million for next year that would have gone a long way. I recognise that the propositions for Health presented a challenge for other Departments. They did not present a reduction, but they presented a challenge. There was an additional £300 million to be allocated next year. That now sits in limbo until such times as the DUP can come back and assist the rest of us in reforming an Executive and taking the necessary decisions for all of the services that you mentioned.

Clearly, there was going to be an opportunity at some stage for people to put their money where their mouth was over the years. Did they support the necessary provision for Health, or had that all been rhetoric and, when it came to putting their hands in their pockets, they would not stand up for it?

Mr Nesbitt: When the Minister published the draft three-year Budget, he ring-fenced over £14 million per annum for PSNI staffing costs. I declare an interest as a member of the Policing Board. The question is this: is that money now lost? If it is, the three-year pressures on the PSNI will rise from £226 million to £240 million. I do not see how the PSNI can keep people safe if we choke them of finance.

Mr C Murphy: I will come back to the Member about ring-fencing. From 1 April, the Department of Justice will have access to 45% of its baseline budget, and there will be no additional money. As I said, the Department of Justice raised issues, as did all Departments, as to the consequences for it of supporting the Health budget. That did not mean that it would be impossible, but, certainly, there would be challenges. The £300 million for next year would have gone a long way towards meeting some of those challenges. However, we are now not able to allocate that either. It sits in limbo, as does the Budget decision.

I will come back to the Member about where the ring-fencing sits. In general terms, however, the Department of Justice will have access to 45% of its baseline budget for the next financial year.

Ms Ní Chuilín: Ba mhaith liom buíochas a ghabháil leis an Aire as ucht a ráitis. I thank the Minister for his statement. It is clear, even from the statement, that there is deep frustration and agreement that the DUP's decision to collapse the Executive is disgraceful. Will the Minister confirm that the Budget will have a devastating impact on the £182 million that was set aside to rebuild cancer services?

Mr C Murphy: As I said, the Health Department had taken forward a number of priorities. It had costed those and presented them to my Department, and this Budget takes account of that. Even in the last number of days, there have been further discussions about waiting lists and people who are waiting for cancer treatment services. We recognise that it is about not just the general pressure of that but individual cases and the real tragedy that is attached to people who have to wait longer than they should.

There was a proposition to fund that strategy in full. We recognise that, in health service funding, we are coming from a long way back. The 10 years of austerity Budgets and attempts to privatise parts of the health service have taken their toll on the type of health service that we want. This was an opportunity to begin to turn things around, but, unfortunately, it has been squandered.

Ms Armstrong: I am so absolutely furious at the statement. I apologise to the Minister: I know that it is not your fault and that you are the messenger. However, oh my goodness, I am so cross about it. You are telling me that £300 million will sit idle while upwards of 6,000 people are homeless in Northern Ireland. Are you telling me that the families and children who do not have a permanent home will not get help because the DUP has pulled its First Minister out? *[Interruption.]*

Mr Speaker: Order.

Mr C Murphy: We will not be able to allocate that £300 million. I sought legal advice. I would have liked to be in a position where we could say to Departments, "All being well, this is where we would have liked that money to go", so that they could begin to plan.

They cannot have the legal certainty that enables them to do that, however. Accounting

officers and Departments can take it that an Executive decision has not been taken.

There is a difference with in-year allocations, in that the Executive recognised that further allocations were going to have to be made, but those can happen only in a very limited way between now and the end of the financial year.

Yes, clearly that £300 million will sit until such times as an Executive are formed again, so that money will not be able to assist all the many worthy causes that Members have identified in their questions on the statement.

Mr O'Dowd: Minister, I have been around this place for 20 years, and the Budget proposed by you, which included a 10% increase in health spending, was the biggest socio-economic investment in our society since the Good Friday Agreement. That is the scale of the change that your Budget could have made.

Does the Minister agree that it is not the EU or the protocol that is denying people access to medicines and operations or preventing the recruitment of more nurses and doctors but the DUP? The failure of the party opposite to allow you to pass the Budget will have huge consequences for every citizen in this part of the island.

Mr C Murphy: The issues with the protocol will not be resolved in the Executive. The situation will not be helped by damaging people as a consequence of our not having a Budget to support public services. The issues will be resolved between the British Government and the EU. That is where we want to see them resolved. Issues have been raised about how the protocol is implemented, and we want to see them sorted and resolved so that there is the least possible damage done as a consequence of Brexit for people who live in this part of Ireland. Brexit was always going to damage all the people who live here.

The issues will therefore be resolved between the British Government and the EU. The idea that the DUP should bring down the Executive and inflict more pain on the people whom we represent through an inability to allocate sufficient funding to vital services is, to me, beyond belief. I cannot understand the logic behind it. If the DUP wants to make a protest, it should pull its MPs out of Westminster, where they are not doing any harm anyway.

Mr Durkan: I thank the Minister for his statement, which I apologise for missing, and for his answers thus far, most of which I have heard.

Minister, the last time that I addressed you in the Chamber, I asked about the £100 million unspent this year and whether there could be an Executive intervention to ensure that that money could be got into the pockets and purses of hard-pressed people who have not been able to avail themselves of any support whilst we are in the midst of a cost-of-living crisis. Now, a few weeks later, the crisis has got worse. You assured me at the time that work was being done, or could be done, with Executive colleagues. In the absence of the Executive, is it fair enough to assume that that work cannot now be done and that people cannot get the help that they so badly need?

Mr C Murphy: As the Member knows, we put together a scheme. It took some time to get it through the Executive, and I wish that it had been in place earlier. The Minister for Communities and I had identified funding to support people with energy costs and home heating.

I propose to allocate a further £45 million. The Department for Communities is one of the Departments that will bid for that support. In January monitoring, the Executive agreed that I would keep the in-year position under review and revisit potential allocations once the financial position was clear. It is now clear, after the end-of-year accountancy that the Treasury has done, and it is my intention to make further allocations, but the larger sum of money that we have could go a long way in the next financial year to assisting people who are struggling, and who will continue to struggle, as the cost-of-living crisis increases daily and impacts on families.

Mr Beggs: Minister, in the absence of Executive approval, you are deciding how to spend £45 million and also holding back a potential £300 million. Yesterday, we had the Health Minister announce that he had consulted other Ministers and taken decisions to limit the risk of legal challenge. Will you do likewise to enable more funds to get on to the ground, and will you detail how the £45 million will be spent?

Mr C Murphy: I intend to do precisely that. I have written to other Executive Ministers. In January monitoring, the Executive agreed that further allocations could be made once the financial position was clearer. In the case of the removal of COVID-19 restrictions, the Executive had a position that they should not be in place any longer than was necessary.

On the same basis, there is some cover for me to do that. I will wait to hear from Ministerial colleagues who are still in place on that, but it is my desire to proceed on that basis because I have a very clear view that there are allocations that are necessary and that it will be beneficial to get that support out on the ground. Also, if we do not proceed, the money will be lost to the Treasury at the end of the year, and the ability to support those services will be denied to us.

I do not have a clear picture on the £300 million and identifying where it should be spent in the next financial year. I have sought legal advice on these issues, and it is fairly clear. It seems that the only decision that I can take is on the £45 million allocation. If we can get agreement on getting that done, I will bring a statement to the Assembly on how it will be spent.

Mr Blair: The Minister has clearly explained the difficulties faced due to the non-functioning Executive, and I note the financial packages that he intends to pursue despite that.

I declare an interest as a member of the Policing Board. What is the Minister's assessment of the Fiscal Council's analysis of the severe proposed hit on the Department of Justice's budget, with its obvious impact on policing numbers, neighbourhood policing teams, tackling crime and overcoming the fear of crime? Can that be rectified?

Mr C Murphy: A ring-fenced amount of money was available to the Department of Justice, which was not included in the Fiscal Council's analysis and alters the picture. As I said, no Department suffers a reduction in allocation under the proposed Budget. I recognise that, with a finite Budget, if we are to prioritise and fix the big issues in health, which people have consistently said they want us to, it will mean not giving other Departments as much as they would like for their public services. The £300 million that was available for the next financial year would have gone a long way to addressing some of the most acute problems, including in the Department of Justice. Unfortunately, we are not able to do that now.

Mr Chambers: Does the Minister accept that the message going out from the House today to those on hospital waiting lists for a consultation or for routine surgery and to NHS staff who are working to their absolute limits is that the promised reforms of the NHS are on hold for the immediate future and the planned and much-needed improvements in the NHS, which were initiated by Minister Swann, will be seriously curtailed?

Mr C Murphy: The Member is accurate in his analysis. Unfortunately, because it was a three-year Budget, there is still a three-year Budget time frame. If we lose even a year of that and just have a care and maintenance Budget in that time, the time that we have to make the transformation will be reduced by a third, which is substantial. We will then run a two-year cycle after that if an Executive are back in place. The ability to begin to plan, fund and carry out that transformation and tackle the big issues that we mentioned — waiting lists, cancer treatment and mental health — is substantially impacted by the fact that we cannot get a Budget agreed. We will not be able to have that in place for the start of the financial year.

Mr Dickson: The Minister's statement is very disappointing, particularly when we hear people asking questions about football stadiums and the like. Surely the priority has to be issues like cancer services and how our health service is delivered. Those have to be the number one priority in the Chamber.

Minister, I want to ask you about the economy issues that you raised in your statement. You clearly highlighted a number of areas in which the Minister for the Economy has failures to deal with in respect of his budget. It is ironic that it is a DUP Minister who will suffer some of the more difficult issues from the Budget, particularly in relation to the failure of the United Kingdom's Share Prosperity Fund and how we will work around that to ensure that there will be sufficient funds to replace the European social fund.

Mr C Murphy: The Member is correct in that the promise to replace like with like in respect of EU funding has not materialised. We cannot give certainty because, as he will know, money from the European social fund and the European regional development fund (ERDF) was directed to groups in that area. That funding is much needed at any time, but particularly now, when there is a requirement to try to get people into the workforce, as it funds very valuable work to support people and give them the necessary skills to gain full employment. There is now a competition-based approach from Whitehall, and there is absolutely no guarantee that those groups will get the funding that they need to keep their schemes and their staff in place. That is where the loss is.

11.15 am

Over the past year, we were able to supplement the Department's loss in that regard with some

COVID money, but we clearly do not have that option this year. There is an opportunity, in more of an emergency situation, for the Department for the Economy to support those groups and keep them going, certainly into next year. I have written to the Economy Minister to encourage him to examine that option, but the loss of the European funding will have an ongoing and lasting impact — possibly in the region of £65 million a year — on the work that the Department for the Economy previously used it for. That will be a real challenge. We cannot predict that groups will get funding from the Shared Prosperity Fund, so we cannot give any certainty. They may get that, and that would be great for them. When it comes to planning the sort of services that we want to see supported, however, we will have to find money from our own budgets.

Mr Allister: Despite the Minister's grandstanding, we have been here before. That was not for one year, but three, during which we did not even have a Finance Minister, courtesy of Sinn Féin's politics. Does the Minister not recognise, although he cannot admit it, that we would not be in this position but for the imposition of the iniquitous protocol? If people want to get angry, let them get angry with the protocol.

Mr C Murphy: I recognise, now that he and his party are in an electoral pact with the people who brought down the Executive, that the Member is obliged to get up and try to defend their actions. They are in a very small minority as far as this institution is concerned. I hope that people recognise that.

I am sure everybody wants to make sure that the issues in relation to the protocol run as smoothly as possible, but those issues will not be resolved in this Chamber or by the Executive, and they are certainly not assisted in any shape of form by denying people access to much-needed services. At some stage, when he gets the opportunity, I would like the Member to go out and explain to the public how denying people access to cancer treatment services, hampering those trying to reduce waiting lists and trying to assist people who have mental health issues and denying people those services, somehow impacts on the negotiations between the British Government and the EU. I cannot figure that out at all, and I look forward to the Member explaining that to the electorate in the time ahead.

Mr Speaker: That concludes questions on the statement, Members.

Mr O'Dowd: On a point of order, Mr Speaker. I ask you to take a look at Mr Frew's comments during the questions on the statement. I believe that he accused Minister Hargey of acting in a sectarian fashion. I ask that your office looks at those comments.

Mr Speaker: I will look at that and come back to the Member. Please take your ease for a moment or two, Members.

(Mr Principal Deputy Speaker [Mr Stalford] in the Chair)

Executive Committee Business

Motor Vehicles (Compulsory Insurance) Bill: Accelerated Passage

Ms Mallon (The Minister for Infrastructure): I beg to move

That the Motor Vehicles (Compulsory Insurance) Bill proceed under the accelerated passage procedure.

Mr Principal Deputy Speaker: The Business Committee has agreed that there should be no time limit on the debate.

Ms Mallon: I seek the House's agreement today to progress by accelerated passage the Motor Vehicles (Compulsory Insurance) Bill, which makes changes to the motor insurance provisions that are contained in the Road Traffic (NI) Order 1981. I do not make the request lightly. It is my firm view that, whenever possible, primary legislation should be subject to full Assembly scrutiny. The Committee Stage of a Bill is clearly a significant element of that scrutiny process. However, for reasons that I will outline, there are, on this occasion, compelling grounds for the use of accelerated passage. Before I do that, I will say a few words about why legislative change is required. I will, of course, cover that in more detail in the Second Stage debate that will follow the debate on this motion.

Briefly, the EU motor insurance directive sets the framework for compulsory motor insurance across Britain and Northern Ireland. In turn, our domestic motor insurance legislation is set out in the 1981 Road Traffic Order, which currently restricts mandatory motor insurance cover to the use of vehicles on roads and in other public places. Historically, that was believed to be in keeping with the requirements of the motor insurance directive. However, European case law subsequently determined that the directive actually required compulsory motor insurance for vehicles beyond their use in traffic, including their use on private land. That case law has been retained following Brexit, and it conflicts with our domestic legislation, which is the 1981 Order. That has created a significant problem.

In Northern Ireland, as in Britain, successful claims against uninsured drivers are met by the Motor Insurers' Bureau (MIB) under government contract. The MIB is funded by the insurance providers. However, until we amend our legislation, the MIB is vulnerable to compensation claims that may be brought by victims of accidents involving uninsured vehicles on private land. The potential for additional claims is significant, since our domestic law does not mandate motor insurance cover for the use of vehicles on private land. Those are claims that the MIB is neither contracted nor funded to meet. There is also significant potential for fraudulent claims. Again, I will cover those matters in more detail in my opening remarks in the Second Stage debate.

We need to act quickly to resolve the conflict. That, quite simply, is the purpose of the Bill. Essentially, it will restore the original interpretation and intention of our motor insurance law. Compulsory insurance requirements will remain confined to the use of motor vehicles on roads and in other public places.

I move on to my reasons for seeking accelerated passage today. As Members will be aware, corresponding legislation for Britain is contained in the Westminster Motor Vehicles (Compulsory Insurance) Bill, a private Member's Bill that is progressing through the House of Lords. As I have said, I am aware of the constraints on our legislative programme in this mandate. With that in mind, I had originally planned, subject to Assembly consent, to include the required Northern Ireland provisions in the Westminster Bill.

Using Westminster Bills to amend devolved legislation is never my preferred option. In this instance, however, it seemed to me to be the most pragmatic approach. It would have achieved early statutory provision for Northern Ireland at the same time as in Britain and would have avoided further congestion in our legislative programme.

Late in December 2021, I was advised that Department for Transport Ministers had decided not to include Northern Ireland provisions in the Westminster Bill. I very much regret that decision. However, I still considered it necessary to ensure that the existing conflict between retained EU law and domestic statutory provision be removed as quickly as possible. With that in mind, I immediately sought and received Executive approval for Assembly legislation. My officials then worked urgently with departmental solicitors and the

Office of the Legislative Counsel (OLC) to draft the Bill that is before us. I am grateful to my Executive colleagues and legal staff for making that possible. I am also grateful to the Committee for Infrastructure for its support in my seeking accelerated passage for the Bill despite its reservations around the use of that process in principle. I share those reservations and fully agree that it should be used only when absolutely necessary.

In this instance, the accelerated passage of the Bill offers the only opportunity to make the required changes in the current Assembly mandate. Speed is of the essence. The making of the Westminster Bill will serve only to highlight the continuing discrepancy in Northern Ireland. Without accelerated passage, the Motor Insurers' Bureau would remain vulnerable to additional claims, some of which may be expected to be fraudulent, which it is not funded to discharge. Inevitably, that would also result in higher insurance premiums for citizens here at a time when households are already struggling to make ends meet. It is my hope that, with accelerated passage, the Bill can complete its legislative passage before the Assembly is dissolved. It would then become law as soon as it receives Royal Assent, hopefully by May 2022. That would allow us to keep pace with Britain. It would provide clarity in the marketplace and remove the risk to the Motor Insurers' Bureau. It would also avoid the otherwise inevitable increase in motor insurance premiums, which has been estimated to be approximately £50 a year on every driver's policy.

I, therefore, commend the motion to the Assembly and ask that it agrees that the Motor Vehicles (Compulsory Insurance) Bill proceeds under the accelerated passage procedure.

Mr Buckley (The Chairperson of the Committee for Infrastructure): I thank the Minister for her opening remarks. The Committee for Infrastructure first considered the proposal for the Motor Vehicles (Compulsory Insurance) Bill at its meeting on 19 January 2022. At the meeting, the Minister outlined in detail the reasons why she seeks accelerated passage for the Bill. The Committee noted that the request for accelerated passage was also supported by the Executive. In advance of the oral evidence session, the Committee contacted a number of stakeholders that provided written evidence on the need for the legislation and the need to progress it urgently. The Committee has, therefore, been able to undertake considerable pre-legislative scrutiny, which highlighted the need for the legislation and the need for the Bill to pass by accelerated passage. I will go into much more detail on the need for the legislation at Second Stage. For now, I will focus on the need for accelerated passage for the Bill.

The Minister outlined to the Committee that, were accelerated passage not to be granted, it would mean that, once the Westminster Bill completes its legislative passage, a discrepancy would exist between Northern Ireland's domestic legislation and the case law until our legislation was amended accordingly. Ultimately, that would mean that the Motor Insurers' Bureau would be vulnerable to claims that were brought by victims of incidents on private land and, potentially, to fraudulent claims. The Department informed the Committee that, in the absence of accelerated passage, the Bill would be delayed for up to one year. The consequences of such a delay were outlined to the Committee not only by the Minister and Department but by the Motor Insurers' Bureau, the Association of British Insurers (ABI), Motorsport UK and, indeed, the Ulster Farmers' Union.

The Motor Insurers' Bureau informed the Committee of the need to avoid what is referred to as:

> *"potentially damaging legal and regulatory divergence."*

The Association of British Insurers supported that view. In its evidence session, it highlighted how drivers in Northern Ireland would be disadvantaged compared with drivers in Great Britain and the Republic of Ireland by being required to pay higher motor insurance costs.

11.30 am

The Ulster Farmers' Union informed the Committee that the current position not only increases motor insurance premiums for farmers but means that, until the situation is rectified, farmers are required to have insurance for all vehicles used on private land.

The Association of British Insurers also highlighted the potential impact on police resources and on the potential threat posed to motor sport in Northern Ireland while the diversions remained. The view was supported by Motorsport UK in its evidence to the Committee.

I will go into much more detail on those issues during the Second Stage debate.

During the Committee's deliberations, all members remained mindful of the need, under normal circumstances, for Committees to be given the opportunity to undertake detailed scrutiny of all primary legislation. However, the Committee recognised that the circumstances under which the policy proposals in the Bill are being considered are exceptional and are not of the Minister's making, given that considerable efforts were made by the Department to progress it in another place.

The Committee is satisfied that the evidence that it has considered is sufficient under those circumstances, and the urgency associated with passing the Bill outweighed the need for further detailed scrutiny by the Committee. On that basis, the Committee for Infrastructure is content to support the Minister and the Executive in seeking accelerated passage for the Bill.

Mr Boylan: Agreeing to take accelerated passage is a decision that we should never take lightly. The Assembly should actively seek to avoid it unless it is absolutely necessary. However, I believe that it is justified on this occasion.

I recognise that the Minister was originally pursuing the legislation through a legislative consent motion (LCM), but, at the last minute, Westminster declined the offer. I am still a little unclear over that series of events, and I would like the Minister to elaborate on that. Did Westminster initially agree to take on the legislation and then do a U-turn at the last minute, or did the Department take the LCM route without explicit confirmation from DfT that it would happen? Either way, as it stands, not going through accelerated passage would mean that there would be a difference between our domestic law and case law, which could have significant implications on insurance premiums. With that said, I support the motion.

Ms Hunter: I thank the Minister for bringing the Bill to the Assembly. As a member of the Committee for Infrastructure, I am grateful to the Minister and her Department for sharing the Bill with us today.

The Minister has pointed out the fact that motor insurance is a devolved matter, and it is right that we as an Assembly take these decisions. However, we in the SDLP agree with what others have said this morning that accelerated passage is not the preferable route.

I am sure that the Minister will want to point further to the case for accelerated passage and her efforts to secure a smoother route. It seems to me that, in the time available, there were few options for the Minister and the Department, and, therefore, I commend them for securing the support to get the Bill here by accelerated passage. I say that because of the real impact that a failure to update the law will have on people here.

In essence, it will restore the original intention of our motor insurance law, ensuring that compulsory insurance requirements will remain confined to the use of motor vehicles on roads and other public places and not place further requirements on our citizens.

I would welcome further assurance from the Minister this morning on that point and that her Department is closely watching the legislation in Westminster. I thank the Minister and her Department for bringing the Bill forward and assure the House of my support.

Mr Beggs: Accelerated passage for legislation should generally be avoided and used only in exceptional circumstances and in a limited way. My Ulster Unionist colleagues and I accept that, in this case, it is correct that we allow accelerated passage to correct the ramifications of the Vnuk case. We accept that urgent change in the law is required.

The outworkings of the Vnuk case would result in an estimated £50 for everyone with private motor vehicle insurance to enable coverage to be provided for uninsured vehicles on private land. The policy was not originally designed to do that. It is highly questionable whether insured drivers should provide full cover for those on lawnmowers, quads, scramblers, trail bikes and a host of other examples. Following the Vnuk case, everyone's motor vehicle insurance would have to increase by a further £50 to provide that cover at a time when many people already struggle with the many increases that have occurred.

As indicated, a private Member's Bill is proceeding at Westminster, and the Minister said that she had hoped that Northern Ireland would be included by means of a legislative consent motion. That has turned not to be the case. Indeed, Europe is also legislating to make a correction. That leaves Northern Ireland without that correction, and it is essential that we urgently pass the Bill. As I said, if we do not, everyone holding private motor insurance on a vehicle will face a significant increase. For that reason, I support the accelerated passage of the limited proposals that the Minister has placed before us.

Mr Muir: The Alliance Party will support accelerated passage. I understand the context behind this, and I have been following the issue since it was raised with the Committee. The Minister had originally asked officials to work with their counterparts in the Department for Transport in London to progress a legislative consent motion. I understand, however, that, on 21 December last year, DfT said that that was no longer a viable option as the late inclusion of amendments could endanger the Bill at Westminster. Whilst accelerated passage is unusual, and it is important that we scrutinise the Bill, it is the only option left to get the Bill through in this mandate.

Most of my comments about the Bill will be at the next stage, if we agree on accelerated passage. The Bill will not, however, prevent us from making changes to the existing statutory provision for motor insurance in the future. Also, it is very important that, in the context of the cost-of-living crisis that has hit so many people and families across Northern Ireland, we grant accelerated passage and pass the Bill. It is important that we give whatever assistance we can to lessen the impact on those people and the bills that they face.

In conclusion, can the Minister confirm whether Executive approval was sought and given to introduce the Bill? I highlight, yet again, the need for us to have a functioning Executive and Assembly to progress legislation. I am very conscious that, if an Executive had not been sitting and agreed this, family budgets and their motor insurance policies would have been hit hard by yet another impact of the collapse of the Executive.

Mr Principal Deputy Speaker: As no other Member has indicated to me that they wish to speak in the debate, I call the Minister to wind on the motion.

Ms Mallon: I thank the Chair of the Committee, the Deputy Chairperson and all Committee members for their contribution and indications of support. I will try to address some of the issues that were raised about seeking to include the Northern Ireland provisions in the Westminster Bill via a legislative consent motion. I assure the Deputy Chairperson of the Committee that every effort was made to explore that route. While the Westminster Bill was confined to Britain only, we were advised that it might be possible to introduce Northern Ireland provisions as amendments at Committee Stage. My officials were working with their GB counterparts and lawyers to take that forward, and I had approached my Executive colleagues and secured their agreement to a legislative consent motion. Unfortunately, however, DfT Ministers advised us, at incredibly short notice, that that was no longer an option because of concerns that it might delay their Bill. I am deeply frustrated, and I deeply regret that that course of action was taken at such a late stage, given the ongoing work between my officials and officials in DfT. I have written to Minister Shapps to detail my frustrations at what occurred.

In response to Mr Muir's question, I confirm that Executive approval was sought for the process of accelerated passage, but, if I had not secured that, we would be in the very difficult situation of not being able to introduce the Bill. Of course, that would mean adding to the already significant financial burden on households across the North.

In response to Ms Hunter's point about monitoring closely the legislation as it progresses through Westminster, I confirm that my officials will continue to do that.

In conclusion, I ask the Assembly to agree the motion.

Mr Principal Deputy Speaker: Before we proceed to the Question, I remind Members that, as this is an accelerated passage motion, it requires cross-community consent.

Question put and agreed to.

Resolved (with cross-community support):

That the Motor Vehicles (Compulsory Insurance) Bill proceed under the accelerated passage procedure.

Motor Vehicles (Compulsory Insurance) Bill: Second Stage

Ms Mallon (The Minister for Infrastructure): I beg to move

That the Second Stage of the Motor Vehicles (Compulsory Insurance) Bill [NIA 53/17-22] be agreed.

Mr Principal Deputy Speaker: The Second Stage of the Bill has been moved. In accordance with convention, the Business Committee has not allocated any time limit to the debate, nor, as the Bill is proceeding by accelerated passage, are there any time limits on individual contributions. I call the Minister for Infrastructure to open the debate on the Bill.

Ms Mallon: First, I thank my Executive colleagues and the Assembly for their support in bringing the Bill to the Assembly, and I also thank the Infrastructure Committee, which ceded Committee Stage so that the Bill can progress within the mandate.

Today, we have the opportunity to debate a Bill that will ensure domestic statutory provision on compulsory motor insurance, as contained in the Road Traffic Order 1981, remains effective. It does that by ensuring that the requirements of the motor insurance directive and any retained EU case law are not taken into account when interpreting the compulsory motor insurance requirement in Northern Ireland. Effectively, therefore, it simply maintains the domestic status quo for compulsory motor insurance.

It is a relatively short Bill, with only two clauses. However, its purpose and length belie the fact that it was a complex piece of legislation to navigate and draft. Prior to Brexit and during the transition period, domestic motor insurance arrangements were governed by the motor insurance directive 2009. That directive established a framework for motor insurance requirements that individual member states then had to implement in their domestic legislation.

The 1981 Order gives effect in domestic legislation to the 2009 directive. That provision restricts mandatory motor insurance cover to the use of motor vehicles on roads and other public places. Historically, that was believed to be in keeping with the requirements of the 2009 directive. However, the provision is interpreted in line with case law, including European case law. EU case law was retained in Britain and the North by virtue of the European Union (Withdrawal) Act 2018, meaning that the general principles established by case law continue to affect our domestic laws.

One piece of case law is of particular significance. The 2014 case of Vnuk versus Triglav concerned a claim that was brought by a Slovenian farmer who was knocked off his ladder on private land by a reversing tractor trailer. The European Court of Justice (ECJ) ruled that the accident should have been covered by compulsory motor insurance. In effect, the Vnuk judgement directed that the 2009 directive should be interpreted to require compulsory motor insurance for vehicles beyond their use in traffic, including use on private land. That would mean that motor insurance policies should cover certain types of off-road risks across a greater range of motor vehicles, including non-road-going vehicles.

That contrasts with existing motor insurance statutory provision in both Britain and Northern Ireland. In domestic legislation, the compulsory third-party motor insurance requirement is limited to the use of motor vehicles on roads and other public places. It also has a narrower definition of "motor vehicle". Crucially, the Vnuk judgement, together with the effect of the European Union (Withdrawal) Act 2018, means that UK statutory provision on motor insurance is no longer consistent with the requirements of the retained 2009 directive and retained EU case law. That means that, unless there is a change to existing statutory provision, GB and NI would potentially be vulnerable to Vnuk-style compensation claims.

Moreover, a recent High Court decision in England established that the UK's Motor Insurers' Bureau (MIB) would be directly liable for claims relating to uninsured motor collisions occurring on private land. The MIB is the UK's designated body to compensate victims of uninsured and unidentified drivers. It carries that function under agreements with Government.

11.45 am

In response to the Vnuk judgement, the European Commission initiated a process to amend the 2009 directive. The UK participated in that process up until the point at which it left the EU. The amending directive was taken forward by the Commission on 2 December 2021, and member states have until December 2023 to reflect its requirements in their respective domestic legislation.

It is perhaps worth noting that, while the 2009 directive has been extended to cover accidents caused during the normal use of a wider range of vehicles, it restricts compulsory insurance requirements to the use of those vehicles on land to which the public have access. A certain number of on-road motor vehicles such as garden tractors, mobility scooters and electric bicycles are also excluded from insurance obligations.

While Europe has effectively lessened the impact of the Vnuk judgement on its laws, I note that the amended motor insurance directive has no reach here. We remain bound by the 2009 directive as it applied on EU exit day and by the related EU case law. However, following Brexit, there is now the option to remove the Vnuk judgement from retained EU case law. For the North, that requires amendment to the motor insurance statutory provision in the 1981 Order. The equivalent provisions for Britain are contained in the Road Traffic Act 1988, and

provisions to make the necessary amendments to that Act have been taken forward in a Westminster private Member's Bill.

The Westminster Bill is currently progressing through the House of Lords and will remove the effect of the Vnuk decision and related retained case law when assessing what constitutes compulsory motor insurance requirements in Britain. It also ends any associated liability for insurance claims against the Motor Insurers' Bureau in respect of accidents on private land and involving vehicles not constructed for road use. The Westminster Bill would effectively preserve the status quo in British domestic motor insurance legislation. The Westminster Bill does not extend to Northern Ireland as, unlike in Scotland and Wales, motor insurance is a devolved matter here.

As I said, the purpose of the Motor Vehicles (Compulsory Insurance) Bill is to resolve the conflict between retained EU law and the compulsory motor insurance provisions in the 1981 Order by disapplying the Vnuk judgement. It is a relatively short Bill of two clauses. Clause 1 inserts new article 102B into Part VIII of the 1981 Order. It is entitled:

> *"Retained EU law relating to compulsory insurance for motor vehicles"*

and has seven paragraphs. Some of the paragraphs are self-explanatory, but I will mention the following paragraphs in particular.

Paragraph (1) of new article 102B alters the way in which the 2009 directive is to be read insofar as it is relevant to the interpretation and effect of Part VIII of the 1981 Order. The effect of that provision is to make clear that the 2009 directive's interpretation of insurance obligation in light of the Vnuk judgement is not applicable when interpreting the compulsory insurance requirements in the 1981 Order.

Paragraph (2) of new article 102B clarifies that, where the vehicle is used or normally based in Britain or in an EU member state, insurance policies must comply with the cover that is legally required in that territory. Paragraphs (3) and (4) of new article 102B concern the removal of relevant directive rights to compensation from the MIB. Essentially, that brings to an end any right to make a claim against the MIB in all cases, apart from those in connection with an accident involving the use of a vehicle on a road or other public place as defined in article 2(2) of the 1981 Order. Paragraph (5) provides that retained EU case law that is inconsistent with the position set out in paragraphs (1) or (3) will cease to have effect.

I now turn to clause 2. Clause 2(1) applies the provisions of the Bill to the Crown. It uses language that is required by section 7 of the Interpretation Act (NI) 1954.

Its effect is that the Crown's rights to compensation from the MIB are affected by the Bill in the same way as the rights of people other than the Crown. The effect of the provision is entirely consistent with the Westminster Bill.

The Bill will restore the original interpretation and intention of our motor insurance law. Compulsory insurance requirements will remain confined to the use of motor vehicles on roads and in other public places. I emphasise that the Bill will not prevent us from making changes to existing statutory provisions for motor insurance in the future, should that prove to be necessary. It will, however, ensure that any such changes can be made in a considered and controlled fashion, and with full scrutiny. I commend the Bill to the Assembly.

Mr Buckley (The Chairperson of the Committee for Infrastructure): As I informed the House during the debate on the motion seeking accelerated passage for the Bill, the Committee for Infrastructure first considered the proposal for a Motor Vehicles (Compulsory Insurance) Bill at its meeting on 19 January 2022.

In the absence of a Committee Stage, I will take some time to put on record details of the scrutiny that the Committee for Infrastructure undertook on the proposals outlined in the Bill. The Committee was able to take sufficient evidence during pre-legislative scrutiny. The Assembly's Research and Information Service (RaISe) was able to collate a fairly comprehensive information pack outlining that evidence, and that is available to Members. That does not usually happen for Bills of this nature, so again I put on record the Committee's thanks to RaISe for its efforts in putting the pack together.

In correspondence with the Committee on the Bill, the Minister outlined the need for the legislation and the implications of the Vnuk judgement, which meant that, unless existing statutory provision was amended, GB and Northern Ireland would potentially be vulnerable to compensation claims. Her correspondence highlighted the fact that a High Court decision in England and Wales in 2018 established that the Motor Insurers' Bureau would be directly liable

for claims relating to uninsured motor collisions occurring on private land. In order to preserve the status quo in domestic motor insurance legislation, it is therefore considered necessary to remove the provision from retained EU case law.

During oral evidence, it was outlined how the EU had amended the relevant directive, which was adopted in December 2021. Member states have two years in which to implement the directive. The Department understands that a number of member states want to amend their legislation more quickly, as they have an anomaly similar to that which we have here in Northern Ireland.

A key area that the Committee explored was why accelerated passage was being sought for the Bill. The Committee wanted to know the likelihood of a case being brought, and its likely impact. Members explored why, if this is such a significant matter, greater priority was not given to ensuring that Northern Ireland was included in the Bill currently proceeding through the Westminster Parliament, especially as there could be additional cost to the UK Government by way of compensation claims to the Motor Insurers' Bureau.

The Minister assured the Committee that every effort had been made to work with Department for Transport officials and that it had been her understanding that the Northern Ireland provisions could be included in the private Member's Bill currently proceeding through Westminster by way of a legislative consent motion. The Minister then told the Committee that the LCM route was not considered viable, as Ministers in DfT had taken a cautious approach because they did not want to increase any risk of the Bill not being brought forward. That then left the Department for Infrastructure with no option but to seek accelerated passage for a Bill in the Assembly. The Minister outlined to the Committee her disappointment with the approach adopted by DfT.

The Committee asked the Minister whether the Bill would include any delegated powers leading to subordinate legislation, and, if so, to which aspects of the Bill they would relate and to which type of Assembly procedure they would be subject. Departmental officials assured the Committee that there would be no subordinate legislation arising from the Bill.

I will outline the evidence received by the Committee on the need for the legislation. The Minister explained that domestic legislation restricts compulsory insurance to the use of motor vehicles on roads and in other public places, whereas case law suggests a much wider interpretation. Ultimately, that would mean that the Motor Insurers' Bureau here would be vulnerable to claims brought by victims of incidents on private land and, potentially, to fraudulent claims.

The Consumer Council, which represents the interests of Northern Ireland consumers, responded in support of the legislation and the approach being taken.

The Motor Insurers' Bureau, which represents the interests of the motor insurance industry, provided a detailed response, outlining why it believes that the legislation is necessary and why it considers the matter to be urgent. In acknowledging that the appropriate legislative process is a matter for the Assembly, the Motor Insurers' Bureau stated in its response that effecting legislative change as expeditiously as is procedurally possible, would:

> *"both limit the significant accruing liabilities which the MIB, motor insurers and – ultimately – Northern Irish drivers will be obliged to bear. Moreover, given the current progress towards removing Vnuk from the statute books in Great Britain and the European Union's recent mitigation of the effects of Vnuk, swift action will prevent the law in Northern Ireland lagging behind that of Great Britain and the EU, avoiding potentially damaging legal and regulatory divergence."*

The Association of British Insurers responded by fully supporting the Minister's position and the views expressed by the Motor Insurers' Bureau. The ABI also supports the view that the issue must be dealt with as a matter of urgency. It stated:

> *"it is entirely possible that delay in removing the effect of Vnuk from the law of Northern Ireland could lead to a divergence between the position in Northern Ireland and that in Great Britain and in the Republic of Ireland (as a Member State of the EU). It is therefore paramount, to both the insurance industry and motoring public, that the effect of Vnuk is removed from the law of Northern Ireland as swiftly as possible.*
>
> *Failure to do so risks: disadvantaging Northern Irish drivers, as compared to drivers in Great Britain and the Republic of Ireland, by requiring them to pay higher motor insurance costs (£50 per year, per policy according to the UK Government Actuary's Department); consequently, offering a perverse incentive for Northern*

Irish drivers to insure vehicles that are ordinarily used in Northern Ireland at addresses in Great Britain in order to access lower premiums. This would be fraudulent and criminal activity; expending police (and potentially other) resources investigating the use of vehicles on private land, including potentially fraudulent claims; the treatment of any motorsport collision taking place on private land as a regular road traffic accident, posing a threat to motorsport in Northern Ireland due to the financial implications of additional insurance costs."

Motorsport UK informed the Committee that it had collaborated extensively with the UK Government on the Westminster legislation. The organisation expressed its support for similar urgent legislation in Northern Ireland, given the sporting and commercial importance of motor sport in Northern Ireland and its contribution to sport in the wider United Kingdom.

The Ulster Farmers' Union wrote to the Committee to request legislative change as soon as possible. The reasons cited were as follows. The current legislation is considered unnecessary as, in many cases, there is insurance already in place to cover accidents. For example, farm businesses have employer liability and public liability insurance to cover accidents on private property. The Vnuk ruling is considered unenforceable and would require the mass registration of millions of new vehicles. It will present the police with the impossible task of checking registrations and the insurance of farm vehicles on private land. In addition, when accidents occur on private land, the police would find it extremely difficult to identify fault as, unlike on public roads, there would be limited witnesses and CCTV. It is also considered to be an unnecessary cost to farm businesses and Northern Ireland motorists. The Ulster Farmers' Union is of the view that the ruling risks adding £50 to the average insurance premium. The Ulster Farmers' Union also informed the Committee that the Vnuk ruling not only increases motor insurance premiums for farmers but means that farmers are required to have insurance for all their vehicles that are used on private land.

Having considered the evidence, the Committee for Infrastructure is of the view that the legislation is required urgently. The Committee therefore supports the Bill.

12.00 noon

Mr Boylan: I do not propose to speak for as long as the previous two Members did. Whilst the Bill is only a two-clause Bill, it is clear that it took a lot of definition and explanation. The most important thing is the impact that the Bill will have on our citizens.

Putting money into people's pockets is a priority for Sinn Féin. The Bill will help to prevent the increase in insurance premiums for drivers, which, according to some estimates, could be around £50. Everyone in the Chamber will agree that people are suffering enough from everyday pressures, not least the rise in energy prices. The last thing that they need is an increase in insurance premiums. I support the Bill.

Many families have endured a difficult winter, and we need to do everything that we can to support them. The Assembly needs to do everything that it can to help families and businesses and to tackle the cost-of-living crisis.

The Infrastructure Committee supported the Bill, as doing nothing would have meant increased insurance premiums and our domestic legislation being out of step with the case law. That retained law is a judgement that states that the mandatory requirement for insurance should be extended beyond the scope of our domestic legislation. As it stands, the compulsory third-party motor insurance requirement is limited to the use of motor vehicles on roads and other public places.

It is also worth noting that the EU intends to amend the legislation. I will not get into the detail of that; the Minister has explained it. The most important thing is that supporting the Bill will mean that there will be no impact on our citizens.

Ms Hunter: I, too, will be brief in my comments. I thank the Minister and her Department for introducing the Bill and the Committee for its universal agreement on the matter.

As the Minister and others have rightly stated, accelerated passage is not our preference, but many of us across the House want to do everything in our gift to prevent increased insurance premiums for our citizens. As Mr Boylan rightly stated, at a time when the cost of living is forever rising and families struggle immensely to keep the lights on and with food poverty, we should do everything in our power to prevent an increase in the cost of insurance premiums. I support the Bill at Second Stage.

Mr Beggs: Like other Members, I agree that we should all support the legislation. It is important that we do so.

Following the legal precedent of the Vnuk case, owners of motorised vehicles on private land, off public roads, are responsible for paying compensation. In the past, there were several routes to compensation from landowners or drivers, and many will have had separate insurance policies. However, the Vnuk case resulted in another route for compensation, the Motor Insurers' Bureau, which was not established to insure vehicles off-road on private land. That case law would result in additional accidents potentially drawing down funds from the collective payments that we all make — everyone who has private motor insurance contributes to a central pool to pay for accidents where there is no insurance or where the driver who caused the accident cannot be identified. The case law would considerably widen that to encompass many additional accidents on private land. It has been estimated that it will cost the UK as a whole £2 billion and cost individual insurance policyholders an additional £50 per annum for their motor insurance.

The accidents that would be covered would include those involving ride-on lawnmowers, motor sports, scramblers, trail bikes, golf buggies, scooters and, potentially — I pose the question — bicycles, if they were powered in some way. There would be a considerable widening of accidents, all of which would happen on private land. As others have indicated, that could make it much more troublesome to get independent confirmation of what had happened and increase the potential for fraud, as well as increasing our premiums.

A private Member's Bill that is going through Westminster is at an advanced stage. It will exempt policyholders in GB from the potential risks and, therefore, keep their premiums down. The question I pose is this: what would happen if Northern Ireland were not to provide that protection? Would we risk our involvement in the Motor Insurers' Bureau? That could be put at risk. In addition, many of our insurance policies are provided UK-wide. Yes, we may pay higher or lower premiums, depending on the risk, but generally they are similar to the policies that exist UK-wide. I have concerns that, if we got to a situation in which there were significantly different risks in Northern Ireland, some policies might not renew in Northern Ireland and there would be less competition.

For a wide variety of reasons, I support the Minister in bringing forth this short Bill. As has been indicated, it has two clauses. We have been advised that it replicates the changes that are happening in GB. I view it as there being limited risk, and it is essential that we correct the error that was created some time ago by the unintended consequences of case law. I note that clause 1 indicates, unusually, that it will not be applicable to accidents for which claims might come in historically, but I see just reason for that. I urge Members to support the legislation in order to keep costs down for everyone and for the households that already struggle to meet the wide range of increased costs they face as a result of increasing energy bills and other pressures on the economy.

Mr Muir: I rise in support of the Bill at Second Stage. It is important that the Bill be given passage by the Assembly, and I commend the Minister and her officials for introducing it. I am conscious of the positive impact that it will have on people across Northern Ireland. The Assembly should be about doing that: helping people and having a positive influence on their lives, not the contrary.

Motor insurance is a devolved matter for Northern Ireland, and the Bill removes the conflict between domestic legislation and retained EU case law. An existing statutory provision in the Road Traffic (Northern Ireland) Order 1981 restricts mandatory motor insurance to the use of motor vehicles on roads and in other public places. We are all conscious of the Vnuk judgement. Unless there is a change, there is an issue on which we will be in conflict with Great Britain, which is obviously progressing legislation in relation to that, in light of the vulnerability associated with those claims. We are aware of the background to this, and the Chair of the Committee outlined a bit more about the judgement that was passed. We need to take action, and we need to do so before the end of the mandate.

As I outlined at the beginning, the most important element is the cost that will be felt if we do not implement the Bill. Ultimately, it will be felt by the public through increased motor insurance premiums. The Bill will end the effect of the Vnuk decision, which is in retained EU case law. Failing to do that and, instead, implementing it in domestic legislation could see a £1·2 billion increase in insurance premiums across the UK. The judgement also places an additional financial pressure on our motor sports industry. A consultation was undertaken by the Department for Transport in 2016-17, and 94% of respondents opposed the implementation of the judgement in domestic legislation. Different rationales were outlined, particularly in relation to cost. A Bill is being brought through Westminster, and it will, I understand, extend to England, Scotland and Wales. I understand that it is currently in the

House of Lords, but the Minister can maybe confirm that.

Until the conflict is resolved, there is vulnerability for motor insurance claims for incidents on private land. The impact of not implementing the Bill will be felt by the public through the increased cost of motor insurance. There are many other Brexit-related issues that we will have to navigate over the coming weeks, months and years, and it is vital that we work together as we navigate our way through the implications as a result of EU exit. I support the Bill.

Ms Kimmins: I thank the Minister for bringing this stage of the Bill to the House. I, too, support the legislation, because it will effectively retain the status quo for domestic motor insurance. I appreciate that there was not enough time to get an Assembly Bill through by the conventional route in the current mandate, but I, too, stress that we must avoid taking this path at every possible juncture, because scrutiny is what we do here, and we need to use the correct procedures.

Domestic law restricts mandatory motor insurance cover to the use of vehicles on roads and other public places, however action is needed to prevent domestic legislation from being inconsistent with case law, which has a much wider interpretation, as others have alluded to. Removing the case law would effectively keep things the same and remove the inconsistency that would have serious implications for the Motor Insurers' Bureau and insurance premiums.

The Infrastructure Committee reached out to a number of groups on the legislation and the decision to take it through by accelerated passage. That included the Consumer Council, ABI and the MIB, to name a few, which all agreed with the way forward. I, too, support the Bill to prevent a rise in motor insurance premiums for everyday workers and families, because it has been estimated that, without the Bill, premiums could increase by £50, which is a lot in the current climate.

I will end on a wider note. We are in the middle of a cost-of-living crisis — we have all mentioned that today — and we need to help people with the pressures of everyday life that are hurting the most vulnerable most. It is a priority for me and for my party to support families and individuals at every turn. The cost-of-living crisis is especially impactful in the North, as, according to an income tracker, in 2021, families in the North had, on average, £143 a week of spare income at their disposal compared with £246 a week in England, Scotland and Wales. Addressing the cost-of-living crisis must be a priority for us, as representatives of families and workers across the North in these institutions, and we must do everything that we can to help people with the everyday pressures of life. The legislation would effectively retain the status quo in domestic motor insurance legislation and help to protect families and workers from any additional rises in the cost-of-living crisis.

Mr Principal Deputy Speaker: No other Member has indicated to me that they wish to speak in the debate. Therefore, I call the Minister to make a winding-up speech.

Ms Mallon: I thank the Chair of the Committee and all other Members who spoke for their constructive contributions to the debate. I thank the Committee Chair for comprehensively outlining the wide-ranging support for the Bill and for having its implementation as quickly as possible. I thank all Members for highlighting the impact if we delay in doing so, particularly the impact on households from higher insurance premiums at a time when they struggle to feed their families and to heat their homes.

I agree absolutely with Ms Kimmins about the importance of scrutiny. Unfortunately, my Department and I have been left in this position, and I very much regret the need to progress the Bill or any Assembly legislation in this way. However, accelerated passage offers the only opportunity to make the required changes in the current mandate, and I believe, particularly given the impact on struggling households, that it is essential that we amend the legislation in the current mandate.

Mr Beggs asked what the implications would be if the Bill were not passed, and he set out many of the implications if we were to fail to do that. I reiterate that it is important that we resolve the conflict in existing legislation as soon as we can. The successful passage of the Westminster Bill without corresponding provision in the North would serve only to highlight the continuing anomaly here and would potentially make the Motor Insurers' Bureau more vulnerable to legal challenges and fraudulent claims. Of course, as we have said on a number of occasions throughout the debate, it could also lead to higher insurance premiums for our citizens here.

12.15 pm

To answer Mr Muir's question, I confirm that the Westminster Bill is in the House of Lords. In the debate on accelerated passage for the Bill, Mr Muir raised a point about its not preventing us from making changes at a later date. I assure him that it does not prevent us from doing so, should that prove necessary. It would ensure, however, that any such changes can be made in a considered and controlled fashion, with full scrutiny.

In conclusion, I ask the Assembly to support the Bill's Second Stage.

Question put and agreed to.

Resolved:

That the Second Stage of the Motor Vehicles (Compulsory Insurance) Bill [NIA 53/17-22] be agreed.

Mr Principal Deputy Speaker: As the Bill is proceeding under the accelerated passage procedure, there will be no Committee Stage, and the Bill stands referred to the Speaker. I advise Members that, as Consideration Stage is scheduled for next week, the deadline for tabling amendments is 9.30 am tomorrow.

I ask Members to take their ease for five minutes or so.

Justice (Sexual Offences and Trafficking Victims) Bill: Consideration Stage

Mr Principal Deputy Speaker: I call the Minister of Justice, Mrs Naomi Long, to move the Consideration Stage of the Bill.

Moved. — [Mrs Long (The Minister of Justice).]

Mr Principal Deputy Speaker: Members have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in the provisional grouping of amendments selected list. There are two groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1 to 11 and amendment Nos 18 to 24, which deal with sexual offences and serious harm, anonymity, court proceedings and guidance. The second debate will be on amendment Nos 12 to 17, which deal with trafficking and exploitation.

I remind Members who intend to speak that, during the debates on the two groups of amendments, they should address all of the amendments in the group on which they wish to comment. Once the debate on each group has been completed, any further amendments in the group will be moved formally as we go through the Bill, and the Question on each will be put without further debate. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 (Voyeurism: additional offences)

Mr Principal Deputy Speaker: We come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 11 and amendment Nos 18 to 24. Within this group, amendment No 8 is consequential to amendment No 7. Amendment No 22 is consequential to amendment No 21. Amendment No 23 is consequential to amendment No 19. Amendment No 24 is consequential to amendment Nos 18 and 19. I call the Chairperson of the Committee for Justice, Mr Mervyn Storey, to move amendment No 1 and address the other amendments in the group.

Amendment Nos 1 and 2 not moved.

Mr Principal Deputy Speaker: As no amendments have been moved, we must dispose of clause 1 before returning to the group 1 debate.

Clause 1 ordered to stand part of the Bill.

Mr Principal Deputy Speaker: We now return to the group 1 amendments. I call the Chairperson of the Committee for Justice, Mr Mervyn Storey, to move amendment No 3 and address the other amendments in the group.

Amendment No 3 not moved.

Mr Principal Deputy Speaker: As no amendments have been moved, we must dispose of clause 2 before returning to the group 1 debate.

Clause 2 ordered to stand part of the Bill.

New Clause

Mr Principal Deputy Speaker: We return to the group 1 amendments. I call the Minister of Justice, Mrs Naomi Long, to move amendment No 4 and address the other amendments in the group.

Mrs Long (The Minister of Justice): I beg to move amendment No 4:After clause 2 insert—

*"**Abuse of position of trust: relevant positions***

***2A.**—(1) The Sexual Offences (Northern Ireland) Order 2008 is amended as follows.*

(2) In Article 2 (interpretation), after paragraph (4) insert—

'(4A) "The Department" means the Department of Justice.'

(3) In Article 28 (positions of trust), in paragraph (1)(b), for 'an order made by the Secretary of State' substitute 'regulations made by the Department'.

(4) After Article 29 insert—

'Positions of trust: further categories

29A.—(1) For the purposes of Articles 23 to 26, a person (A) is in a position of trust in relation to another person (B) if—

(a) A coaches, teaches, trains, supervises or instructs B, on a regular basis, in a sport or a religion, and

(b) A knows that A coaches, teaches, trains, supervises or instructs B, on a regular basis, in that sport or religion.

(2) In paragraph (1)—

'sport' includes—

(a) any game in which physical skill is the predominant factor,

(b) any form of physical recreation which is also engaged in for purposes of competition or display,

'religion' includes—

(a) a religion which involves belief in more than one god,

(b) a religion which does not involve belief in a god.

(3) Paragraph (1) does not apply where A is in a position of trust in relation to B by virtue of circumstances within Article 28.

(4) The Department may by regulations amend paragraphs (1) and (2) so as to add or remove an activity in which a person may be coached, taught, trained, supervised or instructed.'

(5) In Article 80—

(a) the heading becomes 'Orders and regulations',

(b) after paragraph (3) insert—

'(4) Regulations under Article 28(1)(b) or 29A(4) may not be made unless a draft of them has been laid before and approved by a resolution of the Assembly.

(5) Regulations under this Order may include any incidental, supplementary, consequential, transitory, transitional or saving provision which the Department considers necessary or expedient.'"— [Mrs Long (The Minister of Justice).]

The following amendments stood on the Marshalled List:

No 5: After clause 2 insert—

*"**Private sexual images: threatening to disclose***

***2B.**—(1) The Justice Act (Northern Ireland) 2016 is amended as follows.*

(2) In section 51 (disclosing private sexual photographs and films with intent to cause distress)—

(a) for subsection (1) substitute—

'(1) A person commits an offence if—

(a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual ('the relevant individual') appears,

(b) by so doing, the person intends to cause distress to that individual, and

(c) the disclosure is, or would be, made without the consent of that individual.",

(b) in subsection (2)—

(i) after 'disclose' insert ', or threaten to disclose,'

(ii) for 'the individual mentioned in subsection (1)(a) and (b)' substitute 'the relevant individual',

(c) in subsection (4), after 'disclosure' insert ', or threat to disclose,'

(d) in subsection (5), in each place, for 'the individual mentioned in subsection (1)(a) and (b)' substitute 'the relevant individual',

(e) after subsection (7) insert—

'(7A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

(a) that the photograph or film referred to in the threat exists, or

(b) if it does exist, that it is in fact a private sexual photograph or film.',

(f) for subsection (8) substitute—

(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.'

(3) In section 53 (meaning of 'private' and 'sexual'), in subsection (5), for 'the person mentioned in section 51(1)(a) and (b)' substitute 'the relevant individual (within the meaning of section 51)'.

(4) In Schedule 4 (private sexual photographs etc: providers of information society services)—

(a) in paragraph 3(1), after 'sub-paragraph (2)' insert ', (2A)',

(b) in paragraph 3(2), after 'if' insert ', in the case of information which consists of or includes a private sexual photograph or film,',

(c) after paragraph 3(2) insert—

'(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

(a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,

(b) that the threat was made with the intention of causing distress to that individual, or

(c) that the disclosure would be made without the consent of that individual.',

(d) in paragraph 4(2), for 'section 51' substitute 'section 52',

(e) for paragraph 4(3) substitute—

'(3) 'Information society service' means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).'"— [Mrs Long (The Minister of Justice).]

No 6: In clause 3, page 6, line 12, after "paying" insert—

"(which is not limited solely to the exchange of monies for this purpose)".— [Mr Storey (The Chairperson of the Committee for Justice).]

No 7: In clause 7, page 10, leave out lines 16 to 26 and insert—

"'information society service' means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);".— [Mrs Long (The Minister of Justice).]

No 8: In clause 7, page 10, leave out lines 33 to 37.*— [Mrs Long (The Minister of Justice).]*

No 9: In clause 15, page 16, line 10, after "court" insert—

"if satisfied that it is in the public interest or the interests of justice".— [Mr Allister.]

No 10: In clause 15, page 19, line 20, at end insert—

*"**Exclusion of public from appeal hearing***

***27E.**—(1) Paragraph (2) applies where a hearing is to be held by the Court of Appeal of any one or more of the following—*

(a) an application for leave to appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(b) an appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(c) an application for leave to refer a sentence in respect of a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing);

(d) a reference under that section of a sentence in respect of a serious sexual offence;

(e) an application for leave to appeal under section 12 or 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeals against findings of not guilty on ground of insanity and unfitness to be tried) in respect of a serious sexual offence;

(f) an appeal under either of those sections in respect of a serious sexual offence.

(2) The court must give an exclusion direction before the beginning of the hearing (but this is subject to paragraph (4)).

(3) Paragraph (2) applies whether or not the hearing relates to other offences as well as a serious sexual offence.

(4) Paragraph (2) does not apply if the time at which the exclusion direction would fall to be given (in the absence of this paragraph) is not within the lifetime of the complainant.

(5) Where an exclusion direction is given under this Article in relation to a hearing, the direction—

(a) has effect from the beginning of the hearing, and

(b) subject to paragraph (7), continues to have effect until, in respect of each relevant application or appeal to which the hearing relates, either—

(i) a decision has been made on the application or appeal, or

(ii) the application or appeal has been abandoned.

(6) In paragraph (5) a 'relevant application or appeal' means any application, appeal or reference mentioned in paragraph (1).

(7) The exclusion direction does not have effect during any time when any of the following decisions is being pronounced by the court—

(a) a decision to grant or refuse leave to appeal;

(b) a decision on an appeal;

(c) a decision to grant or refuse leave to make a reference under section 36 of the Criminal Justice Act 1988;

(d) a decision on such a reference.

(8) In this Article—

'complainant' has the meaning given by Article 27A(7), reading the reference in Article 27A(7) to the trial as a reference to the hearing;

'effect' has the same meaning as in Article 27A (see Article 27A(7));

'exclusion direction' is to be read in accordance with Article 27F(1);

'sentence' has the same meaning as in Part 1 of the Criminal Appeal (Northern Ireland) Act 1980;

'serious sexual offence' has the same meaning as in Article 27A (see Article 27A(7)).

(9) A reference in this Article to a hearing is not to be taken to include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that are of a kind which (ignoring this Article) are not held in open court.

Exclusion from appeal hearings: further provision

27F.—(1) Subject to paragraph (5), in Article 27E and this Article "exclusion direction" has the meaning given by Article 27A(2).

(2) The following provisions apply in relation to exclusion directions given under Article 27E as they apply in relation to exclusion directions given under Article 27A—

(a) Article 27B(1) to (3), (5) and (6);

(b) Article 27C; and

(c) Article 27D(1) to (4).

(3) As well as being subject as mentioned in Article 27D(4), an exclusion direction given under Article 27E has effect subject to section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (right of accused to be present at hearing of appeal and limitations on that right).

(4) Rules made under section 55 of the Judicature (Northern Ireland) Act 1978 may make provision about any matter mentioned in paragraph (4) of Article 27B or paragraph (5) of Article 27D (reading the references in those paragraphs to Article 27A(2)(c) and (d), Article 27B(6) and Article 27C(3) as references to those provisions as applied by this Article).

(5) In their application by virtue of this Article, Article 27A(2) and the provisions mentioned in paragraph (2)(a) to (c) are to be read as if—

(a) in the definition of 'the complainant' in Article 27A(7), the reference to the trial were a reference to the hearing, and

(b) in the definition of 'persons directly involved in the proceedings' in Article 27A(7), sub-paragraph (e) were omitted."— [Mrs Long (The Minister of Justice).]

No 11: After clause 15 insert—

*"**Guidance about Part 1***

***15A.**—(1) The Department of Justice must issue guidance about—*

(a) the effect of this Part, and

(b) such other matters as the Department considers appropriate as to criminal law and procedure relating to Part 1 in Northern Ireland.

(2) The guidance must include—

(a) information for use in training on the effect of this Part as it considers appropriate for its personnel, and

(b) the sort of information which it seeks to obtain from personnel for the purpose of the assessment by it of the operation of this Part.

(3) Personnel in subsection (2) being any public body that has functions within the criminal justice system in Northern Ireland which the Department of Justice considers appropriate.

(4) A person exercising public functions to whom guidance issued under this Part relates must have regard to it in the exercise of those functions.

(5) The Department of Justice must—

(a) keep any guidance issued under this Part under review, and

(b) revise any guidance issued under this Part if the Department considers revision to be necessary in light of review.

(6) The Department of Justice must publish any guidance issued or revised under this section.

(7) Nothing in this Part permits the Department of Justice to issue guidance to a court or tribunal."— [Mr Storey (The Chairperson of the Committee for Justice).]

No 18: After clause 19 insert—

"CHAPTER 2

CAUSING OR RISKING SERIOUS HARM

Consent to harm for sexual gratification is no defence

***19A.**—(1) For the purpose of determining whether a person ('A') who inflicts serious harm on another person ('B') is guilty of a relevant offence, it is not a defence that B consented to the infliction of the serious harm for the purpose of obtaining sexual gratification.*

(2) The reference in subsection (1) to obtaining sexual gratification is to obtaining it for any person (whether for A, B or some other person).

(3) In this section—

'the 1861 Act' is the Offences Against the Person Act 1861,

'relevant offence' means any of these—

(a) an offence under section 18 of the 1861 Act,

(b) an offence under section 20 of the 1861 Act,

(c) an offence (but not common assault) under section 47 of the 1861 Act,

'serious harm' means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act.

(4) However, this section does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

(a) the serious harm consists of, or is a result of, the infection of B with a sexually transmitted infection in the course of sexual activity, and

(b) B consented to the sexual activity in the knowledge or belief that A had the sexually transmitted infection.

(5) Nothing in this section affects the operation of any rule of law, or any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954), relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence."— [Mrs Long (The Minister of Justice).]

No 19: After clause 19 insert—

*"**Offence of non-fatal strangulation or asphyxiation***

***19B.**—(1) A person ('A') commits an offence if the first and the second conditions are met.*

(2) The first condition is that A intentionally—

(a) applies pressure on or to the throat or neck of another person ('B'), or

(b) does something to B, of any other sort, amounting to battery of B.

(3) The second condition is that A—

(a) intends A's act to affect B's ability to breathe or the flow of blood to B's brain, or

(b) is reckless as to whether A's act would affect B's ability to breathe or the flow of blood to B's brain.

(4) An offence under this section is committed irrespective of whether in fact A's act affects B's ability to breathe or the flow of blood to B's brain.

(5) An offence under this section can be constituted by virtue of A's act irrespective of how A's act is done (for example, by use of a hand or another part of A's body or by A making use in any way of an object of any kind).

(6) It is a defence to an offence under this section for A to show that B consented to A's act, but the defence is not available if—

(a) B suffers serious harm as a result of A's act, and

(b) A—

(i) intended A's act to cause B to suffer serious harm, or

(ii) was reckless as to whether A's act would cause B to suffer serious harm.

(7) No question as to B's consent to A's act may be considered for the purpose of this section unless the question is relevant in relation to the defence in this section.

(8) The matter of B's consent on which the defence in this section may be based is to be taken to be shown by A if—

(a) evidence adduced is enough to raise an issue with respect to the matter, and

(b) the contrary with respect to the matter is not proved beyond reasonable doubt.

(9) If—

(a) an act is done in a country or territory outside the United Kingdom,

(b) an offence under this section would be constituted by virtue of the act if done in Northern Ireland, and

(c) the person who does the act is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits an offence under this section as if the act is done in Northern Ireland.

(10) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) In this section—

'the 1861 Act' is the Offences Against the Person Act 1861,

'serious harm' means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act,

'United Kingdom national' means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of the British Nationality Act 1981.

(12) Schedule 4 contains consequential amendments in connection with this section."— [Mrs Long (The Minister of Justice).]

No 20: In clause 21, page 21, line 20, leave out paragraph (a) and insert—

"(a) sections 16 to 19A,".— [Mrs Long (The Minister of Justice).]

No 21: In schedule 3, page 27, leave out lines 18 to 28 and insert—

""information society service;' means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);".— [Mrs Long (The Minister of Justice).]

No 22: In schedule 3, page 27, leave out lines 33 to 36.— *[Mrs Long (The Minister of Justice).]*

No 23: After schedule 3 insert—

"SCHEDULE 4

OFFENCE OF NON-FATAL STRANGULATION OR ASPHYXIATION: CONSEQUENTIAL AMENDMENTS

Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

1. In Article 53A (qualifying offences for particular investigative purposes), in paragraph (2)—

(a) the second of the two sub-paragraphs numbered as (t) is renumbered as (u),

(b) after the second of those two sub-paragraphs insert—

'(v) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Sexual Offences Act 2003 (c. 42)

2. In Schedule 5 (lists of offences for making particular orders), after paragraph 171G insert—

'171H An offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Criminal Justice (Northern Ireland) Order 2008 (NI 1)

3. In Schedule 2 (lists of offences for sentencing matters), in Part 1—

(a) the second of the two paragraphs numbered as 31A is renumbered as 31B,

(b) after the second of those two paragraphs insert—

'The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

31C An offence under section 19B (non-fatal strangulation or asphyxiation).'

Domestic Violence, Crime and Victims Act 2004 (c. 28)

4. In section 7A (certain rules of evidence and procedure), after paragraph (b) of subsection (2) insert—

'(c) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI 14)

5. In Article 2 (unjustifiable punishment of children), in paragraph (2)—

(a) omit the 'and' preceding sub-paragraph (e),

(b) after sub-paragraph (e) insert—

'(f) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'"— [Mrs Long (The Minister of Justice).]

No 24: In the long title, leave out "rules applying with respect to certain sexual or violent offences prevention orders" and insert—

"certain rules of law and procedure for the purpose of protecting people from harm".— [Mrs Long (The Minister of Justice).]

Mrs Long (The Minister of Justice): In moving amendment No 4, I want to speak to the amendments tabled in my name and those tabled by others. With your indulgence, Mr Principal Deputy Speaker, I would like to take this early opportunity to register my personal thanks to the Committee for Justice for its support and commitment in completing the scrutiny of the complex provisions of the Bill and of my proposed amendments in a very short time frame.

I appreciate that my challenging legislative programme, progressing five Bills to legislation over two years, has generated an intense period of activity for the Committee and placed considerable demands on its members. I would like to thank current and previous Chairs, Deputy Chairs, members and, indeed, officials for their continuing engagement and commitment throughout this period. I am most grateful to the Committee for supporting the Bill at its introduction and for supporting the amendments that I tabled for debate at this

stage. I intend to speak to my amendments in the first instance, and, as part of that approach, I will address Jim Allister's amendment to clause 15. I will then speak to the Committee's amendments before handing over to others to raise any points that they wish to make on the amendments that have been tabled today.

The Bill that I introduced to the Assembly in July 2021 has two key principles: to enhance public safety by implementing certain elements of the report of the Gillen review of serious sexual offence cases and the parallel review of the law on child sexual exploitation and sexual offences against children; and to improve services for victims of trafficking and exploitation.

The package of amendments that are tabled in my name, the first of which is amendment No 4 and which relates to the abuse of positions of trust, will expand the public protection elements of the Bill.

Amendment No 4 extends the existing legislation covering abuse of positions of trust of a child, which is in articles 23 to 31 of the Sexual Offences (Northern Ireland) Order 2008. Offences under articles 23 to 26 of the 2008 Order currently apply only where the position of trust is in the context of a statutory responsibility, covering areas such as education, state care and criminal justice.

The aim of the abuse of trust provisions is to protect young people who are in particular situations where there is some element of dependency on an adult that is often combined with an element of vulnerability on the part of the young person. The offences are not intended to cover all situations where an adult might have contact with or a supervisory role over under-18s. Rather, they are intended to capture those relationships where there is a significant imbalance in power between the adult and child and where there is scope for that position of trust to be abused. It is crucial that a careful balance is maintained. While the provisions seek to protect all under-18s by virtue of the Northern Ireland statutory age of sexual consent, they primarily relate to persons who are aged 16 or 17. The amendment builds on the existing provision to bring additional persons who are outside the statutory sector within the scope of the offences.

I had originally intended to develop that proposal for introduction in the next mandate. However, responding to recent developments in other jurisdictions and to a growing number of requests for the law in Northern Ireland to be changed, I decided that that important additional protection should be provided now.

The amendment proposes to extend the current provisions for abuse of positions of trust of a child to cover the abuse of positions of trust held in sports and faith settings. Proposed new clause 2A(4) inserts new article 29A into the 2008 Order. Proposed new article 29A(1)(a) brings within the scope of the abuse of trust defences those adults who coach, teach, train, supervise or instruct a child under 18 on a regular basis in a sport or religion. Proposed new article 29A(1)(b) provides for a new requirement that the adult person knows that they coach, teach, train, supervise or instruct the child under 18 on a regular basis in that sport or religion. That requirement is additional to the reasonable belief requirements, and the associated evidential burden is set out in the existing abuse of trust offences.

The aim of the additional requirement is twofold: first, to prevent the positions of trust being drawn too broadly; and, secondly, to strengthen the requirement for a prior connection or contact between the adult who is in the position of trust and the young person. For example, it would cover the situation where an adult regularly preaches to a congregation of people where they have never personally met the young person and do not know that the young person is a member of their congregation. In such a situation, the adult will not be considered to be in a position of trust over the young person.

Proposed new article 29A(2) defines "sport" and "religion" for the purposes of article 29A(1). "Sport" is defined as including:

> *"any game in which physical skill is the predominant factor"*

and:

> *"any form of physical recreation which is also engaged in for purposes of competition or display".*

"Religion" is defined as including:

> *"a religion which involves belief in more than one god"*

and:

> *"a religion which does not involve a belief in a god."*

Proposed new article 29A(3) provides that anyone who is considered to already be in a position of trust under existing article 28 of the 2008 Order is not brought within the scope of the proposed new provisions.

The four offences to which those provisions apply and the available penalties remain unchanged. The offences are: sexual activity with a child; causing or inciting a child to engage in sexual activity; sexual activity in the presence of a child; and causing a child to watch a sexual act.

I know that some of those giving evidence to the Committee during its scrutiny of the Bill thought that the scope of those provisions should be wider. The draft provisions are based on the evidence that has been presented to date and on the particular concerns and risks that were identified by stakeholders. They were developed following my Department's review, consultation and engagement on the issues that are involved and were informed by detailed examination of the experience of other jurisdictions. That work involved my officials working in close partnership with the NSPCC, to which I add my thanks.

12.30 pm

The proposed provision will extend the scope of the legislative definition of a person in a position of trust to those areas where the evidence presented to date is strongest: those of sport and religious settings. To extend the law beyond the proposed settings would require a more extensive consultation and engagement process in order to identify and fully explore any particular areas of potential concern to ensure that legal intervention would be required. I have grave concerns about widening the scope of the provisions beyond what I propose in advance of that sufficient, robust evidence being secured to warrant such a further extension.

In extending the provisions, I am conscious of the importance of achieving a proportionate balance between protecting our young people in vulnerable situations and respecting their right to give legal consent to sexual activity from the age of 16. Framing the positions of trust too widely runs the risk of over-criminalising young people who could be considered to be breaking the law: for example, a person aged 18 having a consensual sexual relationship with a person aged 16 or 17. Those with innocent intention who are enjoying a healthy relationship should not be inappropriately criminalised. Without careful targeting, abuse of trust provisions could prohibit any person over 18 having sex with anyone aged 16 or 17, effectively raising the age of sexual consent by stealth. That could well attract legal challenge based on the rights of an individual defined under article 8 of the ECHR, the right to respect for private and family life, which would be directly engaged.

It is crucial that a robust definition for the offences is established in order to promote clarity as to the application of the law and to withstand potential legal challenge. An inappropriate widening of the scope of the offences also has the potential to dilute their relative effectiveness. It is important that the law is strong and clear in its intent. I am content that limiting the extension of the abuse of trust offences to the categories set out in my amendment will achieve that. The amendment will ensure that further protection is focused on areas where a need for legal intervention has been clearly evidenced.

I stress that the abuse of position of trust provision comprises only one element of the wider, robust legislative framework used by the PSNI and the Public Prosecution Service (PPS). That provides very extensive and significant protections to young people from the harm caused by sexual offending. The framework makes it an offence for anyone to engage in sexual activity with someone under the age of 16, whether or not they consent to that activity. Where an offender in a case is in a position of trust, that will always be treated as a significant aggravating factor by the courts at the point of sentencing. However, I am keeping the door open on the policy, should there be future evidence of a further gap in protection. With that in mind, new article 29A(4) provides for an enabling power to allow further sectors to be brought within or removed from the scope of the provisions. Any such change would be made by way of regulations subject to the Assembly's draft affirmative procedures. There would be no requirement to wait for primary legislation, should sufficient evidence to support a future change be presented.

Amendment No 5 proposes a new offence of threats to disclose private sexual photographs and films with intent to cause distress. Section 51 of the Justice Act (Northern Ireland) 2016 already provides for the offence of disclosing private sexual photographs and films, an offence introduced as an amendment to the then Justice (No. 2) Bill by the Justice Committee of the time. The original provisions were based on the disclosure offence in England and Wales. I propose to extend the scope of that offence to include threats to disclose such images. I had originally committed to a review of the disclosure offence; it is important, however, to provide for that

despicable offence now and to take the opportunity offered by the Bill to close a significant legislative gap.

Following the recent amendment of the disclosure provisions in England and Wales, which our proposed provisions mirror, we are now the only part of the UK that has not made threats to disclose an offence. Threats of that type are often used by partners or ex-partners of victims as a means of coercive control. They can make leaving an abusive relationship even more difficult, with the threat being used as a means of forcing the victim to remain for fear of the impact of the threatened disclosure. Such threats can cause serious psychological harm to victims and have significant and long-lasting negative impacts on the lives of those threatened.

Research published last year by the domestic violence charity Refuge found that one in seven young women have received threats that intimate photos will be shared without their consent.

Although that research is not specific to Northern Ireland, it gives an indication of the likely scale of the problem here. When speaking to victims, I have been shocked by the anguish and distress that is being caused by such threats. Amendment No 5 will provide equality of protection for those in our community who are affected by such threats. It sends out a very clear message that that form of intimidating and coercive behaviour cannot and will not be tolerated. Before I move on to the detail of the amendment, I assure the Assembly that the fundamental elements of the existing offence remain unchanged.

Under proposed new clause 2B(2), the existing offence is extended in scope to provide that it would be an offence for a person to make a threat to another individual to disclose a private sexual photograph or film in which that individual appears without their consent and with the intention of causing them distress. All but one of the remaining paragraphs in subsection (2) are technical amendments that are required to bring the remaining elements of the disclosure offence within the scope of the new offence. That includes all relevant definitions in section 51 the Justice Act (Northern Ireland) 2016 and the defences that are available to a defendant charged with a disclosure offence under that section. The one exception is the proposed provision detailed in clause 2B(2)(e), which will insert a new subsection into section 51 of the Act, providing:

> *"Where a person is charged with an offence ... of threatening to disclose ... it is not necessary for the prosecution to prove—*
> *(a) that the photograph ... exists, or*
> *(b) if it does exist, that it is in fact a private sexual photograph or film."*

The sanctions for the new offence are consistent with the existing disclosure offence, where the available penalty on summary conviction is up to six months' imprisonment, a fine or both. On conviction on indictment, the penalty is up to two years' imprisonment, a fine or both.

I also highlight proposed new clause 2B(4), which will amend schedule 4 to the Justice Act (Northern Ireland) 2016. Schedule 4 to the 2016 Act relates to special rules for information society service providers. Those rules provide certain online service providers with protection from prosecution when they are merely storing, caching or hosting information and are unaware of illegal content. The amendment to the schedule is required in order to bring the offence of threats to disclose within the liability restrictions. Were such rules to be amended, devolved Administrations would be required to liaise with the UK Government to ensure that any amended draft provisions comply with their current position on intermediary liability.

The existing schedule 4 makes reference to the e-commerce directive, which sets rules that limit the legal liability that member states may impose on online intermediaries. The post-Brexit transition period has ended, so the e-commerce directive has ceased to have effect in the UK. The UK Government's policy, however, is that restrictions on intermediary liability should continue on a case-by-case basis. As a consequence, references to the directive are required to be removed from all new domestic legislation that falls within the scope of the UK's liability regime. That also necessitates a revised definition of "information society services". The amendment to the schedule in no way changes the scope of the provision. It simply involves a technical amendment to remove the reference to the e-commerce directive from the definition. The details in the amended definition are otherwise the same.

Similar liability restrictions for online service providers are included in clause 7 of the Bill, which relates to a breach of the extended anonymity of victims in sexual offence cases, and in schedule 3 to the Bill, which relates to the offence of a breach of anonymity of the suspect in a sexual offence case. Those provisions were drafted prior to the end of the

post-Brexit transition period, so they contain reference to the e-commerce directive and require similar consequential amendments. I refer Members to my amendment Nos 7, 8, 21 and 22. Those amendments will ensure compliance with the UK Government's policy on intermediary liability and will also provide consistency of drafting in the Bill.

The next of my amendments, which is amendment No 10, will ensure that the additional protections that are afforded to victims of serious sexual offences by clause 15 of the Bill will not be undermined by allowing the public at large to attend appeal hearings.

Before speaking to my amendment No 10, however, I will address amendment No 9 to clause 15, which Jim Allister tabled. The provisions in clause 15 place a duty on the court to give an exclusion direction where a person is to be tried on indictment for a serious sexual offence. The exclusion direction would apply from the beginning of the trial and would ensure that only those with a specific role in court proceedings, as prescribed in the direction, remain in the court. The Member's amendment proposes to amend clause 15 to provide that an exclusion direction can be made at the discretion of the court, where the court considers that it is in the public interest, or in the interests of justice, to do so. In practice, that would mean that decisions on whether the public are excluded from the court would be decided on a case-by-case basis.

The high-profile rape trial in 2018, which was heard over 40 days to a packed public gallery, threw into the spotlight the many issues that affect the progress of serious sexual offence cases through the criminal justice system. The proposals in clause 15 for the exclusion of the public, and other measures in the Bill to further enhance the anonymity of the victim, implement recommendations that were made in the Gillen review of law and procedures in serious sexual offences, which was established in the wake of that trial. People may argue that that case was the exception, and that exceptions make bad law, but my proposals to change the law, and to provide for the exclusion of the public, are not a knee-jerk reaction to an exceptional case. That case led to Sir John's review. That review, however, involved an extended period of local, national and international research, followed by consultation with victims and their families; defendants and their families; the criminal justice agencies; and various support agencies. Such a review was long overdue to address the many issues that have long affected reporting and attrition rates by victims in such cases.

From his conversations with victims and their families, Sir John recorded that the reasons for fear of reporting included the sense of trepidation at the prospect of laying bare their most humiliating experience openly before the public, reflecting their feelings of shame and embarrassment in reporting the crime in the first place. The aim of clause 15 is to provide certainty for the victim of a serious sexual offence that, when the case comes to court, they will not have to give evidence about intimate and harrowing details in front of a public gallery. The Member's amendment would remove that certainty and mean that the police and the Public Prosecution Service would be unable to reassure victims that, if they decided to proceed with the case, the public would be excluded from the court.

That certainty is one of the most important aspects of my proposals in clause 15. The ability of the court to exclude the public where it is in the interests of justice to do so is already provided for in legislation. However, the review found that it is rarely used. That illustrates the need to provide certainty by placing a duty on the court to give an exclusion direction. A case-by-case approach, as the amendment proposes, would result in uncertainty for complainants and potential inconsistency in approach across different courts and localities.

Mr Allister: Will the Minister give way?

Mrs Long: I will.

Mr Allister: The Minister will be aware that article 6 of the European Convention on Human Rights guarantees an individual a fair trial and a public hearing, with exceptions for cases in which there is a determination that there should not be a public hearing. When the Human Rights Commission gave evidence to the Committee, it was very clear:

> *"this ... special measure ... should only be used where ... a ... need is identified. ... this would suggest that the consideration of such a measure should be taken on a case-by-case basis, taking account of the individual circumstances of the case."*

The Human Rights Commission, reflecting the basic provisions of article 6 of the ECHR, is saying to the House, "Take it on a case-by-case basis". However, the Minister is saying to the House, "Impose a blanket ban, with no regard to case-to-case needs". Surely that is draconian beyond description.

Mrs Long: I recognise the importance of cases being open to the public and to public scrutiny, but many of us were profoundly affected as we watched people, who had travelled to Belfast, sit in a courtroom for their entertainment and watch a high-profile trial. Those people had neither an interest in the subject matter nor a connection with the case, but they found the spectacle of a court case to be a way of passing the time.

12.45 pm

Mrs D Kelly: I thank the Minister for giving way. Will she agree that, often, it is the victim who is on trial in such circumstances and that this would provide some degree of comfort to the many victims of sexual and domestic violence who have not come forward for fear of how their personal details and lives would be trailed across social media and public forums?

Mrs Long: The Member is, of course, right. That was exactly the context that I set out when I explained our rationale for the change. It is not something that the Department would choose to do lightly, because we recognise the importance of open justice and of people being able to see what happens. The courts can already decide to exclude people on a case-by-case basis. However, what this gives and what the case-by-case approach does not is certainty to victims and defendants that, when they give evidence in court, their anonymity will be protected and, in particular, that we will not end up with the kind of jigsaw identification that has, unfortunately, subjected many people who have come forward to give evidence in a case of that nature to speculative guesswork in the community as to who they might be.

We are trying to provide that to victims in line with the work that we have done with the judiciary. As I said, Sir John Gillen had extensive discussions with victims across the board with regard to ensuring that we would do it in a proportionate way. Of course, the judge has final discretion. Someone may have good reason to be there — for example, there will still be reporting of the case — so it is not as though the public will be unaware of the case or what is happening in it. It is about trying to exclude from the court people who have no business being there and who want access to the court for no reason other than nosiness or interest — call it what you wish. There is nothing to stop someone who believes that they have an interest making an application to the judge to sit in the public gallery and observe proceedings; for example, if that were necessary as a training exercise or, as I say, if the person was a member of the press, who will be routinely admitted to the court.

The fact that the case-by-case approach is used so rarely is evidence that it is insufficient to deal with the underlying problem that we face, which is that victims feel intimidated by the thought of having to open up about some of their most private, humiliating and traumatic experiences, knowing that there are people sitting in the gallery simply passing time. For the protection of victims, other witnesses and the defendant, such matters should not be aired in that kind of forum. The case-by-case approach, therefore, continues the uncertainty for complainants and a potential inconsistency that is unhelpful. Of course, as I have said, in a small jurisdiction like Northern Ireland, the need for certainty is critical to the protection of victims, but it is also important where cases are heard in local courts and the attendance of local residents — even family and friends — will lead to that jigsaw identification of the victim. Even where special measures are used, such as screens to protect the physical identity of a victim, voice recognition can lead to jigsaw identification.

The importance of the anonymity of the victim in serious sexual offence cases has long been recognised. Clause 15 provides certainty to complainants that the criminal justice system will further protect their anonymity and privacy and shield them from the pain and distress of recounting intimate and harrowing details in front of the general public. I hope that that certainty will enable victims to have greater confidence in the justice system and that more people will feel able to report when they have been the victim of a sexual offence, rather than suffer in silence.

As regards the concern that clause 15 interferes with the principle of open justice, under the proposals, bona fide representatives of news-gathering or reporting organisations are excepted from the exclusion direction, as are a relative or friend nominated by the complainant and the accused. The court also has the discretion to exempt any other person from the exclusion direction where it is in the interests of justice to do so. Press reporting of legal proceedings is an extension of the concept of open justice. It safeguards public interest and transparency in the courts and maintains public confidence in the judicial process. The certainty provided by clause 15 is fundamental to the protection that it offers. I therefore do not support the amendment from Mr Allister, and I urge other Members to join me in voting against it at the appropriate point, later in the proceedings.

My amendment No 10 will ensure that the additional protections afforded to victims of serious sexual offences by clause 15 will not be undermined by allowing the public at large to attend appeal hearings. The Gillen review concluded that the unrestricted access of the public to trials of serious sexual offences deterred, humiliated and intimidated complainants. As I have said, it warrants repetition: giving evidence at trial can be a terrible ordeal for victims, and it is made even more harrowing by having to discuss intimidate details in front of a public gallery. Sir John's recommendation for exclusion of the public was limited to trials in the Crown Court in serious sexual offence cases. However, the process in the Court of Appeal is such that the complainant and other witnesses can be called to give evidence. While that may not be a common occurrence, it is important that the level of protection provided to the victim's privacy and anonymity by clause 15 is also made available in the Court of Appeal.

Mr Allister: Will the Minister give way?

Mrs Long: I will continue.

It is important that victims have certainty that, should a case go to appeal, the general public will not be in the court. The amendment adds new articles 27E and 27F to the provisions to be inserted into the Criminal Evidence (Northern Ireland) Order 1999 by clause 15. The new articles impose a duty on the court to give an exclusion direction where there is an appeal or application for leave to appeal against a conviction or sentence for a serious sexual offence. The appeal hearings to which an exclusion direction will apply are applications for leave to appeal or appeals against conviction or sentence in serious sexual offence cases; referrals of sentence in serious sexual offence cases under section 36 of the Criminal Justice Act 1988, which are referrals of sentences made by the director of the Public Prosecution Service to the court on appeal on the grounds of undue leniency; and applications for leave to appeal against findings of "Not guilty" on the grounds of insanity and unfitness to be tried.

Under the provisions, all persons are excluded from the court with the exception of members and officers of the court, persons directly involved in the proceedings, a relative or friend of the complainant as nominated by the complainant, a relative or friend of the accused as nominated by the accused, bona fide representatives of news-gathering or reporting organisations and any other person excepted from the exclusion direction at the discretion of the court where it is in the interests of justice to do so. In addition to the accused and the complainant, persons directly involved in the proceedings are legal representatives acting in the proceedings, any witness while giving evidence in the proceedings and any person acting in the capacity of an interpreter or other person appointed to assist a witness or the accused.

Recognising how harrowing the court experience can be for victims of serious sexual offences, the provisions allow the complainant and the accused to nominate a relative or friend to remain in the court. The court can then specify the nominated persons as excepted from the exclusion direction and therefore allowed to remain in the court. The court can exercise that power either on application by a party to the proceedings or of its own motion where it is in the interests of justice to do so.

I could offer a lot more detail on the amendment. However, I believe that, in setting out the main points as I have, I have assured Members that, in cases where the complainant and other witnesses can be called to give evidence in the Court of Appeal, the amendment will ensure that they will not be further humiliated or intimidated by having to discuss such details in front of the general public.

I now wish to move to amendment Nos 18, 19 and 23, which are aimed at dealing with causing or risking serious harm.

Amendment No 18 inserts new clause 19A into the Bill. The purpose of the new clause is to place in legislation the current common law proposition, expressed in the 1993 case of R v Brown, that it is not a defence to claim that a person consented to their own serious harm for the purposes of sexual gratification. That is often referred to as the "rough sex defence". It is not a term that I am particularly comfortable with. The case of Brown involved a group of men involved in consensual sadomasochistic activity. In upholding their convictions for assault occasioning actual bodily harm, the House of Lords confirmed that a person cannot consent to their own serious harm.

Subsequent cases have cast some doubt on the extent of the application of the rule, and concerns have been raised over a perceived lack of awareness and understanding of the common law position. Research shows that a significant percentage of women experience unwanted behaviour, such as slapping, choking and gagging, during consensual sex. The rough sex defence has been the subject of

considerable media attention following a series of cases where so-called rough sex was claimed to have gone tragically wrong, including in the case of backpacker Grace Millane in New Zealand, Natalie Connolly and, more recently, Sophie Moss. Having the position set out in legislation will clarify the law and ensure that a person may not rely on consent as a defence where serious harm occurs. The Assembly must respect individuals' freedom to choose to act as they wish within their intimate relationships. However, it is also incumbent on us to intervene to prevent serious harm and to protect those who may be vulnerable.

Mr Principal Deputy Speaker: May I stop the Minister there?

Mrs Long: You may.

Mr Principal Deputy Speaker: I am grateful to the Minister for allowing me to stop her.

It is 12.55 pm. The Business Committee has agreed to meet at 1.00 pm. I therefore propose, by leave of the Assembly, to suspend the sitting until 1.30 pm. When the sitting resumes, the Member to speak will be the Minister.

The debate stood suspended.

The sitting was suspended at 12.55 pm.

1.30 pm

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

Debate resumed.

Mrs Long: I will pick up where I left off on the need for the Assembly to respect individuals' freedom to choose to act as they wish in their intimate relationships. However, we also recognise that it is incumbent on us to intervene to prevent serious harm and to protect those who may be vulnerable. With that in mind, proposed clause 19A provides that, where serious harm occurs, it is not a defence to a relevant offence that the person consented to the infliction of that harm for the purpose of obtaining sexual gratification. It does not matter who derives the sexual gratification, whether it be the defendant, the injured party or another person. Relevant offences are defined as the offences of assault occasioning actual bodily harm; wounding with intent to cause grievous bodily harm; and grievous bodily harm under the Offences against the Person Act 1861. Serious harm is defined in accordance with the provisions of the 1861 Act for each of those offences. An exception is included for cases where a person is infected with a sexually transmitted infection, provided they knew about the infection and the activity was consensual. That exception reflects the common law position and ensures that a person can rely on their partner's consent, should the infection be transmitted in such cases. Importantly, it also recognises the party's article 18 ECHR rights. Finally, the clause clarifies that no enactment or rule of law:

> *"relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence"*

will be affected. Established exceptions include such matters as receiving medical treatment or participating in an organised sporting contest such as a boxing match. Enacting the clause will align Northern Ireland with the law in England and Wales, where a similar provision was included in the Domestic Abuse Act 2021.

The last of my amendments that introduce substantial new policy content are amendment Nos 19 and 23, which introduce new clause 19B and schedule 4 to create a new stand-alone offence of non-fatal strangulation. Strangulation can cause a variety of effects on the body ranging in seriousness and, sadly, in some cases, causing death. It can be used

consensually in intimate relationships but can also be used to instil fear and exert control in abusive relationships, or it may be a purely violent act. Leaving consensual acts aside, research shows that those who use strangulation in an abusive context can be extremely dangerous. Studies have shown strangulation to be a regular feature in relationships that ended in domestic violence killings. Those who use strangulation have been found to be up to eight times more likely to go on to commit more serious offences against their partners. The true scale of the problem in Northern Ireland is not known. PSNI records show 502 charges of strangulation between 2002 and 2019. Of those, only 20 resulted in a prosecution for strangulation. The low numbers leading to prosecution reflect the limitations of the existing offence of strangulation. Under the Offences against the Person Act 1861, strangulation can be charged only in the Crown Court and only where there is also proof of an intention to commit a further indictable offence.

As a result, prosecutors often have no choice but to charge a person with other assault offences that do not recognise the unique nature of strangulation and do not always adequately address the harm done.

Clause 19B introduces a new free-standing offence, similar to that which was included in the Westminster Domestic Abuse Act in 2021. Having listened closely to experts in the field and having given careful consideration to responses to the public consultation, we have developed what I consider to be clearer and more inclusive text for this clause. Under the clause, an offence is committed if two conditions are met. The first condition is that a person:

> *"applies pressure on ... the throat or neck of another person"*

or does some other act that amounts to battery. The second condition is that they intended to affect the other person's ability to breathe or the flow of blood to their brain, or is reckless in that regard. That description of the act and its intended or likely effect avoids the use of the terms "strangulation" or "suffocation" etc, which are potentially open to restrictive interpretation. It will be possible to prosecute the offence even if no physical harm occurs. It is the act and the intention, or recklessness as to injury, that matters. The clause will therefore allow prosecutions to follow in appropriate cases where strangulation is used as a controlling tool or to frighten a victim but causes no injury. The clause also makes clear that the offence can be committed by using other body parts or items to apply pressure to the neck; it is not just the use of the hands.

The defence of consent will not be available if serious harm occurs, whether or not the injured party consented to the act. That means that, effectively, the new offence will be treated in the same way as other serious assaults that are listed in new clause 19A when it comes to claims of consent. "Serious harm" is defined in the same terms as in new clause 19A, which I covered a few moments ago. As with that clause, this provision aims to strike a balance between respecting an individual's private life and protecting them from serious harm. It differentiates between acts that may have been consensual between partners, from which no or limited injury occurs, and those from which more serious harm results.

The clause also allows for the offence to be prosecuted in Northern Ireland where it is committed abroad by a UK national or a person who is habitually resident in Northern Ireland. If, for example, a couple from Northern Ireland were on holiday abroad when the offence occurred, a prosecution could be pursued in Northern Ireland on their return. I expect that that extension will be particularly welcomed by victims of domestic abuse, who may, sadly, find themselves in such a situation.

The new offence is triable in the Magistrates' Court or the Crown Court, depending on the seriousness of the offence, and provides for higher maximum sentences than those available for the commonly used alternative assault offences. The maximum sentence in the Magistrates' Court of two years' imprisonment, a fine not exceeding the statutory maximum or both is available for cases that are tried summarily. The sentencing powers of the Magistrates' Court are normally restricted to imprisonment up to six months with or without a fine. The higher maximum reflects the seriousness of the new offence, even when the choice of court is at the lower level. For cases tried in the Crown Court, a maximum sentence of 14 years' imprisonment, a fine or both are available. Again, that is a relatively high maximum, but it is consistent with the maximum penalty for the recently created Northern Ireland domestic abuse offence and is proportionate to deal with the worst cases.

The new clause also introduces a range of consequential amendments that are set out in new schedule 4. The schedule adds the new offence to existing lists of offences of violence that are prescribed for other purposes, such as

enabling extended periods of imprisonment to be passed or other orders made.

I have, to everyone's great relief, I am sure, reached the last amendments in my name in this group.

Some Members: Hear, hear.

Mrs Long: Amendment No 20 adjusts the commencement provisions in clause 21 to capture the new additions to the Bill, and amendment No 24 is a procedural amendment to the long title to reflect the nature of the rough sex defence and non-fatal strangulation additions to the Bill.

Having concluded my remarks on the amendments tabled in my name — this will disappoint some of those who cheered my earlier announcement — I turn to the two amendments in this group that the Committee tabled. Amendment No 6 relates to the definition of payment in relation to the sexual services provisions in clause 3, and amendment No 11 relates to guidance on Part 1. I assure the Members who were prematurely excited at the idea that I was drawing my remarks to a close that I do not intend to be as thorough on these matters; I am sure that Committee members will have much to say on them.

I understand that Committee amendment No 6 was intended to extend the definition of "payment" that is in proposed new article 41(5) of the Sexual Offences (Northern Ireland) Order 2008, as provided for in Part 1 of schedule 2 to the Bill and as referenced in clause 3. Article 41(5) applies to the offence of paying for the sexual services of a child. However, the amendment would extend the definition of "payment" in article 64A of the 2008 Order, which is headed "Paying for sexual services of a person".

As Members are aware, that is the provision that was introduced by Lord Morrow in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which criminalised paying for sex. I believe that it was not the intention of the Committee to amend that provision, and I understand that the Committee intends to table a corrected amendment at Further Consideration Stage that will propose that the definition of "payment" in article 41(5) in the 2008 Order be extended to clarify that payment is not limited solely to the exchange of money. Should the Chair proceed with that amendment, I look forward to debating the issue at that stage.

The Committee's other amendment in this group, amendment No 11, introduces a new clause that proposes to place a duty on the Department to provide and review in due course guidance, training and data collection in respect of Part 1 of the Bill. I understand and appreciate the intention behind the amendment. However, I have some concern about the consequential impact of such statutory provision on existing departmental resources and on the resources of our operational partners that are responsible for delivery of the Bill's provisions. I know that Committee members appreciate the wider resource concerns that were raised by the PSNI relating to the cumulative effect of the roll-out of the Domestic Abuse and Civil Proceedings Act (Northern Ireland) 2021 and the Protection from Stalking Bill. Indeed, the Chair wrote to me highlighting PSNI concerns and expressing the Committee's support for their resolution.

Part 1 of the Bill includes 15 clauses and four schedules, introducing nine new offences covering a wide range of provisions from sexual offences to the implementation of a number of Gillen recommendations. I am somewhat concerned about the potential impact that a requirement on the Department in the Bill would have, particularly in creating a focus on box-ticking exercises and statutory administrative requirements rather than the delivery of a challenging programme. I am, as with all legislation, committed to ensuring the provision of appropriate guidance, training and data collection. It is a priority of the Department and relevant justice agencies to ensure the effective implementation of any new provisions. There is a clear danger that an amendment imposing such duties could place a burden on the Department and its delivery partners, particularly in light of pressures that have already been identified and of likely budgetary pressures. While I remain somewhat sceptical about the need for that amendment, I appreciate and respect the strength of the Committee's conviction that it is necessary. On that basis, I am prepared to offer it my support.

That concludes my opening remarks on this group of amendments. I look forward to hearing the views of those present and to responding during the winding-up speech to the points that were raised. Thank you.

Mr Storey (The Chairperson of the Committee for Justice): Before addressing the amendments, I wish, with your indulgence, Mr Deputy Speaker, to make some general remarks about the Bill in my capacity as Chair of the Justice Committee.

The Committee supports the Bill, the additional protections that it will provide to victims of sexual offences and the improvements that it will make to the services for victims of trafficking and exploitation, and it wants to see its passage concluded before the end of the mandate. Also, the Committee supports in principle the amendments that the Minister tabled for today, which will add further protections by way of new offences in the legislation. The Committee has tabled a number of amendments that will do that as well, particularly in trafficking and exploitation. We will return to those in the debate on the group 2 amendments.

As I outlined during the debate at Second Stage, behaviours such as upskirting and downblousing are becoming much more prevalent and are used to distress, humiliate, control or coerce victims of such despicable behaviour. Clause 1 will provide new offences to tackle those behaviours.

While I cannot speak to the amendments that were tabled by the Committee to clause 1, following our decision to not move them, I want to assist the House in understanding the Committee's position on that clause. The decision not to move the amendments was based on discussions with the Minister last Thursday on the wording of the amendments. The Committee is supportive of clause 1. However, we still have some questions about whether the new offences are framed entirely satisfactorily, given the views and concerns that were expressed in evidence that we received on that Part of the Bill.

We want to ensure that they will be as effective as possible. Therefore, we intend to further consider the potential need for amendments to clause 1 in conjunction with the Department of Justice officials following Consideration Stage. The same applies to the provision of a new offence of cyber-flashing. The Minister has indicated that, in principle, she supports the inclusion of that in the Bill but, again, has concerns about the wording of the amendment.

1.45 pm

Unfortunately, the reality is that child sexual exploitation is happening in cities, towns and rural areas across Northern Ireland. Deep concerns have been raised about the level of under-reporting, the attrition rates and the pitifully few successful prosecutions of sexual offences in Northern Ireland for a significant period. The Bill goes some way in trying to improve the response to those unacceptable realities. It received widespread support in the written and oral evidence received by the Committee. The frustration was that the Bill did not go far enough. A wide range of proposals to extend the protective measures and support victims was brought to the attention of the Committee in the 42 written submissions received and during the 12 oral evidence sessions with key stakeholders. The Committee also met privately an individual who shared their experience of being a victim and who outlined the devastating impact that it had on not only them but their family.

The Committee explored the issues with the Department of Justice officials, the PSNI and the Public Prosecution Service, both in writing and in oral evidence sessions, focusing in particular with the PSNI and the PPS on Part 1 of the Bill and the operational aspects for which they will have responsibility. To assist consideration of the specific issues raised in the evidence received, the Committee also commissioned a research paper on the practice in other jurisdictions to address cyber-flashing and deepfake pornography. To assist with scrutiny of the technical aspects of the Bill, the Committee sought advice from the Examiner of Statutory Rules on the range of powers in the Bill to make subordinate legislation. She was satisfied that the rule-making powers provided in Bill are appropriate.

The Committee considered the provisions of the Bill and the potential amendments at 18 meetings before agreeing its report on the Committee Stage at its meeting on 27 January. The Committee has undertaken further discussion and consideration of its amendments to the Bill since the report was agreed. I thank Committee members for their contributions to the detailed, robust and careful scrutiny of the Bill and of issues that were raised in evidence during Committee Stage. We have considered all aspects of the Bill and the proposed amendments in as full and thorough a manner as possible within the time frame that we had, taking account of the fact that the end of the mandate is not far away. As Chair, I state my personal appreciation for the diligence of the Committee in carrying out that work. I also thank all the organisations that provided very helpful written and oral evidence and the departmental officials who provided additional information and clarification throughout the process. I can assure you that a considerable amount of clarification went between us and the departmental officials.

Most importantly, I place on record the Committee's thanks and appreciation to the individuals who met Committee members

privately and shared their personal experience of being a victim. They painted a stark picture of the devastating impact that their experience had on them and their family at the time of the offence, during the handling of the case by the criminal justice agencies and since then. That set out to the Committee in a very clear and very stark way the responsibility that we have to get the Bill right and to ensure that it is comprehensive and deliverable.

Mr Newton: I thank the Member for giving way. You talked about our support for victims. I spent a short time on the Policing Board, as I know you did, Mr Chairman. I was naive enough to think that human trafficking did not happen in Northern Ireland until it was described very graphically by the PSNI on a number of occasions.

One photograph from the PSNI showed the inside of a bedroom that had been used for prostitution. On the architrave of the doorway and on the door itself were scratch marks, which indicated that the person, or perhaps, over time, persons, who had been in the bedroom was determined to, or was trying to, escape from the situation.

Mr Chairman, do you agree with me that, when the Bill achieves Royal Assent, we must ensure that those who are engaged in human trafficking are prosecuted and that their victims are not only protected for a short time but helped to return to what might be regarded as a normal life through the rehabilitation and support that we offer them as they move out of that trafficked situation? For that reason, we need to be assured that the Bill gets those aspects right.

Mr Storey: I thank the Member, although I have to indicate to him that those issues will come up in the debate on the second group of amendments. I certainly concur with his comments, however, and we will come back to the need for help for victims and recognition of the serious situation that people sadly find themselves in on the streets of Northern Ireland.

The Committee also appreciates the support and assistance that was provided by Assembly staff, including the Research and Information Service (RaISe), the Examiner of Statutory Rules, the Communications Office, Assembly Broadcasting, Hansard and, in particular, the Bill Clerk and our Committee Clerk and her team. They all played a very important role in supporting the Committee to undertake its legislative scrutiny of the Bill. I place on record the Committee's appreciation to them, given the timescales to which they had to work and the challenges that they faced owing to the availability of personnel.

I will now address the Committee's amendments in group 1, before turning to those tabled by the Minister and by Mr Allister.

Amendment No 6 is the Committee's proposed amendment to clause 3. It provides clarity that payments can be other than financial, and I welcome the Minister's indication that she is not opposed to the amendment. Although it is supportive of clause 3, the Committee discussed with Department of Justice officials whether "paying" was too narrowly defined and whether it should be extended to include paying though inducements other than money. The officials advised that payment was not necessarily defined as being financial and could include, for example, accommodation, food or drugs. They also stated that, until evidence was received by the Committee from the children's organisations about the definition not fully reflecting the reality that children and young people face when they are exploited, groomed or abused, no particular issue had been raised about intangible rewards. In the officials' view, it was not a significant gap that needed to be addressed, and they felt that the current definition provided a sufficiently broad base through which a wide range of financial and non-financial rewards would be captured.

The Committee acknowledged that the children's organisations raised important issues regarding the reality of child sexual exploitation and the type of inducements that are used to entice children, but it also accepted the difficulty in trying to cover intangible inducements in legislation. It is of the view that the wording of the current definition does not make it clear that payment is not necessarily defined as financial but could include goods and services such as those described by departmental officials. In the interests of achieving clarity, the Committee therefore agreed to table amendment No 6. Although the Minister initially, and without having had sight of its text, indicated that she would not support the amendment, I welcome her change of position, as outlined in the Assembly today.

Amendment No 11 is the Committee's proposed amendment to place a duty on the Department to provide and review, in due course, guidance, training and data collection on Part 1 of the Bill. A number of stakeholders referenced the need for guidance, training and data collection on a number of the clauses in Part 1, including for the new offences of upskirting and

downblousing. While the PSNI advised of the need for operational guidance in respect of live streaming and how it would be captured and explained to provide the necessary evidence, other organisations highlighted that comprehensive guidance and public education was required to ensure that new offences were fully understood. That is an issue that we need to pay relevant attention to. Bringing forward legislation is all well and good, but there has to be a grasp and understanding of the purpose and intent of that legislation. As was the case with other justice legislation, such as the Domestic Abuse and Civil Proceedings Act and the Protection from Stalking Bill, the provision of training for the criminal justice agencies and the judiciary on the new offences and data collection to assess the implementation of the new offences and their effectiveness were highlighted as being necessary.

Departmental officials advised the Committee that the Department intended to establish a task and finish group on which all operational partners would be represented to address the issues of practitioner guidance and awareness-raising of the new offences with all those on whom they impact. The Committee is of the view that a clear understanding and effective implementation of the new offences by the criminal justice agencies, which leads to successful prosecutions, is vital. Otherwise, it will be impossible to build victims' confidence in the system and encourage them to come forward, report offences and engage and participate in the criminal justice process. I trust that victims and the community will take on board what we have been saying in all of this: it is about bringing those responsible before the courts and to justice. It is vital that all the elements and component parts of the preparation, understanding and implementation of the legislation work in a collective manner.

The Committee believes that guidance, training and data collection are fundamental to the successful implementation of Part 1 of the Bill, particularly with regard to the new offences that are being created, one of which — downblousing — is unique to this jurisdiction. The Committee, therefore, agreed to bring forward amendment No 11, which places a duty on the Department to provide and review, in due course, the guidance, training and data collection in relation to Part 1 of the Bill. I trust that that will not be a tick-box exercise, but something that is meaningful and purposeful, because that is the intent of our amendment.

Initially, the Minister indicated to the Committee that she was committed to ensuring the provision of guidance, training and data collection. However, conscious of the proposed Budget and related constraints, and concerned that it would place a focus on administration rather than delivery, she said that she did not support the amendment. I welcome her comments in the House today and the recognition that guidance is a key component in the effective implementation of the legislation. I ask the Assembly to support the Committee's amendment.

That brings me to amendment Nos 7, 8, 9 10, 21 and 22, which relate to anonymity in the Court of Appeal. In the evidence received by the Committee, there was widespread support for the exclusion of the public from court hearings of serious sexual offence cases, as provided for by clause 15. Views were expressed that that would be less intimidating and daunting for the victim and would encourage more victims to engage with the justice system and not to withdraw from the process, as they would be giving their evidence in front of fewer people and be more assured that their anonymity would be protected. Anonymity is of particular importance in a small jurisdiction such as Northern Ireland.

Requests were also made for clause 15 to be widened to cover all sexual offences cases, all sexual offence cases involving a child or cases involving domestic abuse offences. However, as has been stated, the Northern Ireland Human Rights Commission said that, while it is permissible for criminal proceedings to be carried out in the absence of the public, that is considered to be a special measure that should be used only where a special protective need is identified. The commission expressed its view that consideration of such a measure should be taken on a case-by-case basis, taking account of the circumstances of the case, and advised that consideration be given to the adoption of an individual approach within a structured framework, which could include a judicial decision at the commencement of the trial.

The Committee noted that the provision implements Sir John's Gillen's recommendation, which was reached following a significant period of engagement and consultation with a wide range of stakeholders and the public. It also provides the court with the discretion to permit any other person to remain in the court where it considers it in the best interests of justice so to do.

2.00 pm

The Committee believes that that is a step in the right direction in trying to reduce the trauma of these types of cases for victims and to

encourage them to engage with the criminal justice system on such cases. The Committee is therefore content with the inclusion of this provision in the Bill, and, given that it is logical to carry the principle of the exclusion of the public from court hearings of serious sexual offences cases through the entire court process, including any appeal hearings against conviction or sentence, the Committee also agreed that it is content to support the principle of the amendments tabled by the Minister in this regard. However, given the time constraints to complete the Committee Stage of the Bill, the Committee was not able to consider the text of those amendments — amendment Nos 7, 8, 10, 21 and 22 — in detail, to seek out the views of key stakeholders or to carry out adequate scrutiny of them.

We heard the rationale that Mr Allister gave in the House today on amendment No 9, which he tabled. He set before Members his reasons why he believes that his amendment should be supported in the House this afternoon.

Amendment No 4 seeks to introduce a new clause dealing with abuse of position of trust. The Minister outlined the background to the amendment and the reasons for the approach that she has taken to widen the scope of the abuse of position of trust provision. Following consideration of the NSPCC briefing paper on its Close the Loophole campaign to extend abuse of trust legislation, the Committee sought further information on the position and recent developments in England and Wales and other relevant jurisdictions, including Jersey and the Republic of Ireland, as it was aware that the Minister intended to table an amendment to widen the scope as part of the Bill.

Although the text of the Minister's amendment was not available at the time, a range of organisations commented on the proposal to legislate in this area in the written evidence provided to the Committee on the Bill. The key themes in the evidence provided were: as broad a range of extra-curricular activities as possible should be covered to ensure that 16- and 17-year-olds are protected from potential grooming; technological advances mean that there is an even more pressing need to extend the abuse of trust provisions; and if the scope is too narrow, there will be loopholes that perpetrators will still be able to target.

When the NSPCC, Barnardo's and the Children's Commissioner attended to give oral evidence on the Bill, they made it clear that an amendment focused only on extending the scope to cover activities in sports and religious settings would not go far enough to protect children. When the text of the Minister's amendment was available, the Committee invited further views from those organisations. In response, the Children's Commissioner advised that she was deeply concerned that provisions to address current legislative gaps in safeguarding children and young people from abuse and exploitation by those in positions of trust should not be limited only to certain settings. She noted:

> *"abuse of trust protections in law should take account of the power dynamics of sexual abuse and exploitation and reflect that children and young people can be subject to abuse by those in positions of trust across a wide range of relationships and activities rather than instead focusing on a limited number of settings."*

The Children's Commissioner also had significant concerns about the Department's position that further evidence must be provided that children have been sexually abused by adults in positions of trust outside of sporting and religious settings before further amendments to widen the scope can be considered.

Barnardo's stated that the proposed amendment was too narrow in scope. In its view, the legislation should be as strong as possible from the outset. It stated:

> *"Children deserve protection in the law now, no matter what the setting, and should not have to wait until an incident of abuse in an additional setting is exposed to receive that protection."*

It advised the Committee that it knows that perpetrators of child abuse and sexual exploitation deliberately seek out loopholes in the law and settings where they will go undetected.

That is, sadly, what we face in our society. Surely we, as legislators, have a duty to do all that we can to ensure that we give the best possible protection in those circumstances.

The NSPCC noted that the proposed amendment mirrored the approach for England and Wales adopted in the Police, Crime, Sentencing and Courts Bill and reiterated its view that it does not go far enough, nor is it expansive enough to protect children from adults in a position of trust in relation to them. The NSPCC stated that adults working in non-statutory settings in a position of trust to 16- and 17-year olds in areas other than religion

and sport will remain outside the law, which conflicts with the views expressed in the Department's public consultation on child sexual exploitation law and in the joint stakeholder workshop that the NSPCC facilitated with the Department in May 2021, where respondents overwhelmingly supported an inclusive approach to legislative change that included all adults working in a position of trust in relation to a child. The NSPCC was also concerned that the amendment lacked clarity and could cause confusion about which activities fall within the definition. It wanted to see the amendment widened to give 16- and 17-year-olds protection from all adults in a position of trust in relation to them, regardless of the setting.

The Committee discussed those issues and concerns with departmental officials, who outlined the rationale for the approach being taken and assured the Committee that the Department had worked closely with the NSPCC in the development of the policy proposals. However, the amendment does not appear to reflect the views of the NSPCC, the Children's Commissioner or other children's organisations, and the Committee was also concerned about the strong views expressed by the Children's Commissioner regarding the position of the Department.

While the Committee welcomes the intention to extend the abuse of trust provisions, it wants to see legislation in this area that is robust and inclusive and affords protection to as many young people as possible. Members were not fully convinced that amendment No 4 does that and therefore considered tabling an amendment to extend the scope to include those in a position of trust in relation to young people who would not be included in the extension to cover certain activities carried out in sport and faith settings.

The Committee advised the Minister of the intent of its proposed amendment, and she responded, indicating that widening the provision would have significant consequences. Her concerns centred around whether widening the scope could attract legal challenge based on the rights of an individual under article 8, the right to private and family life. She was also concerned that there was a clear risk of inappropriately increasing by stealth the age of sexual consent, which would be open to successful legal challenge. In her view, care should be taken to avoid that and to ensure that any undue interference in a young person's ability to freely express their autonomy is limited. The Minister also stated that framing the positions of trust provision too widely ran the risk of over-criminalising young people, who could be considered to be breaking the law if, for example, a person aged 18 had sexual relations with a person aged 16 or 17.

The Committee discussed the issues raised by the Minister and, given the limited time before Committee Stage had to be completed, agreed not to table an amendment to extend the scope at this stage but rather to take the opportunity at Consideration Stage to seek further information and clarification of the basis for the Minister's concerns. The Committee will therefore support amendment No 4, but it would be helpful if the Minister could outline how robust her amendment is, given the view expressed that it is not expansive enough to protect children from adults in a position of trust; clarify how exactly widening the scope could interfere with article 8 rights in a way that her amendment does not, bearing it in mind that the Children's Commissioner and children's organisations raised no concerns in that regard; and say on what basis there is any greater risk of inappropriately increasing by stealth the age of sexual consent or criminalising young people unnecessarily, taking into account the fact that the provision relates solely to those in positions of trust. The Committee may wish to further consider its position on the issue before Further Consideration Stage.

I turn to amendment Nos 5, 18, 19, 20 and 23, which reference new offences. The Minister has outlined the background to and the purpose of the amendments. The Committee received comments welcoming the proposal in amendment No 5, and organisations viewed it as addressing a clear need. Departmental officials confirmed that, while the amendment sought to widen the scope of the existing offence of disclosure of private photographs or films with the intent to cause distress to include the threat to disclose, it does not alter the fundamental elements of the main disclosure offence. The PSNI stated that it is likely that the threats will be made in some part through online means and highlighted the increasing workload of the cybercrime unit and the public protection arrangements and the resulting resource implications. The Committee will consider that issue as part of its scrutiny of the draft Budget for 2022-25. The Committee is content to support amendment No 5 in principle but was unable to properly scrutinise the text of the amendment in the time that was available to it.

In July 2021, the Department advised the Committee that work was being undertaken to develop amendments to set in legislation the common case law position that a person cannot

lawfully consent to their serious harm for the purposes of sexual gratification. While the text of the proposed amendment was not available at that time, the Committee drew attention to the Minister's intention as part of its call for evidence on the Bill. A range of organisations commented on the issue, with many stating that the law is not fit for purpose in dealing with violent crimes where the term "rough sex" is used as a defence. They wanted to see an amendment that would abolish it as a defence in criminal proceedings. The PSNI highlighted that it was essential that the gravity and the high-risk indicators that are attached to the occurrences of strangulation are recognised. The Northern Ireland Human Rights Commission referred to the need to ensure that it is implemented in a way that is compliant with human rights law.

Departmental officials subsequently outlined to the Committee that, normally, the common law does not treat rough sex as a defence. However, the amendment will put clarity and certainty into the law in the interests of victims and will ensure that, where serious harm within the defined text of the amendment occurs, the perpetrator will not be able to raise the claim that the victim consented to the harm being inflicted. The amendment also makes it clear that there are no limits on the nature of the relationship between the parties, making its application across the board absolutely clear.

The Department also advised the Committee that, given the close link between rough sex and non-fatal strangulation, the Minister was also tabling an amendment to introduce a new offence of non-fatal strangulation or asphyxiation, with the intention that the defence of consent will not be available for the new offence where serious harm occurs. The Department had previously briefed the Committee on the results of a consultation on such an offence that had indicated strong support for a hybrid offence triable in the Magistrates' Court or the Crown Court and for lengthy maximum sentences in both. At that time, it indicated that legislation covering that would be brought forward in the next Assembly mandate.

Mrs D Kelly: I thank the Member for giving way. He may recall from when he was a member of the Policing Board having received a presentation from the National Crime Agency (NCA) about the Dark Web and the strangulation offence. Perpetrators were giving online classes on the Dark Web on how to control their partners. In his view, does the amendment go far enough to include those who would teach others, via the Dark Web, some of those evil habits?

Mr Storey: We are trying to go as far as we can within the remit of the powers that pertain in Northern Ireland. The Member will be aware that a Bill is going through the House of Commons in relation to the use of various technological means. That communications Bill will have an impact, because, sadly, no matter how much we legislate and how much we try to curtail the activities of those who want to engage in that dreadful behaviour, they will always seek another means.

Sadly, we have come to learn more of what goes on on the Dark Web. It can instil only greater determination in us all, whether in this House or in other legislatures, to do all that we possibly can to make sure that we have closed down every opportunity for people to exploit others, cause serious harm and lead to sad circumstances and situations for young people, for families and in homes right across society.

2.15 pm

It is a start and a move in the right direction, but I take the point that, as legislators, we must continue that work. The Minister shares the view that we must use every possible legislative means to bring these issues to the attention of the police and, eventually and hopefully, into a courtroom.

I have a few final comments about these amendments. These issues were brought to the attention of the Committee during the Committee Stage of the Domestic Abuse and Civil Proceedings Bill, and there were calls at that time for the legal framework to be strengthened and for the introduction of a specific offence of non-fatal strangulation. The Public Prosecution Service also indicated that, despite the seriousness of these types of assault, non-fatal strangulation was very difficult to prosecute and the Criminal Justice Inspection Northern Ireland in its 2019 report, 'No Excuse: A Thematic Inspection of the Handling of Domestic Violence and Abuse Cases by the Criminal Justice System in Northern Ireland', recommended that the Department should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed.

The need for the legislative framework to be strengthened in those areas is clear, and the Committee, therefore, in principle, supports

amendment Nos 18, 19, 20 and 23 to provide clarity and certainty in relation to the common-law case position that a person cannot lawfully consent to their serious harm for the purposes of sexual gratification and to provide for a new offence of non-fatal strangulation or asphyxiation. Unfortunately, the text of what are detailed amendments was not available in time for the Committee to consider them in depth, seek the views of stakeholders or carry out further proper scrutiny before the end of Committee Stage.

Finally and briefly, on amendment No 24, while the Committee supported the long title as drafted, if the proposed amendments in this group are made, I understand that the long title will need to be amended to better reflect the Bill's content. When the Minister makes her concluding remarks, she will perhaps give an assurance that the purpose of that is to ensure that it fits the content of the Bill and is not to widen its scope in any way.

I conclude my comments as Chair. My party colleagues will contribute to the debate from the DUP's perspective.

Ms Ennis: Incidents of violence against women and girls are at epidemic levels across Ireland and further afield. Incidents of sexual violence, abuse and gender-based violence are alarmingly on the rise.

The Justice (Sexual Offences and Trafficking Victims) Bill represents the latest in a series of important pieces of legislation that demonstrate our commitment to tackling the scale of the problems.

Domestic abuse, inappropriate touching, sexual assault, stalking, harassment and image-based sexual abuse are just some of the issues that women and girls have to deal with on an all too regular basis. We rightly talk about the need for a zero tolerance approach to sexual harassment and abuse. That is crucial if we are truly to tackle the scale of the problem.

The reality for many women, however, is that the criminal justice system is not a friend or ally. It often represents a failure to tackle crimes and perpetrators and a failure to protect the best interests of victims in court. It is a failure that, all too often, favours the abuser over the victim, and it often represents trauma and humiliation for the victim.

I am proud that, over the past 24 months, the Assembly has taken a stand to reverse that trend and build a criminal justice system that protects women and girls and victims of abuse, and aims to find and punish perpetrators.

The Domestic Abuse and Civil Proceedings Act, the Protection from Stalking Bill, the Criminal Justice (Committal Reform) Bill and now the Justice (Sexual Offences and Trafficking Victims) Bill are all major pieces of legislation that show our commitment to tackling gender-based and sexual violence.

The Bill introduces important provisions to protect victims of sexual offences from the risk of identification and to protect their dignity and privacy. The Bill will exclude the public from hearings of sexual offence cases and introduce additional reporting requirements on such cases. That measure will increase victims' confidence to report their experiences to the police and to know not only that their case will be taken seriously but that they will be protected against indignity, humiliation and additional stress throughout their journey through the justice system. Mr Allister's amendment No 9 to clause 15 flies in the face of that. It is a clever attempt to undermine and undo what was a clear recommendation of the Gillen review. For that reason, we will oppose that amendment.

I welcome the proposed amendment that will prohibit the so-called rough sex defence from being used in courts by abusers who have killed or seriously harmed victims during sex, only to claim that their victims consented to that harm. Sadly, at least three women have been killed in the North by men who claimed that the women had consented to the violence, including, most recently, the tragic case of Patrycja Wyrebek in August 2020. Let me make it clear: there is no excuse or justification for strangling or beating a woman to death during sex. It is wrong and abhorrent that, despite the fact that legal precedent has been set that victims' consent to sexual gratification is not a defence, the defence continues to be used. Abusers, not their victims, are to blame. Victim blaming and victim shaming are unacceptable, and I am pleased to support the Minister's amendment that will explicitly prohibit the use of that defence.

I also support the proposed amendment that will introduce a new offence of "non-fatal strangulation or asphyxiation". Strangulation is a particularly vicious and deplorable act. It is common for strangulation to leave no visible signs of injury, but it leaves long-lasting fear and harm. Strangulation is, by its very nature, an act that is intended to terrify its victim. It is also an overwhelmingly gendered crime. Even more stark is the evidence that, if a person has

been strangled, the chances of their being murdered by their abuser increases eightfold. Therefore, there is an urgency to tackling this increasing problem, so I am pleased to support the introduction of a new offence of non-fatal strangulation, which will, once and for all, tackle the problem head-on.

In drawing my remarks to a close, I thank, as the Chair did, the representative organisations and, more importantly, the victims of these crimes who gave up their time to help the Committee with its deliberations. We very much appreciate that. I also thank Linda Dillon, my predecessor on the Committee, who sat on the Committee for a long time and made an important contribution to the Bill.

It was a clear priority for the Justice Committee, when we scrutinised the Bill, to ensure that victims are always at the centre of any new legislation that we progress through the House. The Bill, the Committee's amendments and the Minister's amendments reflect our desire to ensure that victims receive the maximum support and protection. I urge Members to support the Committee's and the Minister's amendments, and I again urge Members to reject amendment No 9, given the harm that it would undoubtedly cause.

Ms S Bradley: On behalf of the SDLP, I welcome the passage of the Bill to Consideration Stage. I, too, record our support for and thanks to the Bill Office staff, who worked tirelessly on it; the departmental officials, who worked very well not just with me, on behalf of the SDLP, but with the Committee; and the Minister. In these times, when we are navigating a new passage to deliver the Bill, although there is much negativity around our politics at the moment, I have to say that, despite that backdrop and on a more positive note, I sense that everybody on the Committee will work with the Minister and endeavour to find whatever pathway can be found to make sure that the Bill sees final passage. I commend all the Committee members for doing that, and I particularly commend the Minister for coming forward to work with us.

It is important legislation that will better protect victims of sexual offences and the deplorable crime of trafficking.

The Bill will implement certain elements of the Gillen report on serious sexual offence cases, including the exclusion of the public from all serious sexual offence hearings. It also includes provisions arising from the outcome of a review of the law on child sexual exploitation and sexual offences against children. Other provisions include the creation of the new offences of upskirting and downblousing. Those provisions are to be welcomed and are long overdue. I must comment, however, that we repeatedly heard from stakeholders, including Barnardo's and the Children's Commissioner, about how the implementation of the legislation is as important as its content.

The Bill is an important piece of child protection legislation. It will sit amongst a suite of legislation and add a layer of protection for children who may be targeted by adults. This is an opportune time to say that it is important to acknowledge the importance — it was raised repeatedly at the Committee — of the legislation being underpinned by age-appropriate standardised relationships and sexuality education (RSE) in schools. Children need to be empowered to understand what a healthy relationship looks like and to know when they are on the edge of behaviours that are leading to abuse.

I appreciate the fact that the Bill is making its way through the House, even in these uncertain times. I am also conscious that other Bills will necessarily be competing with it for space and time in the Chamber, so I will not go over all the comments made by the Minister or the rationale and thinking behind a lot of the amendments, nor, indeed, will I repeat the commentary that was very ably given by the Chair of the Committee, who put on record the many deliberations that the Committee went through.

I will quickly speak to the Committee amendments. Amendment No 6 will safeguard in particular young people who are dependent on the care of an adult for daily living. It is an apt amendment that puts payment by way of money in the Bill when so many young people are so dependent on an adult for love, support and welfare. I will also refer to amendment No 11, which gives the guidance. Whilst the Minister is not opposed to that amendment, I heard her words about it. Given that the Bill has brought forward unique provisions, such as that on downblousing, it is important, as with most legislation, to have clear guidance on how exactly those can be rolled out for the betterment of all.

Like others, I have serious concerns about amendment No 9. It would go some way towards unpicking the recommendations of Gillen, who gave clear and rational thinking for why they were proposed in the first place. Certainty for victims is needed to ensure that they do not suffer; in fact, cases may not even come forward to the courts because people

who may be victims do not feel that the system is there to support them.

I particularly welcome amendment No 18, which is on the elimination of:

"consent to harm for sexual gratification"

as a defence. It was disturbing to learn about the cases behind that piece that meant that it had to come forward, so it is appropriate that it is alongside the offence of non-fatal strangulation or asphyxiation. Again, given the unique nature of those acts, the Minister rightly pointed out that they cannot properly be captured in other legislation. It is therefore appropriate that they are in this Bill.

I will draw my comments on the group to a conclusion. I have to record again my overall disappointment that the Bill has undoubtedly been pared back from what was originally intended. It is important legislation that is focused on enhancing public safety and improving services for victims of trafficking and exploitation. It is therefore essential that the Bill safely progresses by the end of the mandate to ensure that some of the most vulnerable are afforded the protections that they need and deserve. On behalf of the SDLP, I am committed to working with others to do just that.

2.30 pm

Ms Bradshaw: I start by re-emphasising what the Minister said about the purpose of the Bill: we are here to enhance public safety and to improve services for victims of trafficking and sexual exploitation. I support amendment Nos 4, 5, 7, 8, 10 and 18 to 24. I reserve my position on amendment Nos 6 and 11. I oppose amendment No 9, which fundamentally works against what the Bill is trying to achieve.

Amendment No 4 is a response to growing pressure in Northern Ireland and changes in the law in neighbouring jurisdictions. It establishes that the abuse of a position of trust regarding sexual offences against children can cover sport and faith settings. Its scope is based on a wide-ranging review of evidence. I thank the NSPCC for its input on the matter.

Amendment No 5 is essential in the modern world, as it covers threats to disclose sexual photographs. We are the only part of the UK where threatening to do that is not currently an offence. Ultimately, it is a matter of coercive control, so it needs to be tackled in law now that we have the opportunity to do so.

Amendment Nos 7 and 8, which I welcome, are consequential to those to tidy up the remaining elements of the disclosure offence.

I recognise that amendment No 6 is well intentioned, but it is evident that the amendment is not sufficiently detailed to achieve its purpose. Likewise, the intent behind amendment No 11 is clearly worthy, but some consultation is necessary on the significant resource that would be required and where it is to be taken from. I am sure that that will be returned to at Further Consideration Stage.

Amendment Nos 18, 19, 21 and 23 are important to emphasise that serious harm is an offence. That should seem obvious, but, for too long, loopholes have existed. They include the defence of consent and the restrictive interpretation of some terms for activity that may cause harm. The amendments, alongside amendment No 20, which is consequential, clarify that serious harm and recklessness that causes serious harm are offences. I welcome amendment No 24, which changes the long title of the Bill to reflect those changes and emphasises that serious harm is serious harm and that intent to cause it is intent to cause it.

Amendment No 9 is an attempt to reverse the fundamental issues raised by Gillen and others. It is based on the pretence — it is a pretence — that, in trials concerning matters of acute sensitivity, there should be bias in favour of public attendance rather than opposition to it. In practice, that bias is bound to cause distress to victims.

Mr Allister: Will the Member give way?

Ms Bradshaw: Yes.

Mr Allister: Does the Member think that article 6 of the European Convention on Human Rights is biased?

Ms Bradshaw: No. I will get to that in a minute. Thank you for your intervention.

Clearly, the balance in such serious cases needs to be shifted, not least to protect identity. There is no need for others to be present, except when specifically directed by the judge rather than by active participants in the trial. The judge will still decide ultimately, but the clear assumption will be in favour of privacy and sensibly so.

Let us remind ourselves that we are here to discuss serious sexual offences that lead to serious harm. For too long, the entire system

has been biased against the victim. It has almost treated the victim as a perpetrator whose conduct, often at a time of high vulnerability or when another person is abusing his or her power, is assessed in public or even by the public. The Gillen review refers to the intense scrutiny faced by those participating in trials and emphasises that, while that is an inevitable consequence of open justice, open justice is not an absolute concept.

Scotland, Ireland, New Zealand and parts of Australia have already recognised that it is long past the time for some balance and have given victims much more faith in the system and in how they will be treated if they take a case forward. In Northern Ireland, that is reinforced by what is referred to in the review as the high risk of "public familiarity" in a small jurisdiction. It is small wonder that so few complainants come forward to face the intense glare of public familiarity and choose instead to suffer in silence. We must put an end to that.

Amendment No 9 would maintain that suffering and that silence. Amendment No 10 will move us in the right direction, away from that and towards a more just system.

Mr Frew: I have not been on the Committee for Justice of late, but I have always taken a keen interest in justice matters. During my time in the Assembly, I have seen the clear journey taken by legislation since justice was devolved to Northern Ireland. In the 2011-16 mandate, there was the Justice Act (Northern Ireland) 2015 and the Justice Act (Northern Ireland) 2016. There is now the Justice (Sexual Offences and Trafficking Victims) Bill, to which we can add domestic violence legislation and the stalking piece that is going through the Assembly. It would be remiss of me not to mention the contribution that Lord Morrow made to that journey. Every time I look at any legislation to do with sexual offences and trafficking victims, I look at it through the prism of Lord Morrow's work and the foundation that he laid to ensure that it builds on his work and does not diminish it in any shape or form.

I have always taken a keen interest in such matters. In a previous term, I was able to amend the Justice Bill that brought in the child protection disclosure scheme. I must admit that I am still aggrieved at the way in which that scheme has been rolled out and used in practice. I do not believe that it is promoted enough or that people know about it enough in order to keep their children safe from individuals who are deemed to be a risk to them. Knowledge is important to parents. It is important that they be fully informed and are not the last to know if someone poses a risk. I know that time is short in the mandate, but I plead with the Minister to promote the child protection disclosure scheme in any way that she can. I would be grateful.

I also record my thanks and appreciation to the Minister for this term of work. I have always enjoyed jousting with her in the Chamber on various pieces of legislation. That leads to good legislation. Good, robust debate always helps in that. I also pay tribute to the Chair of the Committee, Mervyn Storey, my colleague in North Antrim, for his work in the Committee on scrutinising the Bill over the past year. We are grateful for that.

It is important that we support the Bill. It is part of the journey. It is important that we have a law against upskirting and downblousing. A colleague across the Chamber has already said how important it is to protect people, as have the Chair and the Minister. We all know of a case here in Northern Ireland. Adults, children and professional people need to be protected in that regard. With technology as it is nowadays, with a camera in everyone's hands, it is vital that we protect people. That is what law is all about, and clause 1 is a good clause.

On sexual grooming and the potential harm or danger to children in this age of technology, where you cannot necessarily see the person with whom you are communicating, it is vital that, when their parents cannot always see what they are at, children be protected in law as best they can be. It is important that clause 2 is in the Bill.

I am glad to see that new clauses have been tabled. When I first read the Justice (Sexual Offences and Trafficking Victims) Bill, I was disappointed that items that, I thought, would have made great law had been omitted. I am glad that the Minister is now pursuing such amendments, and I thank her for that.

I turn now to amendment Nos 4 and 5. Amendment No 4 relates to positions of trust, which is an issue that I have thought long and hard about. There is no doubt about it: when you are in a position of trust, you become a very powerful person. We must congratulate all those people who sacrifice parts of their lives to help coach, train, teach, supervise, instruct our children and pay a general interest in their growing up. They are an absolute godsend to parents, and, sometimes, when a parent cannot get through to a child, the local football coach or boxing coach can. Those people can have a massive positive bearing on the potential of a child, so it is a very powerful position to be in. It

is very good to be in a position where we have people who I class as being community champions, and we should utilise them more in the justice setting to help steer young people who might not necessarily make team sports away from areas where they could get themselves into trouble and might end up with a criminal record.

There is great potential for community champions in that setting, but with that is the powerful flip side where a community champion can exact pressure or leverage on a young person, which has the potential to become really dangerous. So, it is important that we legislate for that to protect those people so that, when pressure is applied to get a place on the team or to please your coach, it is not used by the coach for their own ends. It is vital that we recognise that potential and try as best we can to legislate to protect the children who could be at risk. I suspect that a very small percentage of people are inclined to act in that way, but it is right that we protect every single child as best we can from the one or two people who are involved in such behaviour or have thoughts in that regard and would use their position of trust, as a community champion, for their own sexual gratification or anything else for that matter. So, it is important that that is legislated for.

I am glad to see amendment No 5 because it is not just the disclosure of a photograph, a picture or a video that does the damage; it is the potential and the threat of release or disclosure that can upset and change the course of somebody's life. If you have that threat hanging over anyone, you can alter their behaviour. You can demand all sorts of that person. So, the crime should not be the disclosure, which is criminal in itself: there should be legislation that covers the threat to disclose. That is where the leverage is and where there is potential for real harm and damage. So, I thank the Minister for tabling the amendment.

Before I move to amendment Nos 18 and 19, I will address amendment No 9, because I understand why the Member tabled it. I engaged with Gillen at the time of his review, and it struck me that something had to be done. The way that cases are reported in the press is sometimes deeply unfair. Time and time again, we see camera crews outside courts, and they will report on the court cases of that day. In most big cases, usually, you only hear one side on any particular day. When one side of a court case is reported — the defence or whatever — the other side of the argument may not be presented until a week or two later, and maybe, the journalist or broadcaster will not give that the same attention that they gave the other side two weeks before. Unfair reporting can skew and have an unfair bearing on any given case.

2.45 pm

Of course, the cameras follow the people as they walk out of the court, and that is before anyone has been proven guilty. That can be harmful not only for the victim but the accused. I take the points that Mr Allister raised about article 6. We have to be careful about what we do. Whilst I acknowledge and agree that something needs to be done, we have to be careful how we do that. It strikes me that the best place for that to be decided is in the court, but we will see how that develops as the debate goes on.

As I promised, Mr Deputy Speaker, I go to amendment Nos 18 and 19. Amendment No 18 is a new clause, titled "Consent to harm for sexual gratification is no defence". The amendment is very important. It is something that I looked at in other pieces of legislation, and it was out of scope. I am delighted to see that amendment now, and I hope the House approves and passes it. There is absolutely no defence or justification for seriously harming anyone, either by wounding, grievous bodily harm or actual bodily harm, through a sexual act. There is absolutely no justification or defence, and no one should try to make that case. Of course, as the Minister rightly pointed out there is a history of courts believing that a person cannot consent to serious harm. It is great and good that we will put it down in law so there is no question or grey areas around that, and that we protect people who may be manipulated, bullied or coerced into sexual acts as best we can.

That brings me to the other amendment that is very close to that, and that is on the offence of non-fatal strangulation or asphyxiation. Again, that is something that I have looked at previously, and it was out of the scope of other Bills. I commend the Minister for acting on that also. The amendment adds a very long clause, and I have not got through all the ins and outs of what it actually does. In my limited understanding of the amendment, it covers a loophole whereby people think that that behaviour is acceptable. There should be no acceptance of that behaviour. I will read down new clause 19B:

> *"19B.—(1) A person ("A") commits an offence if the first and the second conditions are met.*

(2) The first condition is that A intentionally—

(a)applies pressure on or to the throat or neck of another person ("B"), or

(b)does something to B, of any other sort, amounting to battery of B.

(3) The second condition is that A—

(a)intends A's act to affect B's ability to breathe or the flow of blood to B's brain, or

(b)is reckless as to whether A's act would affect B's ability to breathe or the flow of blood to B's brain."

Reading that out is chilling, but it is necessary to have that in the statute book to make sure that we change behaviours in this land of ours. There is sickness out there, there are depraved minds out there, and we must do all we can to protect people from those who would act in such a way.

I believe that these amendments and clauses will do that. It is a step in the right direction; it is a further step on our justice journey. I welcome these amendments and clauses, and I hope that this Assembly sees fit to place them onto the blue pages of the Bill. I commend the work of the Minister and the Committee and hope that the amendments that I have spoken on pass. Thank you.

Mrs D Kelly: Like Mr Frew, I have not had the opportunity to speak on this Bill on domestic and sexual abuse. I was pleased to have been involved in previous passages of such legislation. I am very pleased to see it here today, albeit a few years too late because of our suspension. I commend the Minister and the Committee for their hard work and their deliberations over the past two years. My colleague Sinéad Bradley explained very well the good relationship between the Minister and the Committee in wanting to put the needs of victims first in the work that they have been doing and the effort that they have made.

Minister, you will have heard my comments to Mr Storey in relation to amendment No 19. I accept what he said about the correlation between legislation here and the legislation on communications which, of course, is not a devolved matter. I hope that you might further explain how we can ensure that those who use the Dark Web for their evil acts eventually pay the price.

Forgive me, because I do not serve on the Justice Committee, but the other amendment I want to talk about is amendment No 5 in relation to offences against the person and the definition of someone who resides in or is a national of Northern Ireland. Minister, some people have exploited young people through online grooming. In one case, it led to the suicide of one of the young people, because he was threatened that the pictures he had sent to the other person would be published. It caused such concern, anxiety and depression that the young man subsequently took his life. Will the legislation allow you, Minister, through Interpol or whatever, to follow through and arrest the perpetrator, or have the likes of the European arrest warrant and the Brexit shambles had any impact in being able to pursue such offenders internationally?

Miss Woods: I welcome the opportunity to take part in this debate on the amendments to the Justice (Sexual Offences and Trafficking Victims) Bill. Like others, I want to say a huge thank you to all those individuals and organisations that gave evidence to the Committee. Their words, reflections and experience proved to be invaluable, as always, in scrutinising legislative proposals. Much of what we are discussing today is about using that evidence to strengthen the Bill's provisions and making sure that they are working in practice and delivering for those that they are intended to protect. I also welcome the constructive approach taken by the Minister and her Department throughout the Committee's scrutiny.

With regard to the upskirting and downblousing offences, I fully recognise the concerns expressed by the Minister at the Justice Committee last Thursday in relation to the proposals. However, it is disappointing that those issues were not resolved long in advance of the debate and before the deadline for submission. Throughout the Committee's evidence gathering, concerns were raised about a potential loophole in the construction of the new offences whereby an alleged perpetrator could effectively acquit themselves by claiming that what they did was simply a joke. Members of the Committee heard from victims, those with extensive knowledge of a case here, trade unions, children and women's sector organisations, and Victim Support NI. All of them questioned the narrow scope of the clauses and the motives that the prosecution could rely on.

Indeed, Professor Clare McGlynn from Durham University agreed with the common concern among a wide range of organisations that clause 1 as drafted would not effectively deal with the scenario that is similar to a case that we well know here. She advised the Committee that, if the "just for a laugh" defence was not addressed, the Bill would become ineffective.

Unsurprisingly, the Committee took that very seriously, but we were given evidence that such a case would be covered. The obvious solution to addressing the practical joke defence would be to include it in the list of purposes, but, of course, that brings the unintended consequence of criminalising behaviour that might otherwise have fallen way beyond what the original intent of the new offence was trying to capture.

There is no doubt that those issues are highly complex and that care must be taken when attempting to address them, but I am not fully satisfied that, as it stands, the inherent weaknesses in the construction of the offence have been overcome. In Professor McGlynn's view, the solution is not to list more motivations for upskirting and downblousing but to focus on consent. I absolutely agree with that, yet, when we explored that with officials, we were told that it was unworkable. We were also given a suggestion for an alternative to the consent-based approach that included recklessness as to whether the victim suffers distress, alarm or humiliation, which draws on Scots law or Irish law. Ultimately, that was what we decided to pursue. I accept that the reasonable person element may not be workable, and I look forward to working with clause 1 as drafted at this stage at the Committee meeting this week.

I conclude my remarks on clause 1 by reminding the House, the Minister and the Department of the urgent need to address the whole issue of consent and how it is understood in our laws and courts when it comes to sexual offences. As noted by the Gillen review, our definition of consent is:

> *"vague, with the result that juries may bring sexual stereotypes into play in determining whether there was consent."*

The Gillen report stated clearly:

> *"there should be a discernible shift towards a requirement for some measure of affirmative or participative expression of consent and away from a focus on resistance as a means to prove the absence of consent."*

I cannot stress enough how important that statement and recommendation is for our criminal justice system. Gillen proposed that the Sexual Offences (Northern Ireland) Order 2008 should be amended:

> *"• to follow the example in New Zealand and to provide that a failure to say or do anything when submitting to a sexual act, or to protest or offer resistance to it, does not of itself constitute consent;*
> *• to expand the range of circumstances as to when there is an absence of consent to include, for example (i) where the complainant submits to the act because of a threat or fear of violence or other serious detriment such as intimidation, coercive conduct or psychological oppression to the complainant or to others; (ii) where the only expression of consent or agreement to the act comes from a third party; and (iii) where the complainant is overcome, voluntarily or not, by the effect of alcohol or drugs; and*
> *• to add that, in determining whether there was a reasonable belief in consent, the jury should take account of a failure to take any steps to ascertain whether the complainant consented."*

Those proposed amendments were published in 2019, and it is now 2022. It is deeply disturbing to think that a failure to protest or resist when subject to sexual abuse could be considered as a form of consent. The new criminal offences that are set out in clause 1 should be based on consent, given that they are sexual offences. I urge the Minister and her Department to work on the reform of the wider issue. Again, I acknowledge the complex nature of that work. Nevertheless, we should be much closer to implementing the changes proposed by Gillen than we currently appear to be. I would welcome some clarity or an update from the Minister on that.

I move to cyber-flashing. My understanding is that the Westminster Government will legislate on that issue soon, meaning that that will become law in England and Wales. Scotland made causing a person to look at a sexual image without their consent an offence in 2010. We need to take the opportunity that the Bill provides to legislate on that. Again, I understand and acknowledge the comments that the Minister made at Committee last Thursday. I am a bit uncomfortable with pinning all our hopes on Further Consideration Stage, but I look forward to the Committee meeting this week and to some intensive engagement with officials to ensure that a more robust amendment is drafted and tabled as soon as possible.

3.00 pm

The Committee heard from a wide range of organisations, as the Chair said, on the Minister's amendment to broaden the scope of abuse of trust in the Sexual Offences Order 2008. There is an extensive list of those issues

in the Committee report, and I do not intend to repeat them. However, I reiterate the concerns of the NSPCC, Barnardo's and the Children's Commissioner with regard to the limited scope of the amendment, which will capture only sporting and religious settings.

Those organisations made clear that that does not go far enough to protect all children. Strangely, the Department seems to have clearly accepted this assessment, which is why the proposed amendment includes a regulation-making power that will allow it to include other settings in the future. The question is: why would we not seek to provide that certainty and extend protection now?

Mrs Long: Will the Member give way?

Miss Woods: I will give way.

Mrs Long: It is not strange at all. The reason is clear. It was set out for the Committee, and in my speech earlier. In doing this, we have based it on the evidence currently available. The two areas where there is sufficient evidence to demonstrate that there is a need for us to intervene are in faith-based and sports-based activities.

At this point, there is not sufficient evidence that there are other areas where we would wish to introduce this provision. However, in order to prevent any progress on that being delayed by waiting for another suitable primary legislative vehicle, we have said that there is an order-making power that will allow us to amend the law if further evidence becomes available of other sectors that need to be included, and that will be by positive affirmation in the Assembly.

The reasons for it are rational: the evidence base is simply not there to underpin any further additions at this time. We have never as a Department ruled out the potential that they will be there in the future.

Miss Woods: I thank the Minister for her intervention. I have said before in Committee that we do not need to wait for evidence of sexual exploitation of children to occur in other settings where there is an abuse of trust. That is my position on that.

The NSPCC's position is also clear. It wants to see children protected no matter what the setting or activity, and it argues that the protection should be based on risk of harm. It stated that, if the proposed amendment were made, adults working in non-statutory settings in a position of trust in areas other than religion and sport would remain outside the law. The Children's Commissioner stated that she had significant concerns about the position of the Department that further evidence must be provided that children had been sexually abused by adults in positions of trust outside sporting and religious settings before further amendments could be considered.

Barnardo's stated:

> *"Children deserve protection in the law now no matter what the setting, and should not have to wait until an incident of abuse in an additional setting is exposed to receive that protection."*

Mrs Long: Will the Member give way?

Miss Woods: I will give way.

Mrs Long: The additional evidence that would be required is not that abuse had taken place. The evidence would be that there is risk, so it is that evidence of risk. These are settings in which we know that there is considerable risk, so we are acting to mitigate it. We are balancing that against the article 8 rights of the young people themselves. I will expand on that in my responses, but they have a right at 16 and 17 years of age to make choices about having sexual relationships. What we do not want to do is, essentially, to raise the age of consent by stealth by making it so prohibitive for anybody over the age of 18 to have sex with somebody at the age of 16 or 17 that we effectively make 18 the age of consent.

That is the balance that we have to strike, but we are not saying that there has to be evidence of actual offences. We are not waiting until somebody is harmed but are saying that there has to be evidence of that risk.

Miss Woods: I thank the Minister for her intervention. I appreciate that this discussion and debate have been going on for a number of months, certainly in Committee. I accept that children and young people have article 8 rights. They have the right to make choices, and I do not want to raise the age of consent, but the point that I will consistently make is that this is not about raising the age of consent. This is about positions of trust in that type of relationship, so I do not accept that a comprehensive framing of abuse of trust in law will lead to healthy relationships between young people being criminalised. I do not accept that it will be challenged under article 8 or that it represents a raising of the minimum age of

consent. We are talking about the sexual exploitation of children.

The offences in articles 23, 24, 25 and 26 of the Sexual Offences Order 2008 that concern the abuse of trust still require evidence. They still require police investigation. They still require a case file to be referred to the PPS and a decision to prosecute by the PPS, and the onus is on the prosecution to prove the alleged perpetrator's guilt in the courts. Therefore, I find some of what the Department said about the unintended consequences of widening the scope to be unhelpful, and I think that we should be listening much more closely to the children's sector on this and reflecting its concerns in changes to the proposed amendment.

There are other possible ways to strengthen the new clause. I would absolutely support a statutory review mechanism being built into it, alongside the power to expand through regulations, and that could be brought forward at Further Consideration Stage. Ultimately, however, I want all children to be protected, no matter what the setting or activity is, when there is someone in a position of trust there. The Minister should put firm proposals to the Committee for us to consider and scrutinise.

I will move on to the amendment on threatening to disclose images, which is amendment No 5. I fully support the Minister's amendment to introduce an offence of threatening to disclose private sexual photographs or films, and I absolutely agree with the many organisations that raised issues with the language that is often used to describe that kind of behaviour and the fact that we should now talk about "image-based sexual abuse", which, indeed, has many forms. As highlighted by the Human Rights Commission, image-based sexual abuse should, due to its disproportionate impact on women and girls, be recognised as a form of gender-based violence, and amendment No 5 will strengthen the offence that already exists in law around disclosing private sexual images. I thank the Minister and her Department for including that in the Bill.

I will move on to amendment No 6. The legislative changes set out in clause 3 are long overdue. It is beyond belief that the current legal position, which is reflected in the 2008 Order, refers to "child prostitution" and child porn, which could be interpreted to imply that children are responsible for or willing participants in their abuse. That language was scrapped in England and Wales some time ago, as noted in the Bill's explanatory and financial memorandum (EFM) and in the Marshall report, which was published in 2014 and recommended that the same changes be made here. Unfortunately, it, too, has been stalled and disrupted by the constant dysfunction of the Executive system here and the parties that have governed for the last many years. Yes, we are talking about language used in our laws, but it is not simply a question of semantics. I agreed wholeheartedly with many representations received by the Committee that called for changes in terminology to be applied consistently in all communications and documentation in order to drive the cultural shift that is needed in the way that we talk about and address child sexual exploitation and abuse. The Department advised that it would be wary of changing any language that may impact legal certainty in that regard, so I ask the Minister, if she can, to point out what the barriers are and how we can get to a point where the language that we use around this, especially from a legal perspective, clearly captures harm and leaves no room for euphemism, ambiguity or downplaying the severity of these crimes.

The Committee heard loud and clear the calls from children's sector organisations to include and capture other forms of inducements when defining payment in child sexual exploitation cases, and I understand that concerns were raised about the potential for clarification regarding other inducements, which may, in their words, have unintentional consequences. I believe, however, that the Committee's approach here is the correct one, and the amendment is carefully crafted to provide a simple clarification that the interpretation of payment should not be limited solely to money.

Amendment No 11 introduces guidance on Part 1. Mr Deputy Speaker, I am sure that you and all other Members of the House will be glad that I do not intend to repeat previous speeches — there have been many — on the importance of guidance when we create new criminal offences, and I am glad that the Committee shared my views on the need for the new clause relating to guidance on Part 1. As with other Bills that we have considered on domestic abuse and protection from stalking, guidance will help to ensure the effective implementation of the legislation. It is not just for the benefit of the criminal justice system and the operationalisation of the new offences that we need guidance; it is to help those in the voluntary sector and education settings and to boost overall public awareness of new criminal offences. I recognise the crucial work that the Department will do through its task and finish group with all partners, and I do not believe that the new guidance clause will take anything away from that; if anything, it will enhance that

work. The key point is that there will be a duty on the Department to ensure that the guidance on Part 1 includes information for use in training and for monitoring the operation of the law.

As legislators, we need to satisfy ourselves that the laws that we pass will be subject to adequate post-legislative scrutiny, issues will be identified quickly and solutions will be developed. The new clause will help to facilitate that process. It will also encourage more openness and transparency in the work of putting new laws into practice, support the public awareness and cultural shifts that we need and help us to see clearly how things are working out so that we can review them effectively, strengthen certain provisions or close potential loopholes in the future.

On the rough sex defence and amendment No 18, I very much welcome the Minister's amendment to codify the case law since R v Brown. However, I am disappointed that we have not explored the introduction of a sexual homicide offence in more detail, as was suggested by the Women's Policy Group and others and raised at Second Stage. Victim Support was of the view that placing R v Brown in statute may not in and of itself resolve the problem of a claim of rough sex gone wrong being raised in murder cases. Obviously, it is a serious and complex issue that involves the balancing of rights, and, as explained, it is not possible to preclude defendants from raising an assertion in evidence that the injured party consented to the behaviour that led to the charge brought again them. It is an ECHR matter of a fair trial that should not be interfered with. In such cases, it is and must remain a matter for the courts to determine whether consent was present and, if so, whether any mitigation in sentence is merited.

I urge the Department to explore and possibly consult on the creation of a new sexual homicide offence. That is something that we could have for Northern Ireland. It would help to deal with scenarios where the rough sex defence was employed in the prosecution, which then failed to move forward with murder charges. There are other possible solutions to strengthen the legal position, including introducing an aggravating factor at sentencing, giving the Director of Public Prosecutions a role in cases where the defence is used or introducing certain court rules where the defence of rough sex will be used. I am interested to hear the Minister's views on those and on what further work her Department will do in response to the evidence that the Committee received.

In concluding my remarks on the group 1 amendments, I thank the Minister and her Department for tabling the amendment to introduce the offence of non-fatal strangulation or asphyxiation. I am glad that that is happening and that there will be no more delay in legislating for it. The Committee looked at it first in 2020 during its deliberations on the Domestic Abuse and Civil Proceedings Bill. It is also closely linked to the so-called rough sex defence, which has been used as a defence in non-fatal strangulation assaults, even when victims have stated openly that they did not consent to those assaults. Taken together, the amendments should provide legal protections that are much more robust than those that currently exist.

In its 2019 'No excuse' report, the Criminal Justice Inspection recommended:

> *"The Department of Justice should review, with input from relevant stakeholders, how potential inadequacies in current legislation regarding the act of choking or strangulation by defendants could be addressed".*

The Committee also heard from the PPS and looked at the new offence of strangulation and suffocation that was introduced in England and Wales in the Domestic Abuse Act 2021 that was passed at Westminster. It would have been completely shameful if we had not taken the opportunity to legislate on that now, especially when we are threatened with the uncertainty of another post-election hiatus. I sincerely hope that the amendment and the introduction of the new offence will provide the legal certainty and protection that victims and survivors need urgently.

I urge the next Justice Minister and whoever finds themselves sitting as a member of the Justice Committee in the next mandate to watch this space closely and to ensure that legislative change works in practice. We have much to do to extend protections to children and young people on child sexual exploitation, equal protection, youth justice, including the minimum age of criminal responsibility, and implementing the rest of the Gillen review.

Mr Allister: When the House debates criminal justice and the processes pertaining to it, we are dealing with one of the most solemn issues that we, as legislators, can deal with. We are dealing with the framework within which society can take that most extreme of steps: robbing a citizen of their liberty. Therefore, no one should approach the processes and procedures of criminal justice in a flippant or ill-considered manner.

3.15 pm

Our criminal justice system has evolved over centuries. There was a time when an accused person was not allowed to cross-examine his or her accuser. There was a time when justice was administered in secret, behind closed doors. There are good reasons why, over the decades and centuries, we have moved away from those starting points. My anxiety is that some are tempted to move back to elements of those dark ages.

As our society and the wider Western society fine-tuned its attitude to criminal justice, there evolved, in due course, the European Convention on Human Rights. Some people like to quote it a lot. I will quote and major upon article 6 of the European Convention on Human Rights. It is not a script of accident or flippancy; it is a script that beds down — beds in — fundamental principles that are supposed to shape and ensconce the very things that, we say, we hold dear in respect of criminal justice. We, of course, are a signatory to the European Convention on Human Rights. What does it have to say? It says:

> *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing".*

It does not say, "everyone except those charged with a heinous sex crime". It says:

> *"everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but" —*

this is important —

> *"the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or" —*

mark these words —

> *"to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

I will read that clause again:

> *"to the extent strictly necessary in the opinion of the court".*

It is not, "in the opinion of the Assembly or the legislator". It is:

> *"strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

What are we doing in the Bill? We are taking it on ourselves, in clause 15, to take away from the court the decision of what is in the interests of justice. We in the Assembly will decide that we will impose a blanket, mandatory ban on public justice in any case involving some of the specified criminal offences. That is what clause 15 says:

> *"Where a person is to be tried on indictment for a serious sexual offence, the court must give an exclusion direction before the beginning of the trial".*

There will be no discretion; it "must".

Article 6 of the European Convention might well state:

> *"strictly necessary in the opinion of the court",*

but forget it, because we know better. Clause 15 contains the mandatory imposition of an exclusion direction. Do not worry about special circumstances. Do not worry about the interests of justice. Let us just make it the law that, in all cases, there shall be an exclusion order. I say this to the House, even to those Members who came in with their preordained ideas and read from their pre-prepared script: are you really comfortable with excluding from our courts the least shred of discretion on the issue of whether there should be an exclusion order?

There are Members of this House who have been accused in criminal courts. I am sure that, when they were, they were very jealous and precious of their right to a fair trial. Well, their rights were no less than the rights of any other individual, yet, today, some of them, according to their spokesperson, will vote for mandatory exclusion orders, with no thought given to the interests of justice and no thought given to the discretion of the court. They will vote just to slap on a mandatory exclusion order.

Mrs Long: Will the Member give way?

Mr Allister: Yes, I will.

Mrs Long: Does the Member believe that it is in the interests of justice for victims of serious sexual assault to have to enter the courtroom, often a local courtroom, where their voice may be recognised, even with the measures that are in place, and where jigsaw identification can take place? Does the Member believe that it is in the interests of justice that people should be able to sit and hear those most intimate and harrowing details for nothing other than their personal entertainment?

Mr Allister: If it is not in the interests of justice, that is for a court to decide. That is why my amendment states that, if a court decides that it is in the interests of justice, an exclusion order will flow from that decision. If the picture that the Minister paints is the correct picture in any given case, the provision therefore already exists. Indeed, it does not even need clause 15, because, as long ago as the Criminal Evidence (Northern Ireland) Order 1999, we have a provision whereby evidence by a court can be required to be given in private. It has been there for 23 years. It already exists in law, but we wish in this House, apparently, to supersede article 6 of the European Convention. It might be an uncomfortable reality that article 6 is, in fact, accused-specific, with the interests of the accused put front and centre. That might be an uncomfortable reality, but that is an essential adjunct to having a fair criminal justice system. That is why it is there.

Many courts have been called on to adjudicate on the issue of excluding the public from a court. The European Court of Human Rights has given many judgements on the matter. I will refer to only two of them. In the cases of B v the United Kingdom and P v the United Kingdom, the court said that it is a right to equality before the courts to have a fair trial. It said:

> *"The public character of proceedings protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice visible, publicity contributes to the achievement of the aim of Art 6(1), a fair hearing".*

Secrecy and behind-closed-doors justice do not embed in the public mind, or contribute to, confidence in our courts.

Let me quote another case, which, maybe not surprisingly, was taken against Russia. We might think about that given what we are trying to do here. In the case of Chaushev and Others v Russia, the European Court of Human Rights criticised the Russian authorities, finding that they did not provide sufficient reasoning to demonstrate that the closure of a court was necessary. In other words, they did not demonstrate why it was necessary to do it behind closed doors. The House is inviting our courts to follow exactly the same course, whereby they will not have to demonstrate why it is necessary to lock and bolt the doors and why it is necessary to exclude public justice. Of course there will be circumstances, many of them turning on the needs of victims, in which it is right, proper and necessary to have evidence heard in a non-public setting. That provision already exists and will always be necessary, but it can never be necessary to wantonly make that, not on a case-by-case basis but universally, the mandatory requirement. That is the folly of clause 15: it seeks to make that which should be subjected in every case to a case-by-case decision subject to a blanket situation in which there is no discretion in the court.

Then, we have the ludicrous situation whereby the Minister wants to carry that forward into the appellate courts. I have spent many's the long and arduous day in our appellate courts in my lifetime. I can think of only one occasion in that time — it is such a rare eventuality — on which there was an application to hear fresh evidence. Appellate courts are not courts in which evidence is heard in public. Appellate courts are courts in which matters of law are argued and where the evidence previously given in the Crown Court, if it is a Crown Court appeal, will be sifted, assessed and evaluated, but there are virtually no circumstances in which individuals are called to the witness box to give evidence in an appellate court. It will be the dry, musty stuff of arguing what particular cases mean and arguing about legal authorities, yet the Minister comes to the House and says, "Ban those too. Shut the public out of that as well." That is way beyond where we need to be.

That causes me to ask this question: what is it that we are trying to hide? Maybe there are things to hide. The Gillen review, which so many in the House are so unquestioningly besotted with, has launched some staggering attacks on our traditional criminal justice values. Do Members realise that, in many serious criminal charges, your barrister, if you are the accused, is only allowed to ask questions of the accuser that the judge has approved? I can tell you that cross-examination is not something to be scripted; it is answer-led. Cross-examination goes where the answers lead it. That is how you sift the evidence. That is how you sort the wheat from the chaff. By asking the questions, whatever answer you get usually leads to

another question, and, eventually, if the truth is not being told —

3.30 pm

Mrs Long: On a point of order, Mr Deputy Speaker. This relates to previous decisions that were taken by the House which have passed their Consideration Stage, and we are now rehashing a debate that we had some months ago rather than dealing with the substance of this particular amendment. Is there any way that you, Mr Deputy Speaker, can encourage the Member to move back to this Bill and these amendments?

Mr Deputy Speaker (Mr Beggs): Members are entitled to raise, in a cursory fashion, a range of issues, and I have allowed them to do so. However, I encourage the Member to deal with the amendments that are before us today.

Mr Allister: I understand that the Minister might be embarrassed by the question, "Is there is something to hide in this process?". I am suggesting that there is something to hide in this process and why you might not want it to be in a public court. We have now reached the absurd position where in many of those criminal trials, your hands are tied behind your back in cross-examination. You can only ask the questions that the judge allows you to ask, and you cannot follow the evidence in the questioning. Maybe there is a reason why, therefore, some people would not like that to be subject to public examination. If that is the case, all the more shame for these propositions.

The fundamental point is this: any case may well deserve evidence to be taken in private, and that facility already exists. What is so fundamentally wrong is that we strip out that discretion and that case-by-case examination, and we impose a one-size-does-not-fit-all mandatory block on ever having a public hearing for those types of offences. In doing that, we do no service to the criminal justice system, which has been built up over so many years to command respect. Rather, we invite disrespect for that very system.

I say to the House that that is why, in a very modest amendment No 9, I am saying pause and insert into clause 15 that very simple article 6-compliant provision that, on a case-by-case basis the judge shall decide whether it is in the interests of justice or the public interest. If it is, he issues his exclusion order; if it is not, he does not issue it. Is that not how it should be, that if it is not in the interests of justice or the public interest, you should not be closing down the courts or hiding behind closed doors and it should be in public? Is that not the right test, rather than this blanket thing where we say, "Oh well, we will just take all these cases and have no regard to their individual circumstances", and have no case-by-case inspection, and say, "We, not the court, will decree that we are going to impose a mandatory blanket ban on public justice"? Do not do it.

Mr Deputy Speaker (Mr Beggs): I call the Minister of Justice, Naomi Long, to make her winding-up speech on the group 1 amendments.

Mrs Long: Since becoming Justice Minister, my goal has been to promote effective legislation in this mandate to protect the vulnerable in our community. The content of this Bill and the amendments that we have debated in this group will introduce valuable additional protections for the public by addressing important gaps in our current legislation and breaking new ground in several critical areas.

Importantly, the provisions contribute to the Executive's wider approach of protecting women and girls and recognising that, unfortunately, most victims tend to be female. However, and importantly, the provisions are constructed in a manner to make them gender-neutral, so any victim and any perpetrator is captured by the law, recognising that anyone can be a victim or a perpetrator of serious sexual offences. The amendments to the Bill that I have tabled today will make our community safer through a further strengthening of the existing law and by introducing new offences. The provisions will offer additional protections to victims, whose well-being remains at the heart of the criminal justice system.

I am encouraged by the support that has been shown by most Members today, and I would like to thank everyone who contributed to what was a useful and constructive debate on this group of amendments. In particular, I welcome the Chair of the Justice Committee's comments, along with those of Committee members, on how to handle the remaining issues, working with the Department on, for example, cyber-flashing, in order that that can be addressed by way of a Committee amendment at Further Consideration Stage.

I have to say that, in unusual circumstances, they have done all in their power to ensure that the Bill can proceed and cover new offences in what I recognise is a very rapidly changing

environment, particularly with respect to the online environment. I concur with Sinéad Bradley, who pointed out that it is important that we are all committed to continuing progress in this space and that this is not simply a matter that will be dealt with and then we will move on.

I want to touch on a number of issues. One of them is the Committee's proposal to further widen abuse of trust provisions in the Bill. I want to respond to the Committee Chair's request for me to set out the serious concerns that I expressed to the Committee in writing in relation to its proposal to seek to further widen the abuse of positions of trust provisions. They were also touched on by Rachel Woods. I covered those concerns as part of my earlier remarks on my amendment No 4, but I want to restate the main issues that I see with the proposal.

The Committee's proposal is to extend the scope of my amendment of the abuse of position of trust to offences beyond the area of sport and religion, as defined in the provisions. I am of course conscious that predatory behaviour can occur in any environment where an adult has significant influence or power over a young person in their care. However, as I said earlier, these offences were never intended to cover all situations where an adult might have contact with, or a supervisory role over, under-18s. They were created to protect young people in particular situations where there is some element of dependency on an adult, which is often combined with an element of vulnerability on the part of the young person. They are intended to capture those relationships where there is a significant imbalance in power between the adult and the child and where there is scope for that position of trust to be abused.

I stress how crucial it is to ensure that, in strengthening the law, we strike the right balance in proportionality. We must ensure that we can protect our vulnerable young people from sexual exploitation whilst at the same time safeguarding a young person's right and ability to engage in legal, consensual sexual activity in a relationship. My amendment, as it stands, achieves that balance. The scope of the provisions that I propose was taken as a result of my Department's review, consultation and engagement on the issues involved and following an examination of the experience of other jurisdictions. Their development is based on evidence presented to date and the particular concerns and risks identified by stakeholders. As I have already highlighted, this has been strongest in the areas of sport and religion, where those in a position of trust are particularly influential over a young person's development. For example, sports coaches have unique opportunities for physical contact and can hold major influence over a young person's career and future development. Similarly, those who hold positions of responsibility in religion have significant influence over a young person's spiritual and religious development, often against a background of emotional vulnerability or immaturity. In both situations, individuals can command very high levels of trust, influence, power and authority over young people who look up to them as figures who are well-established and respected by the wider community.

No equivalent evidence has emerged to identify wider areas of concern where further legislative intervention is justified or appropriate at this point. I therefore have grave concerns about widening the scope of the provisions beyond what I propose, in advance of sufficient robust evidence being secured to warrant that further extension. Widening the provision further, as the Committee may propose, would have significant consequences that I wish to avoid. Specifically, widening the offences' scope could well attract legal challenge as to the rights of an affected individual under article 8 of the ECHR. Article 8 protects the right to family and private life. The abuse of position of trust provisions would engage article 8 as they criminalise conduct in the prescribed circumstances where previously such conduct between consenting individuals would have been lawful. Article 8 is a qualified right of privacy that includes protection for every individual's private sexual life, including the private sexual life of a young person aged 16 or 17 in Northern Ireland and with an individual who is over the age of consent. Measures that interfere with those rights must satisfy the specific exemptions to article 8 and must be:

> *"necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

The extension of the abuse of position of trust offences to sport and religious settings has been strongly supported by evidence of a need for legal intervention, which is important in ensuring the legal competence of the provisions. Article 8 engagement would be more limited in the narrower extension that I propose than in a more broadly based approach, particularly where similar evidence

has not been brought forward to support such an approach. If the abuse of position of trust offences were extended to all adults, that would seriously affect a young person's right to engage in legal sexual activity. That would have an obvious consequential impact on the proportionality of article 8 engagement.

A wider approach would also be open to potentially successful legal challenge. The concern is based on legal advice and not on idle speculation. A proposed widening of the offences' scope without due process could also be considered as increasing the age of sexual consent by stealth. It also runs the risk of over-criminalising young people, who could be considered to be breaking the law if, for example, a person aged 18 had a sexual relationship with a person aged 16 or 17. Those with innocent intention who are enjoying a healthy relationship should not be criminalised inappropriately.

A widening of the scope of the offences also has the potential to dilute the effect that they are trying to achieve. It is important that the law is strong in its intent, and limiting the extension of the abuse of position of trust offences to the categories in my amendment will help to achieve that. It will also ensure that further protection is focused on areas where a need for legal intervention has been identified rather than casting a wider net.

I hope that Members are provided with some reassurance that the door on this policy remains open with the inclusion of a delegated power in my proposed provision. That will enable the inclusion of further areas at a future stage and without the need to await a primary legislative vehicle, should evidence be provided that it warrants further legal intervention. I trust that that is helpful to the Committee in its continuing consideration of the proposals to further reform my provisions and will encourage Committee members to agree that no additional amendment is needed at this time.

I turn to the other issues raised by the Committee Chair. *[Pause.]* Apologies, Mr Speaker, I want to turn to notes that I have on my phone.

The Chair and, indeed, the Member for North Down Miss Woods raised a number of issues on the amendments to clause 1 that will not be moved. They chose to explore those issues before the House in advance of Further Consideration Stage. The amendments will not be moved today, and I welcome that.

The intended amendments sought to address concerns expressed by Committee members that the proposed provisions in clause 1 may not adequately capture offenders who take an upskirt or downblouse image and claim that it is a joke or prank. To be absolutely clear: taking such an image is never funny. It is never acceptable. It is not banter. It is an unacceptable invasion of an individual's privacy. The impact of that type of behaviour on victims can be devastating. I therefore understand and sympathise with the Committee's wish to plug what its members see as a gap in the proposed provision. In that context, particular reference was made in written and oral evidence to the Committee to the relatively recent case of upskirting in Enniskillen. In the absence of a specific offence of upskirting, that case was prosecuted under the common law offence of outraging public decency. The predominant view that emerged in Committee sessions seemed to be that that case, in which the defence put forward that the act was done as a schoolboy prank, would not have been caught by the proposed provision. The judgement in that case was published, however, and it is clear from the judgement that the case would have been caught by the provisions in the Bill. If Members have any doubts, they may wish to read the youth court panel's conclusions, which state:

> *"The acts committed by the defendant could not have had any innocuous purpose".*

That judgement underlines and reinforces the evidence that the PPS gave to the Committee that simply because a defence is put forward that does not mean that it will be accepted when making a prosecutorial decision.

3.45 pm

The PPS and the PSNI, in their evidence to the Committee, made it clear that proving intent is an integral part of any criminal offence, and, indeed, we have had lengthy debates — in Latin, at times — about the need to do so. However, the full individual circumstances of each case will be used to evidence intent in those cases rather than a person's defence, which may be to assert that the behaviour was merely a prank. The Committee's amendment, which seeks to close that perceived gap by introducing a test in the motivation requirements that:

> *"a reasonable person would consider the action likely to cause ... humiliation, alarm or distress",*

is similar to the test included in the Protection from Stalking Bill. That would capture issues that were not intended to be covered by this law, as I explained to the Committee at length. The provisions in the Protection from Stalking Bill were drafted to address a particular kind of insidious, abusive or threatening behaviour that is extremely diverse in nature and is particularly difficult to specify in legislation, and hence there was a need for the catch-all provision referring to the "reasonable person" and to cast the net as widely as possible to capture acts that may conclude with coercive control and stalking having taken place. The offences that we are dealing with today, however, are well specified. There is therefore no requirement to cast the net more widely.

There has to be some concern that the Committee's proposal to include a reasonable person test in the clause by way of an amendment, as it was, does not represent a minor change; it completely transforms the offence. The suitability of the reasonable person test to stalking offences does not mean that it transposes to these offences. The behaviour to be captured in that Bill is in stark contrast to the behaviour being captured in these offences, which are, by definition, much more narrowly specified.

My main concern has been that these offences do not lead to over-criminalisation, whereby those who are foolish and perhaps act with disregard to their own and others' common sense or those who behave in what they believe to be a mutually acceptable way end up being criminalised. That is a high risk. While I much appreciate the Committee's careful scrutiny of the provisions and its wish to see legislation that is as wide-reaching as possible, it is important that, as we work together before Further Consideration Stage, we avoid introducing anything that would lead to over-criminalisation.

The Committee Chair also referenced the intention to table an amendment that proposes the introduction of a new offence of cyber-flashing, which is a form of offending behaviour that is, unfortunately, becoming more prevalent. Unlike with most intimate abuse offending, the victim is the recipient rather than the subject of the image. The images can make victims feel frightened, violated and vulnerable. I very much welcome the Committee's focus on the issue and therefore have no objection in principle to an amendment to provide for the offence of cyber-flashing.

The amendment that the Committee tabled but did not move included the same reasonable person test. I thank the Committee for not moving that amendment. I wish to work with the Committee to find a form of words for an amendment and for the Committee to table that amendment, which would allow us to include cyber-flashing without endangering the substance of the Bill.

I will move on to comments from other Members, if I may. I turn to amendment No 9 to clause 15, which was tabled by Mr Allister. I completely acknowledge the careful balance that is required when making change in this space. The Member's amendment proposes to amend clause 15 to provide that an exclusion direction would be made at the discretion of the court where the court considers that:

> *"it is in the public interest or the interests of justice"*

to do so. As Sinéad Ennis, Paula Bradshaw and other Members rightly identified in their contributions, however, that would mean that, in practice, decisions about whether the public are to be excluded from the court would be decided on a case-by-case basis, as is already the case. The aim of clause 15 is to provide certainty for the victim of a serious sexual offence that, when the case comes to court, they will not have to give evidence about intimate and harrowing details in front of a full public gallery.

The Member's amendment would remove that certainty. The police and the Public Prosecution Service would be unable to reassure victims that, if they decide to proceed with the case, the public will be excluded from the court.

Ms S Bradley: I thank the Minister for giving way. Does she agree that a court could make an assessment only if a case came forward in the first place? Victims who do not feel empowered and whose voices are silent will never feel empowered unless that certainty is put in place.

Mrs Long: I agree with the Member. Mr Allister suggested that clause 15 is to secure secrecy and that the courts have something to hide in that regard. It is not about secrecy. Let me be clear: it does not exclude the press or reporters; nor does it extend to preventing the judge from permitting all of those who, the judge feels, are required to be there for the passage of justice. The current —.

Mr Allister: Will the Minister give way?

Mrs Long: I will in a moment.

The ability of the court to exclude the public where it is in the interests of justice to do so is already provided for. The review found, however, that it is rarely used. That illustrates the need to provide certainty by placing a duty on the court to give an exclusion direction. The case-by-case approach still applies: the judge can make a judgment to permit others to enter the public gallery where he or she believes that it is important, in the interests of justice, to do so.

Mr Allister: The Minister says that the power exists but has not been much used: maybe that speaks to the fact that it is not much needed in such cases. The Minister wants to jump to the conclusion of saying, "We dispense with discretion; we just make a mandatory order". She is, with respect, incorrect when she says that the judge can admit anyone whom he wants. The judge can admit only the people listed in new article 27A(2)(a) to (f). It is not open; it is an absolute exclusion order against open justice. That is what it is in every case, even where it is not needed. The balance is wrong.

Mrs Long: I disagree with the Member. First, I have not jumped to a conclusion; extensive research has been done. There is an extensive evidence base. The power not being used in court is not because it would not be welcomed by individuals who have access to other special measures in some of those cases; neither is it because it does no harm when it is not used. In fact, we know, because the evidence is there, that not using it creates a barrier. The Committee has seen that evidence. It creates a barrier to people pursuing a case against their abuser. In that case, the evidence is clear. This is not about a Minister simply jumping to conclusions; it is about a study of the evidence. Unfortunately, the opportunities to exclude are rarely used, not because there is no need; they are rarely deployed in a courtroom setting because of the underpinning legislation, which rightly suggests that our courtrooms should be open. It is right that, in the majority of cases, they should be, but these are exceptional cases, and that is the reason for the amendment.

Mr Allister: Will the Minister give way?

Mrs Long: I will move on.

The certainty and consistency provided by clause 15 are fundamental to the protection that it offers. Under the European Convention on Human Rights, everyone is entitled to a fair and public hearing. It is right to ask whether the amendments are compliant. They are compliant: under article 6 of the ECHR, the press and the public can be excluded from the court in certain circumstances. We have prescribed those circumstances. The International Covenant on Civil and Political Rights provides that the public can be excluded in exceptional circumstances. Sir John Gillen stated in his report that he was satisfied that the circumstances of deterrence that currently deter so many complainants from taking forward cases of this nature are such that they represent exceptional circumstances. Under our provisions, the press continue to be admitted to hearings, and the public will be able to hear the announcement of decisions. There is no barrier to people being able to know that justice has been done or to observe how justice has been done, other than that they will not be in the public gallery when people are giving what is incredibly difficult and harrowing evidence to the court.

I will also echo the comments of Sinéad Bradley, if I may, on the need to protect young people from sexual abuse and exploitation and how that need is inextricably linked to providing young people with factual, non-judgemental, age-appropriate relationships and sexuality education. Sadly, it is not within my gift to deliver that, but I will continue to press to see change in that space, because young people cannot protect themselves against inappropriate behaviour if no definition of appropriate behaviour exists.

(Mr Principal Deputy Speaker [Mr Stalford] in the Chair)

I also agree and acknowledge that the Bill was pared back from its original format as a miscellaneous provisions Bill. However, I believe that what we have here, which amounts to 70% of the original Bill, is a significant and comprehensive addition to the protections that are available to victims of sexual offences, including children, and that it will provide them with the confidence to report such abuse and proceed with prosecutions. The other matters that were excluded from the Bill are ones that the Committee will, no doubt, be able to return to in the new mandate.

Paul Frew said in his contribution that he was concerned that those amendments had not been included in the original Bill. Of course, it was always the Department's intention to bring forward those amendments. However, in order that we could avoid running out of time in this mandate, the Committee has been very helpful in working with us by allowing us to stagger the

information that was sent to the Committee. With respect to his comments on the positive influence that sporting figures and, indeed, religious figures can have, we do actually utilise that in the justice system, as he suggested we should, whether it be Carl Frampton or Paddy Barnes, who presented certificates to women and young men who undertook boxing courses in Hydebank Wood, or Jonathan Rea, who visited Hydebank recently to discuss road and bike safety. We recognise that such figures can inspire change in those who are in our care, raising aspirations and giving hope. However, that influence, when it is in the hands of someone with malign intent, can also be powerful, so it is right that a young adult who may be particularly vulnerable to coercion from such a person ought to be protected.

Dolores Kelly raised extraterritorial jurisdiction. I reassure her that that is already included in the Bill for sexual offences and all of the 2008 Order. Extraterritorial jurisdiction is also included for the so-called rough sex defence and non-fatal strangulation. However, if a foreign national who is not normally resident in Northern Ireland or the UK more widely were to commit such an offence against an individual who was resident in Northern Ireland, that would be brought by the local authorities of the international jurisdiction concerned. That would be completed via our existing and continuing relationships with Europol and Interpol, so we would be covered.

Finally, with regard to the remaining comments from Miss Rachel Woods, I wish to make just two short comments before drawing my remarks on the group to a close. On payment, it should be noted that payment is already interpreted by the courts to include non-monetary payment, so whilst I have no objection to the amendment, it adds nothing to the Bill, because the courts will already take payment in kind, services and other things as payment. Payment does not have to be monetary. That is the interpretation as it stands in the courts.

With respect to language and the evolution of language around issues such as child pornography, I very much share her concerns. The redefining of language is a continuing process. It will continue to evolve in the Department and the justice system over time. I hope that Members can continue to show leadership around the careful use of such language in order that we can show leadership in where it should evolve.

That concludes my remarks on this group of amendments. I look forward to the debate on the amendments —

Mr Storey: Will the Minister give way —

Mrs Long: I will indeed.

Mr Storey: — just for clarity? Earlier, the Minister made reference to the amendment about payment. Can she clarify — maybe we should clarify this — that that is not about us seeking to amend the 2015 Act; it relates to the Bill and is not a reference to the 2015 Act. That is clear from the Committee's deliberations on it. It is very specific. With regard to the first amendments, which we did not move, will the Minister — I suspect that this will be the case — take into account the extensive correspondence that we have now received from Professor Clare McGlynn on those issues? We will share that with the Minister because there are some points contained in it that need to be addressed.

4.00 pm

Mrs Long: I indicated to the Committee when we met last week that, first, we are open to looking to see whether, before Further Consideration Stage, we can agree a form of words that does no harm to the Bill and that will give the Committee the reassurance that it seeks. We undertook to do that in response to a query from Mr Weir.

On the fallback position if that is not possible, I have said that I will task my officials with looking at the wording to provide the kind of reasonable person test or additional threshold that the Committee sought to include but that would not do harm to the Bill. We could then take that forward in any new mandate, and do the research and evidence gathering. We are essentially being asked to introduce what is a novel idea into the Bill at a very late stage. That comes with a degree of risk. We should avoid doing so without being fully cognisant of the unintended consequences. The Committee largely agreed with that. If the Committee has additional correspondence and it wishes to share that with my officials in the course of our discussions, I am happy to try to bottom that out and get to a point where we can bring back a suitable amendment.

On amendment No 6 and the definition of payment for sexual services, which is in clause 3, my understanding — I am happy to take an intervention from the Member — was that the amendment was intended to amend new article

41(5) of the Sexual Offences (Northern Ireland) Order 2008, as provided for in Part 1 of schedule 2 to the Bill and as referenced in clause 3. The amendment was, therefore, intended to make it clear that payment for the sexual services of a child may be something other than financial. The amendment, as tabled, is incorrectly drafted and, instead, amends the definition of payment in article 64A of the 2008 Order, which provides for the criminalisation of paying for sex, as introduced by Lord Morrow.

I do not support amendment No 6, as it stands, on the grounds that it is incorrectly drafted. I understand from what the Chairman has just said that it does not fulfil the requirements. However, at Further Consideration Stage, a redrafted, accurate amendment could be tabled to take care of that particular issue. I am happy to support the Committee in taking that forward, though, as I have said, it is already taken as read by the courts that payment does not need to be monetary. I hope that that provides the reassurance that the Committee and Chairman have sought.

I look forward to being able to come back to debate the amendments in group 2. I hope that we will be able to make significant progress on the Bill this afternoon.

Amendment agreed to.

New clause ordered to stand part of the Bill.

New Clause

Amendment No 5 made:

After clause 2 insert—

*"**Private sexual images: threatening to disclose***

***2B.**—(1) The Justice Act (Northern Ireland) 2016 is amended as follows.*

(2) In section 51 (disclosing private sexual photographs and films with intent to cause distress)—

(a) for subsection (1) substitute—

'(1) A person commits an offence if—

(a) the person discloses, or threatens to disclose, a private sexual photograph or film in which another individual ('the relevant individual') appears,

(b) by so doing, the person intends to cause distress to that individual, and

(c) the disclosure is, or would be, made without the consent of that individual.",

(b) in subsection (2)—

(i) after 'disclose' insert ', or threaten to disclose,'

(ii) for 'the individual mentioned in subsection (1)(a) and (b)' substitute 'the relevant individual',

(c) in subsection (4), after 'disclosure' insert ', or threat to disclose,'

(d) in subsection (5), in each place, for 'the individual mentioned in subsection (1)(a) and (b)' substitute 'the relevant individual',

(e) after subsection (7) insert—

'(7A) Where a person is charged with an offence under this section of threatening to disclose a private sexual photograph or film, it is not necessary for the prosecution to prove—

(a) that the photograph or film referred to in the threat exists, or

(b) if it does exist, that it is in fact a private sexual photograph or film.',

(f) for subsection (8) substitute—

(8) A person charged with an offence under this section is not to be taken to have intended to cause distress by disclosing, or threatening to disclose, a photograph or film merely because that was a natural and probable consequence of the disclosure or threat.'

(3) In section 53 (meaning of 'private' and 'sexual'), in subsection (5), for 'the person mentioned in section 51(1)(a) and (b)' substitute 'the relevant individual (within the meaning of section 51)'.

(4) In Schedule 4 (private sexual photographs etc: providers of information society services)—

(a) in paragraph 3(1), after 'sub-paragraph (2)' insert ', (2A)',

(b) in paragraph 3(2), after 'if' insert ', in the case of information which consists of or includes a private sexual photograph or film,',

(c) after paragraph 3(2) insert—

‘(2A) This sub-paragraph is satisfied if, in the case of information which consists of or includes a threat to disclose a private sexual photograph or film, the service provider had no actual knowledge when the information was provided—

(a) that it consisted of or included a threat to disclose a private sexual photograph or film in which another individual appears,

(b) that the threat was made with the intention of causing distress to that individual, or

(c) that the disclosure would be made without the consent of that individual.’,

(d) in paragraph 4(2), for ‘section 51’ substitute ‘section 52’,

(e) for paragraph 4(3) substitute—

‘(3) ‘Information society service’ means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request).’”— [Mrs Long (The Minister of Justice).]

Clause 3 (Miscellaneous amendments as to sexual offences)

Amendment No 6 made:

In page 6, line 12, after "paying” insert—

"(which is not limited solely to the exchange of monies for this purpose)”.— [Mr Storey (The Chairperson of the Committee for Justice).]

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

Clauses 4 to 6 ordered to stand part of the Bill.

Clause 7 (Special rules for providers of information society services)

Amendment No 7 made:

In page 10, leave out lines 16 to 26 and insert—

"‘information society service’ means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);”.— [Mrs Long (The Minister of Justice).]

Amendment No 8 made:

In page 10, leave out lines 33 to 37.— *[Mrs Long (The Minister of Justice).]*

Clause 7, as amended, ordered to stand part of the Bill.

Clauses 8 to 14 ordered to stand part of the Bill.

Clause 15 (Serious sexual offences: exclusion of public from court)

Amendment No 9 proposed:

In page 16, line 10, after "court" insert—

"if satisfied that it is in the public interest or the interests of justice".— [Mr Allister.]

Question put, That the amendment be made.

Some Members: Aye.

Some Members: No.

Mr Principal Deputy Speaker: Before I put the Question again, I remind Members present that, if possible, it would be preferable to avoid a Division.

Question put a second time.

Mr Principal Deputy Speaker: Before the Assembly divides, I remind Members that, as per Standing Order 112, the Assembly currently has proxy voting arrangements in place. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. I remind all Members of the requirement for social distancing while the Division takes place. I ask Members to ensure that they retain a gap of at least 2 metres between themselves and others when moving around in the Chamber or the Rotunda, and especially in the Lobbies. Please be patient at all times, observe the signage and follow the instructions of the Lobby Clerks.

The Assembly divided:

Ayes 28; Noes 56.

AYES

Mr Allister, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mrs Cameron, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Erskine, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Storey, Mr Weir, Mr Wells.

Tellers for the Ayes: Mr Allister and Mr Weir

NOES

Dr Aiken, Mr Allen, Dr Archibald, Ms Armstrong, Ms Bailey, Mrs Barton, Mr Beattie, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Butler, Mr Catney, Mr Chambers, Mr Delargy, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Ferguson, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lyttle, Mr McAleer, Mr McCrossan, Mr McGlone, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Á Murphy, Mr C Murphy, Mr Nesbitt, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Miss Reilly, Ms Rogan, Mr Sheehan, Ms Sheerin, Mr Stewart, Mr Swann, Miss Woods.

Tellers for the Noes: Mr Blair and Mr Dickson

Question accordingly negatived.

Amendment No 10 made:

In page 19, line 20, at end insert—

*"**Exclusion of public from appeal hearing***

***27E.**—(1) Paragraph (2) applies where a hearing is to be held by the Court of Appeal of any one or more of the following—*

(a) an application for leave to appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(b) an appeal against a conviction or sentence (or both) in respect of a serious sexual offence;

(c) an application for leave to refer a sentence in respect of a serious sexual offence to the Court of Appeal under section 36 of the Criminal Justice Act 1988 (reviews of sentencing);

(d) a reference under that section of a sentence in respect of a serious sexual offence;

(e) an application for leave to appeal under section 12 or 13A of the Criminal Appeal (Northern Ireland) Act 1980 (appeals against findings of not guilty on ground of insanity and unfitness to be tried) in respect of a serious sexual offence;

(f) an appeal under either of those sections in respect of a serious sexual offence.

(2) The court must give an exclusion direction before the beginning of the hearing (but this is subject to paragraph (4)).

(3) Paragraph (2) applies whether or not the hearing relates to other offences as well as a serious sexual offence.

(4) Paragraph (2) does not apply if the time at which the exclusion direction would fall to be given (in the absence of this paragraph) is not within the lifetime of the complainant.

(5) Where an exclusion direction is given under this Article in relation to a hearing, the direction—

(a) has effect from the beginning of the hearing, and

(b) subject to paragraph (7), continues to have effect until, in respect of each relevant application or appeal to which the hearing relates, either—

(i) a decision has been made on the application or appeal, or

(ii) the application or appeal has been abandoned.

(6) In paragraph (5) a 'relevant application or appeal' means any application, appeal or reference mentioned in paragraph (1).

(7) The exclusion direction does not have effect during any time when any of the following decisions is being pronounced by the court—

(a) a decision to grant or refuse leave to appeal;

(b) a decision on an appeal;

(c) a decision to grant or refuse leave to make a reference under section 36 of the Criminal Justice Act 1988;

(d) a decision on such a reference.

(8) In this Article—

'complainant' has the meaning given by Article 27A(7), reading the reference in Article 27A(7) to the trial as a reference to the hearing;

'effect' has the same meaning as in Article 27A (see Article 27A(7));

'exclusion direction' is to be read in accordance with Article 27F(1);

'sentence' has the same meaning as in Part 1 of the Criminal Appeal (Northern Ireland) Act 1980;

'serious sexual offence' has the same meaning as in Article 27A (see Article 27A(7)).

(9) A reference in this Article to a hearing is not to be taken to include any proceedings on an application for leave to appeal, or on an application for leave to refer a sentence, that are of a kind which (ignoring this Article) are not held in open court.

Exclusion from appeal hearings: further provision

27F.—(1) Subject to paragraph (5), in Article 27E and this Article "exclusion direction" has the meaning given by Article 27A(2).

(2) The following provisions apply in relation to exclusion directions given under Article 27E as they apply in relation to exclusion directions given under Article 27A—

(a) Article 27B(1) to (3), (5) and (6);

(b) Article 27C; and

(c) Article 27D(1) to (4).

(3) As well as being subject as mentioned in Article 27D(4), an exclusion direction given under Article 27E has effect subject to section 24 of the Criminal Appeal (Northern Ireland) Act 1980 (right of accused to be present at hearing of appeal and limitations on that right).

(4) Rules made under section 55 of the Judicature (Northern Ireland) Act 1978 may make provision about any matter mentioned in paragraph (4) of Article 27B or paragraph (5) of Article 27D (reading the references in those paragraphs to Article 27A(2)(c) and (d), Article 27B(6) and Article 27C(3) as references to those provisions as applied by this Article).

(5) In their application by virtue of this Article, Article 27A(2) and the provisions mentioned in paragraph (2)(a) to (c) are to be read as if—

(a) in the definition of 'the complainant' in Article 27A(7), the reference to the trial were a reference to the hearing, and

(b) in the definition of 'persons directly involved in the proceedings' in Article 27A(7), sub-paragraph (e) were omitted."— [Mrs Long (The Minister of Justice).]

Clause 15, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 11 made:

After clause 15 insert—

*"**Guidance about Part 1***

***15A.**—(1) The Department of Justice must issue guidance about—*

(a) the effect of this Part, and

(b) such other matters as the Department considers appropriate as to criminal law and procedure relating to Part 1 in Northern Ireland.

(2) The guidance must include—

(a) information for use in training on the effect of this Part as it considers appropriate for its personnel, and

(b) the sort of information which it seeks to obtain from personnel for the purpose of the assessment by it of the operation of this Part.

(3) Personnel in subsection (2) being any public body that has functions within the criminal justice system in Northern Ireland which the Department of Justice considers appropriate.

(4) A person exercising public functions to whom guidance issued under this Part relates must have regard to it in the exercise of those functions.

(5) The Department of Justice must—

(a) keep any guidance issued under this Part under review, and

(b) revise any guidance issued under this Part if the Department considers revision to be necessary in light of review.

(6) The Department of Justice must publish any guidance issued or revised under this section.

(7) Nothing in this Part permits the Department of Justice to issue guidance to a court or tribunal."— [Mr Storey (The Chairperson of the Committee for Justice).]

New clause ordered to stand part of the Bill.

Clause 16 (Support for victims of trafficking etc)

Mr Principal Deputy Speaker: We move to the second group of amendments for debate. With amendment No 12, it will be convenient to debate amendment Nos 13 to 17. In the group, amendment No 14 and amendment No 13 are mutually exclusive.

I call the Chair of the Committee for Justice, Mr Mervyn Storey, to move amendment No 12 and to address the other amendments in the group.

Mr Storey: I beg to move amendment No 12: In page 20, line 6, at end insert—

"(aa) in subsection (4) after 'days' insert '(or more based on need)';".

The following amendments stood on the Marshalled List:

No 13: In page 20, line 6, at end insert—

"(ab) in subsection (9) leave out 'such further period as the Department thinks necessary' and insert 'for 12 months (or less if not required)':".— [Mr Storey (The Chairperson of the Committee for Justice).]

No 14: In page 20, line 6, at end insert—

"(ab) in subsection (9) leave out from 'may' to 'necessary' and insert—

'shall nevertheless ensure that necessary assistance and support continues to be provided to that person under this section for at least 12 months'".— [Mr Storey.]

No 15: In page 20, line 6, at end insert—

"(ac) after subsection (9) insert—

'(9A) In determining the assistance that is necessary under subsection (9) the Department must have regard to subsections (5) to (7).'".— [Mr Storey.]

No 16: In page 20, line 12, at end insert—

"(4) In section 22 (Defence for slavery and trafficking victims in relation to certain offences)—

(a) in subsection (9)(a)(i) after 'of a' insert 'Class A,',

(b) In subsection (9)(a)(ii) after 'of a' insert 'Class A or,'".— [Mr Storey (The Chairperson of the Committee for Justice).]

No 17: After clause 17 insert—

*"**Protective measures for victims of slavery or trafficking***

***17A.**—(1) The Department of Justice may by regulations, within 24 months of Royal Assent, make provision—*

(a) enabling or requiring steps to be taken or measures to be imposed for protecting a person from slavery or trafficking,

(b) for the purpose of or in connection with such steps or measures for protecting a person from slavery or trafficking.

(2) Steps or measures which may be provided for in regulations under this section are not limited to notices or orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly."— [Mr Storey (The Chairperson of the Committee for Justice).]

Mr Storey: There was widespread support for clauses 16 and 17. However, a number of organisations believed that the legislation provided an opportunity to go further to improve the support and protection provided to victims of trafficking and exploitation. The evidence received by the Committee highlighted the need for the statutory support and assistance provided to victims of trafficking and exploitation to be extended beyond what is available under the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which, when it was brought forward by my friend and colleague Lord Morrow, led the way in tackling those horrendous crimes and providing support to victims. A Member who spoke previously made reference to the change that that legislation has made and the benefit that it has brought about.

Proposals to provide additional support to people while in the national referral mechanism (NRM) process, which determines whether a person is a genuine victim of trafficking or slavery, following receipt of a positive conclusive decision and when appealing a negative NRM decision, were put forward. The Committee discussed them in depth during oral evidence sessions with organisations that work with and provide direct support to victims of trafficking and exploitation, including CARE NI and the Migration Justice Project organisations, which include the Law Centre NI, Belfast and Lisburn Women's Aid, Flourish NI and Migrant Help. We also discussed that with Department of Justice officials.

The organisations highlighted that a positive NRM conclusive grounds decision does not in itself give rise to a benefit entitlement or access to support with any degree of security from the point when someone is confirmed a victim. While the 2015 Act provides for support to be continued on a discretionary basis, under that power, support is currently being provided only to a limited number of victims and only as a short-term transition to mainstream services or repatriation. That lack of statutory support leaves some recognised survivors of human trafficking homeless, destitute and completely reliant on the charitable support that they receive. In those circumstances, they will be vulnerable to being re-trafficked and are unlikely to have the sense of stability and security that would encourage them to engage with the criminal justice agencies and assist in bringing traffickers to justice. Figures provided to the Committee suggested that the number of victims with a positive NRM outcome requiring support is likely to be small and would comprise those who are an EEA victim with pre-settled status or a non-EEA victim waiting for a decision on a concurrent asylum claim or other immigration application.

When the Committee discussed the issues with departmental officials, they confirmed that section 18 of the 2015 Act places a statutory duty on the Department to provide assistance and support to adults who are potential victims of human trafficking during a 45-day recovery and reflection period, pending the determination of their status as victims through the NRM process. It also provides for support to be continued on a discretionary basis following a positive conclusive grounds decision based on assessed need.

The officials advised that support is provided in excess of 45 days in 95% of all current cases. For cases going through the NRM process, support is typically provided for 150 days, but it can be provided in excess of that in some cases, largely due to the length of time that is taken for the Home Office competent authority to make reasonable grounds or conclusive grounds decisions in individual cases. The officials highlighted the fact that the Minister gave a clear commitment to progressing the work needed to increase support for trafficked victims, which will be a key element of the development of a longer-term strategy for human trafficking and modern slavery.

4.30 pm

Victims of modern slavery and trafficking are victims of the most horrendous crimes. The Committee is concerned that, sadly, the number of victims is increasing but the number of convictions remains low. The Committee believes that there are strong arguments for ensuring that support be provided to the victims who need it, rather than providing it on a discretionary basis, pending not only the determination of their status through the NRM process but from the point at which they are confirmed to be a victim following a positive conclusive grounds decision. That would enhance their protection from re-trafficking and assist in their recovery and engagement with the criminal justice agencies to help to secure increased convictions.

Ensuring support is particularly important given the potential future pressures on the Department's budget, which are very likely to result in difficult funding decisions being taken and discretionary areas of spend potentially being reduced or ceased. On that point, I thank the Minister for again taking the time to meet the Committee to discuss the particular concerns that have been raised about the Department's budget. It is clear that there are particular pressures. However, despite those, we need to ensure that we keep a very close focus on the victims of this abhorrent crime, which is, sadly, still prevalent in our society.

The Committee was also conscious of the motion that was unanimously supported by the Assembly in October 2020, which called for:

> *"consideration of further support for victims of trafficking beyond the end of the support provided under the National Referral Mechanism". — [Official Report (Hansard), 13 October 2020, p26, col 2].*

The Committee, therefore, proposed amendment Nos 12 and 13 to provide statutory support for victims to cover them from the presentation stage to the NRM decision, based on need. From receipt of a positive NRM decision, statutory support would be provided for 12 months, or less if it were no longer required. The period of support following a positive NRM decision aims to provide the support required to aid a victim's recovery and to assist them in moving forward while not providing a disincentive to move out of support.

I appreciate the Minister's indication at the Committee meeting last Thursday that she would support the amendments. The Committee is also happy to work with the Minister and her officials to address any minor technical or drafting issues that may be required prior to Further Consideration Stage.

My colleagues in the DUP and I have proposed two separate amendments on the support for victims. My colleague Peter Weir will outline the rationale for those during the debate on this group of amendments.

Amendment No 16 deals with the extension of the statutory defence on exploitation. Section 22 of the 2015 Act provides a statutory defence for victims and survivors of human trafficking for certain offences. It gives effect to the principle of the non-punishment of trafficking victims. That is affirmed in international law and guidance and is aimed at ensuring that a victim of trafficking is not punished for unlawful acts committed as a consequence of trafficking. In Northern Ireland, the defence does not apply to an offence that, in the case of a person over the age of 21, is punishable on indictment with imprisonment for life or a term of at least five years, other than a defined list of offences, including drug-related offences for class B or C drugs and offences relating to false immigration documents.

Questions were raised in the evidence that was received by the Committee about whether the current statutory defence provides adequate protection for victims of emerging forms of criminal exploitation. It was highlighted that the legislative intent of the statutory defence in the 2015 Act was to ensure its availability for victims who were recovered from criminal exploitation relating to drug use. At that time, there were a number of cases of human trafficking for cannabis cultivation in Northern Ireland. More recently, however, there has been an increase in the number of victims who have been trafficked for heroin distribution. Heroin is a class A drug and not currently covered by the statutory defence. The Committee noted that the Department had commenced a review of the statutory defence and was gathering evidence and reviewing relevant judgements and research. The Committee, however, believes that the Bill provides an opportunity to ensure that the legislative intent of the 2015 Act in relation to the statutory defence for victims recovered from criminal exploitation relating to drug use is updated to reflect emerging forms of exploitation. The Committee agreed to table amendment No 16 to extend the statutory defence on exploitation to include class A drugs in order to provide adequate protection for victims who are trafficked for heroin distribution.

I move now to the last amendment in the group, amendment No 17, which deals with protective measures for victims of slavery or trafficking.

Slavery and trafficking risk orders (STROs) are available in England and Wales but not in Northern Ireland. The independent Anti-Slavery Commissioner highlighted in her 2019-2020 report and, more recently, when she attended an event hosted by the Assembly's all-party group on modern slavery, slavery and trafficking risk orders as a means of protecting victims of modern slavery, and she recommended that consideration be given to implementing them in Northern Ireland. In October 2020, the Criminal Justice Inspection report also recommended that the Department of Justice, in consultation with the PSNI and the Public Prosecution Service, consider the experience in England and Wales. It recommended that, within one year of the publication of its report, they look at the need for STROs in Northern Ireland as a way to prevent modern slavery and human trafficking-related crimes and to support victims.

When asked about the current position, Department of Justice officials advised that preparations were being finalised for a public consultation early this year on the introduction of STROs in Northern Ireland, with the aim of identifying an appropriate legislative vehicle as soon as possible in the next mandate, depending on the outcome of the consultation. They clarified that the STROs had originally been consulted on in 2014 and that a decision was made at that time not to include them in the 2015 Act. They were subsequently introduced in England and Wales in 2015. Scotland's equivalent is the trafficking and exploitation risk order. The Department acknowledged that there was widespread support for their introduction in Northern Ireland from a range of non-governmental organisations and bodies involved in modern slavery and human trafficking issues.

The Committee noted examples of the beneficial use of STROs in England and Wales, the positive findings of the 2017 Home Office review of their effectiveness and the findings of the May 2019 independent review of the Modern Slavery Act 2015. The Committee believes that STROs would be a useful additional tool in Northern Ireland in tackling and disrupting human trafficking and modern slavery, and in assisting in the prevention of reoffending. The Committee is disappointed at the lack of progress by the Department in that area and wants work to be expedited to provide STROs when a defendant is convicted of a crime other than human trafficking but where there is a suspicion that trafficking may be involved; where there is a connection between human trafficking and the offending behaviour; and where people have not been convicted, including in situations where there is a need to protect future potential victims while modern slavery or human trafficking crimes are being investigated, particularly when those investigations are very long and drawn out. That would make our system similar to what is in place in England, Wales and Scotland.

The Committee therefore decided to table amendment No 17, which places a duty on the Department to bring forward by 2024 protective measures, such as STROs, for victims of slavery or trafficking. That approach provides the Department with the flexibility to take account of the findings of the consultation when shaping the provisions relating to STROs. It also ensures that they will be in place within a reasonable time frame and that any further long delays are avoided. I understand that the Minister is content with that amendment, and the Committee appreciates her support.

It would be remiss of us not to comment on the fact that STROs were being discussed in 2014, and we are now in 2022. Therefore, I think that the time has well passed for us to take positive, decisive action and to see their introduction in Northern Ireland.

The Committee has taken the opportunity through the Bill to bring forward additional legislative provision to improve the support and protection that are given to victims of human trafficking and modern slavery and to build on the 2015 Act. I look forward to the debate on the second group of amendments. Before I finish, I place on record the Committee's appreciation to all the organisations that provide vital support and assistance to victims of human trafficking, exploitation and modern slavery.

I conclude those comments as Chair of the Justice Committee, and, as I referred to, my colleague Peter Weir will expand on the amendments that have been tabled in our names as members of the DUP. I think that, as with all legislation, we can always run the risk of unintended consequences. There is a concern about the amendment where there is the use of the phrase "or less", and I think that there is an opportunity for the House to ensure that there are no unintended consequences. I will leave my comments there, and I look forward to my eloquent colleague Mr Weir elaborating on that before I move the amendments.

Mr Principal Deputy Speaker: No pressure, Mr Weir.

Ms Dolan: Figures that were released in August last year show that there has been a

750% increase in the numbers of suspected victims of human trafficking in the North over the last eight years. In 2012, there were 15 referrals to the national referral mechanism, which is the framework for identifying and supporting victims of human trafficking and modern slavery, and there were 128 referrals in 2020. Those figures may be influenced by other factors, such as an increased awareness of human trafficking and better methods of identifying and supporting victims. However, the upward trend is still extremely worrying. It shows that the scale of human trafficking and modern slavery in our society is huge, yet those figures likely represent only a fraction of those who suffer from the cruelty of this criminal exploitation. I am pleased to support Part 2 of the Bill, which improves support for victims of human trafficking and modern slavery and which will allow the human trafficking and slavery strategy to be published every three years instead of annually. That will allow us to put in place more effective long-term actions to address the scale of trafficking and exploitation.

Turning to the proposed amendments to the Bill, I will say that, when the Justice Committee heard evidence from a range of organisations on the Bill, concerns were raised that the Human Trafficking and Exploitation Act 2015 is too restrictive in the support that it offers to confirmed victims of trafficking. The legislation specifies a period of 45 days for the provision of support for confirmed victims, albeit it also provides the Department of Justice with a discretionary power to provide the support for a longer period if it thinks that that is necessary.

Amendment Nos 12 and 13 would remove the 45-day period specified and would instead ensure that the support be provided for up to 12 months, or fewer if it is not required. I appreciate the will of the Justice Committee to guarantee that support be provided for an appropriate length of time, and I believe that amendment Nos 12 and 13 do that by providing support for up to 12 months based on need.

Given that existing legislation provides the Department with the discretionary power to provide support for an unspecified period, which may be more or less than the 12 months, I am not convinced that the case has been made that amendment Nos 14 and 15 are necessary. I am concerned that amendment Nos 14 and 15 have not been sufficiently discussed, examined or tested and that we are totally unaware of the financial implications of such changes. Whilst I am sympathetic to the motivations behind the amendments, I fear that making legislation without having that crucial information will be bad practice and could have huge implications. Sinn Féin will, therefore, oppose amendment Nos 14 and 15.

At present, confirmed victims of human trafficking and slavery have a statutory defence in court in relation to certain offences that they carried out under their exploitation and because of their exploitation. That defence applies to class B and below drug offences but not to class A drug offences. Amendment No 16 will insert class A drug offences into the list of offences where victims are entitled to use that statutory defence.

That is an important protection, as we know that there are no limits to the things that trafficked and exploited victims are forced to carry out. Sinn Féin is happy to support that amendment.

Finally, Sinn Féin is also happy to support amendment No 17, which would place a statutory duty on the Department of Justice to bring forward protective measures for victims of slavery or trafficking within 24 months. It is anticipated that the measures will take the form of the important slavery and trafficking risk orders. I know that the Department will soon do a public consultation on STROs, and I look forward to my party engaging with that consultation to identify the best way forward in protecting victims.

4.45 pm

Ms S Bradley: I will speak on behalf of the SDLP to the amendments in group 2, which focus on trafficking and exploitation.

Amendment No 12 seeks to move away from a set number of days and make support "based on need". We support that.

Amendment No 13 seeks to move away from the discretion that the Department has. Stakeholders made the point that that discretion has been most welcome and much needed. Unfortunately, because a large part of the support is discretionary, people who have been trafficked live in fear of the unknown. They live from week to week or month to month and are dependent on the goodwill of others. That is an unfair situation to place anybody in, given the trauma that they have just come through.

Amendment No 13 pins down in law a period of 12 months. We debated the timeline in Committee, but there was recognition that that period would take away a cliff edge and allow a person an adequate amount of time in which to rebuild their lives. It was not reasonable to expect anybody to live on the goodwill or

discretion of the Department. The rationale and thinking behind the 12-month period in that amendment are sound.

The inclusion of the words:

"(or less if not required)"

also has good grounds. We all, on the Committee for Justice in particular, recognise that, when resource is tight, it is a case of robbing Peter to pay Paul. It is difficult to look at situations and say, "We know we have finite access to resource." I hope that there will be plenty of situations in which support is not required. Unfortunately, I do not expect that, within a 12-month window, there will be many such situations.

I see what amendment No 14 is attempting to do, and I will reserve judgement until I have heard full clarity on the situation. My fear, however, is this: if we have limited access to resource and we put it into law that the Department is bound to support somebody who does not need it — if the outcome of a fair assessment is that the support is not required — is it fair that we then direct resource to somebody who does not need it, while, perhaps, somebody who desperately needs it sits on a much lesser package or level of support, if any at all? We have to be realistic. I genuinely fear that, as Mr Storey mentioned, the unintended consequences of amendment No 14 could become apparent. Whilst I am not unsympathetic to what it attempts to do, I am fearful that good intentions might result in wrong outcomes.

I say that having listened to the graphic explanation given by a Member of a photographic image. This is about people living in the most horrific of situations. I would like to think that we have a fair system that reaches each of those people. I can see how we could undo the good work of amendment No 13 by agreeing to amendment No 14, but I will wait to hear the Member's contribution on that. I would also welcome hearing from the Minister, when she speaks to it, whether she knows of any other unintended consequences that I have not been mindful of.

Amendment No 15 will underpin the determination for when help is required, and I will listen with interest to the case for it. Amendment No 16 looks to include class A drugs in clause 16, and the SDLP fully supports that.

Finally, amendment No 17 is proposed new clause 17A, which is titled "Protective measures for victims of slavery or trafficking". The new clause is, no doubt, the foundation stone that would allow for the STROs that have been discussed. Many stakeholders put forward compelling arguments for why STROs should be triggered. I have no doubt that amendment No 17 does that, but I would argue that, given the way in which it is drafted, it goes further. It allows for STROs and beyond and gives the Department discretion to implement any measures that it believes are necessary. It is not limited to notice orders. Quite rightly, it also includes this provision:

"The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly."

That is good practice, but the proposed new clause is the critical foundation stone for building real support for the people whom we are desperately trying to reach. For that reason, we will support amendment No 17.

Mr Butler: On behalf of the Ulster Unionist Party, I will speak to the second group of amendments, which deals with trafficking and exploitation. I pay tribute to the Minister, her Department and the Justice Committee for the collegiate manner in which they have dealt with the Bill. Bar one, there has been a lack of Divisions so far, so I hope that there will be no more Divisions after further debate.

I am going to give voice to amendment Nos 14 and 15, which were tabled in the names of Mervyn Storey, Peter Weir and Robin Newton. Although I commend the Committee's intention to provide statutory support to confirmed victims, I, too, am concerned about the wording of amendment No 13. It is too ambiguous to provide, with certainty, the minimum 12 months of support that confirmed victims of modern slavery need in order to recover from their exploitation and trauma.

Although amendment No 13 would provide new statutory support to confirmed victims, the wording:

"for 12 months (or less if not required)"

lacks clarity on exactly how much support would be provided. It fails to provide the certainty that victims who have come through harrowing circumstances and abuse need in order to begin to move forward with their lives.

It is clear from the evidence from individuals who are working directly with victims of trafficking that 12 months is the absolute

minimum amount of time that it takes for victims to recover from their trauma and abuse. Amendment Nos 14 and 15 provide the certainty and stability of the at least 12 months' support that victims desperately need and depend on during their recovery. When properly supported, victims are also more likely to engage with the police in investigations into their abusers and less likely to be re-trafficked. We need that input from victims in order to help prosecutions succeed. It is therefore essential that we adopt the more prescriptive approach of amendment Nos 14 and 15 in order to avoid being unintentionally restrictive in our provision of support to victims.

Amendment No 15 makes it clear that sections 18(5) and (7) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 will apply when determining what type of support will be considered necessary under amendment No 14. The amendments do not include the length of time for which victim support will be given, nor what might be left to chance. Amendment Nos 14 and 15 also leave the door open for the Department to provide additional discretionary support beyond 12 months, if the victim requires it.

We are talking about victims' needs here. Evidence shows that victims need at least 12 months' support, so I urge the Assembly to give that to them. I strongly support amendment Nos 14 and 15 and urge Members to vote in favour of them. As an Assembly, we have an opportunity to do the right thing and, as has already been said, lead the way with this groundbreaking statutory support. Why would we settle for something less than that in amendment No 13?

Common sense says that amendment Nos 14 and 15 provide greater and more certain support to confirmed victims of trafficking, so —

Mrs Long: Will the Member give way?

Mr Butler: Absolutely.

Mrs Long: Will the Member accept, however, that it could lead to a situation in which somebody who is no longer in need of support continues to receive it? We could even end up in a situation in which there is double funding, where somebody has moved away from that support, is in work and is in receipt of in-work benefit but would also be receiving payment from the public purse at the expense, potentially, of other services that are short of funds. What is key is to allow the discretion to continue. The work that the Committee has done has dealt with that situation appropriately.

Mr Butler: I thank the Minister for her intervention. I am sure that she will speak to that. However, the amendments tabled are much more victim-centric. That is not to take away from what anyone is trying to do, but those are the points that need to be teased out in the debate. I will listen to further points that the Minister may make, but there was nothing —.

Mr Storey: I thank the Member for giving way. This has come up on a number of occasions. By definition, anything in section 18 is conditional on the support that is provided on the basis of assessed need. Therefore, what, the Minister says, could happen is not as likely to happen, provided it stays within the confines of section 18, particularly section 18(5). That gives assurance. We are dealing with — my colleague will allude to this — individuals who have ended up in a dire situation. The numbers may not be as large as they are for some other crimes, but the impact is equally severe. The last Member to speak referred to the dramatic increase over the past year.

Mr Principal Deputy Speaker: Can I say something before you resume, Mr Butler? You are making progress, but it was agreed that the sitting would be suspended at 5.00 pm. Do you think you will finish in three minutes, Mr Butler?

Mr Butler: Oh, absolutely.

Mr Principal Deputy Speaker: Oh, right. I thought that you were just getting started. *[Laughter.]* Mr Butler.

Mr Butler: Thank you —.

Mrs Long: Given the short time that he has left, will the Member give me the opportunity to respond to what Mr Storey said?

Mr Butler: As long as you keep it to no more than a minute, Minister. *[Laughter.]*

Mrs Long: I appreciate your generosity.

That may have been the case, had the words "at least" not been included. Once you say that it has to be "at least 12 months", the discretion to remove the support when it is no longer needed is also removed. It obliterates the discretion that the Department holds.

Mr Butler: I thank the Minister and the Chair of the Justice Committee for those points. We will continue to listen, but I have not heard anything that suggests that we will change our minds on the matter.

In conclusion, I simply urge Members to vote against amendment No 13 and in favour of amendment Nos 14 and 15. I ask that the Assembly gives victims of modern slavery the greatest chance to recover from their exploitation and to bring the perpetrators to justice.

Mr Principal Deputy Speaker: By leave of the House, the sitting will be suspended until 5.30 pm. When we return, the next Member to speak on this group of amendments will be Ms Paula Bradshaw.

The debate stood suspended.

The sitting was suspended at 4.57 pm and resumed at 5.36 pm.

(Mr Speaker in the Chair)

Debate resumed.

Mr Speaker: We have resumed the sitting. Robbie Butler had just finished his contribution; I was nearly going to say, "thankfully", but I would not have meant that. *[Laughter.]*

Ms Bradshaw: I rise briefly to support amendment Nos 16 and 17. I will, however, oppose amendment Nos 14 and 15, which run contrary to the amendments agreed by the Committee as a whole. Although I will not seek to divide the House on them, I am unconvinced by amendment Nos 12 and 13. I am also concerned about resource implications, which have not been properly consulted on. There also appears to be a lack of cross-community consensus on those amendments, as amendment No 14 in particular contravenes and conflicts with amendment No 12. That speaks of a lack of clarity about what is being sought and about the purpose of such amendments.

I am particularly concerned —.

Mr Storey: Will the Member give way?

Ms Bradshaw: Yes, go ahead.

Mr Storey: I do not think that there should be any confusion. It is to absolutely ensure that there is no unintended consequence and that, by using the term "less", we have a situation whereby people in need get the service and support that they deserve. I give the Member the assurance that there is no intent to be Machiavellian, cute or clever here; there is no intent other than to ensure that we have good legislation. We want to pass good legislation, not something that we may have to come back to and rectify at some stage. My colleague will give a particular example that highlights the need to ensure that this is done properly.

Ms Bradshaw: I appreciate your intervention.

I am particularly concerned about amendment No 14, as it means that support will not be provided on the basis of need but on the basis of a blanket time provision. That is not the sort of targeting of resources that we should seek. Likewise, amendment No 15 does not add anything to existing provisions. It is odd that that amendment has been brought forward by a single party rather than being raised at Committee.

Amendment No 16 is a more specific and clearly beneficial change to include class A drugs in the statutory defence for trafficking and exploitation offences. That will bring Northern Ireland into line with the rest of the UK, which is to be welcomed, and is a clear and useful addition to the Bill.

I am sympathetic to those who are seeking slavery and trafficking risk orders. Those orders were raised at the UK level in recent months in the review of the Modern Slavery Act 2015. It is useful to add the requirement to consult on them to this Bill, as it enhances what the Bill aims to do. I support amendment No 17 as a means to do that.

In closing, on the basis of today's debate, we still have a lot of work to do, and further work may be needed on some of the amendments. However, I urge rapid progress on the Bill, as it reflects an area of high sensitivity where Northern Ireland is being left behind.

Mr Weir: I had the honour of being a Member of this House in 2015 when, with support from all sides of the House, we passed the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which was introduced by my friend and colleague Lord Morrow. That was one of the most significant and worthy pieces of legislation that had been brought through this House, and it made this House a shining example, leading the way for the rest of the UK. Although that was a very important and worthy Act, nothing ever stands completely still.

As time has developed, we have learned more and more about victims' needs. As with any legislation, we do not rest on our laurels; we look continually to improve it.

I will deal particularly with the issues that are raised in the amendments that Mr Storey, Mr Newton and I tabled. While there is a clear difference of position in amendment Nos 14 and 13, I do not believe that amendment No 14 is incompatible with amendment No 12 — the Committee amendment — of which I am very supportive. It would apply support during the recovery period, when the potential victim is going through the national referral mechanism, commonly known as NRM, and being confirmed as a victim or not of modern slavery. The Committee's intention is rightly to ensure that potential victims have the support that they need during that process.

I do not want to be churlish. Although we have a preference for amendment No 14, I will happily acknowledge that amendment No 13 is a step forward. As it stands, our statutory support ends when an individual is confirmed as a victim of modern slavery. After that, under section 18(5), support is only discretionary, and, in practice, according to the DOJ's figures, few individuals receive that discretionary support. Evidence has shown that a lack of long-term support leaves already vulnerable individuals at risk of homelessness, destitution and even the horrors of re-trafficking. There is a failure to provide certainty and stability. In those circumstances, we cannot expect individuals to help the police with information to prosecute perpetrators, which is so critical to our overall strategy against human trafficking.

Amendment No 13 would amend section 18(9) of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act to provide:

"12 months (or less if not required)".

That is a step forward. However, we support amendment No 14, rather than amendment No 13, because we contend that amendment No 13 does not go far enough. There is the potential to limit the intention of the amendment, as the wording —

Miss Woods: I thank the Member for giving way. Will he clarify his comments about amendment No 13? Is it his intention to oppose amendment Nos 12 and 13, which are both in the name of the Committee?

Mr Weir: I indicated that I felt that amendment No 12 was also a step forward. Amendment No 13 is, largely, in conflict with amendment No 14. While amendment No 13 is, at least, some level of advance, amendment No 14 is better. That is the point that I am making. In case there is a lack of clarity, I say that we will certainly support amendment No 12, but, because there is a conflict between amendment No 14 and amendment No 13, we will support amendment No 14 as a preference to amendment No 13.

Amendment No 13 could be interpreted as having an upper time limit. Maybe that is a misinterpretation, but it certainly could be interpreted in that way. In addition, because it refers to 12 months or less, there is a danger of it being significantly less. Therefore, instead, my colleagues and I will support amendment Nos 14 and 15, which are in my name. They provide enhanced support for confirmed victims.

As has been indicated, amendment No 14 would provide "necessary assistance and support" under section 18(9) "for at least 12 months". Members may think that we are talking about semantics, but think about the wording of the two amendments from a victim's perspective. Sometimes, it is difficult to put yourself in other people's shoes, but I urge you to do that. They will wonder what support they will receive. Will it be one month, 12 months, at least 12 months or more, if that is needed? The support and the certainty will be make or break for victims of modern slavery in their recovery.

The Minister has indicated that not everyone needs a minimum of 12 months. To make that argument would be to dismiss all the evidence provided by the front-line charities that work with victims. They were vociferous when they made those comments to the Committee and separately to parties. Those charities said that 12 months should be the minimum, not the maximum, time for which confirmed victims should receive support. If support is provided, victims can engage with the police to bring about successful prosecutions.

There will, of course, be a cost. On balance, however, does the Minister not agree that it would be a price worth paying to see lives restored following exploitation?

5.45 pm

The Minister's argument is largely that not every victim would require support for a full 12 months. We should remember that this is grounded in section 18. Section 18(5) creates

the limitation on support, which is provided on the basis of assessed need. There would not be an assessed need for somebody to receive double funding, for example, so that would limit it. Different theoretical arguments can be used on that. From a practical point of view, I think that the direct costs would be minimal, but it would give a level of assurance.

Amendment No 15 safeguards against any potential concerns that the Department has no flexibility and that unnecessary support would be provided. It reaffirms the key provision of section 18: it is a needs-based support. Amendment No 14 would not discourage victims.

Mrs Long: Will the Member give way?

Mr Weir: I will give way briefly.

Mrs Long: The Member referenced that, currently, the discretionary support extends only to a small number of victims and that it is based on need. The Department has not been found wanting when it comes to providing additional support where that is necessary. What the Member has proposed in the amendment cuts through the discretion that is based on need, because it states that a victim must be supported for "at least 12 months". Therefore, even if someone does not require that financial support, they are employed or are able to make their way in life without any additional financial support, at least 12 months' support must be given. The effect of that is that the discretion to say whether it is needed cannot be applied because it is overridden by the requirement to provide it for at least 12 months. That is the fundamental problem with the amendment. I think that we are all sympathetic to the case that is being made about the need for support, but the issue here is that you are saying that, irrespective of need, it must be given for at least 12 months. That is not necessarily a good use of public funds.

Mr Weir: I have no doubt that the Minister and I have the same good intentions in that regard. I do not impugn any motivation. The amendment makes two clear points. One is that it gives some certainty. For those who seek that level of support, it reassures them that the rug will not be pulled from under them. That might be a false worry, but it will be uppermost in people's minds. The second point is that, when we say that it will be for 12 months or less, while it gives support, it is provided on the basis of the assessed need. That is circumscribed under section 18(5). Therefore, the idea of an unlimited level of support, irrespective of whether it is needed, is not accurate.

It is also important for Members to realise that the support that we would give would be only to genuine victims of modern slavery who need it vitally. They would be individuals who had gone through the UK Government's processes and been confirmed by the Home Office as genuine victims of modern slavery. It is unfair and unrealistic to expect those victims to fend for themselves once they have exited the NRM. Victims face an uphill climb with their recovery.

Take, for example, the particular case of a client of Flourish NI, one of the leading charities for victims of human trafficking. We will call him "Lucas". Flourish NI works with victims once they have exited the NRM. Lucas is a European national who was trafficked to Northern Ireland for the purposes of criminal exploitation. He has had a positive conclusive grounds decision. Lucas is not eligible to receive EU settled status because he has not been in Northern Ireland for five years. He has applied for pre-settled status. It is appalling that Lucas has been left homeless ever since he exited the NRM. Without extended support, he has no choice but to sofa-surf. At one point, he had to live in a tent. Lucas wants to start work, begin to rebuild his life and make a contribution to society. However, without a fixed address, that is virtually impossible.

He is also managing two serious health conditions that require ongoing treatment and constant monitoring, but he has unsuccessfully sought assistance from the Housing Executive and social services. He is entirely reliant on charitable support, which is coordinated by Flourish NI. Lucas is just one example, but his is not a one-off case.

Miss Woods: I thank the Member for giving way. Will he clarify whether the two amendments tabled in his name cover people who have exited the NRM? The example that the Member is giving is of someone who has left that process. I would welcome clarity on whether the amendments that he tabled cover support after the NRM process has been finalised.

Mr Weir: They would cover the full year. At the moment, the danger is that people simply exit at the referral mechanism point, and there is no support beyond that. As I said, Lucas is not just a one-off example. There is significant evidence of genuine victims in similar circumstances, not just in Northern Ireland but in England and Wales. The question is this: how are individuals

like Lucas not considered to be in need of extended support? Clearly, there is a need for 12 months' support, which has been acknowledged by the national Government at Westminster. In a recent House of Commons debate on the Nationality and Borders Bill, they gave an assurance that they would provide 12 months' tailored support to confirmed victims and said that they would set out further details and guidance. This has been accepted nationally.

During last week's debate in the House of Lords, it was suggested that Westminster could learn from the Committees, and I hope that the amendment is recognition of the need for long-term statutory support for confirmed victims.

We have the opportunity, if we accept amendment No 14, to lead the way in providing at least 12 months' statutory support to confirmed victims. Alternatively, if we accept amendment No 13 and provide 12 months "or less if not required", we will be playing catch-up with Westminster for years to come. If genuine victims in England and Wales need at least 12 months' support, why would genuine victims in Northern Ireland need less? All victims go through the same NRM identification process, so it makes no logical sense that victims in Northern Ireland would be in less need than those across the water.

I turn to the other amendments. Amendment No 16 would protect victims from being punished for crimes committed as a result of their exploitation by extending the statutory defence to include class A drugs. This is to meet an emerging form of exploitation, which is human trafficking for distribution. I appreciate that there have been differences on some of the other amendments, but I hope that Members will agree on the need to view victims through the lens of their exploitation and not through the lens of criminality when it comes to crimes that stem from their exploitation.

Amendment No 17 would allow the Department to introduce slavery and trafficking risk orders. We need to get ahead of traffickers. We have to realise that, whatever actions are taken by the House or the police, criminals who are intent on the evil practice of trafficking are always trying to stay one step ahead of us. When it comes to those who are awaiting prosecution, it is important that we nip any further exploitation or trafficking in the bud. Amendment No 17 would mean playing catch-up with England and Wales, which have had STROs since 2015, but it is a welcome step forward.

In closing, my plea to Members is to vote against Committee amendment No 13, not because it is not a step forward — I acknowledge that it is — but because amendment Nos 14 and 15 put forward a better alternative to provide enhanced support for confirmed victims in Northern Ireland.

Every day, we deal with many things that are controversial or political in the Assembly, but this should not be one of them. This should be about people, not politics. It is difficult for all of us in the Chamber to imagine the horrors that victims of modern slavery have had to go through. It is about providing those people with the best support available, and amendment Nos 14 and 15 do that. Through these amendments, we can recapture the position of 2015 and be on the verge of having groundbreaking human trafficking legislation.

Let us get the amendments right for the sake of the victims of modern slavery, like Lucas and the others, who will be impacted by them. Let us take a lead rather than catching up with others in a year or two's time.

Miss Woods: I welcome the opportunity to take part in the debate on the group 2 amendments, which focus on human trafficking protections. As others have outlined, the amendments are mostly about the trafficking and exploitation of people, and they look to further protect some of our most vulnerable people. I do not intend to speak for long on the group, you will be glad to know, as the majority of the points have been covered by the Chair and other members of the Committee, but I want to touch on a few things and to highlight some areas that need further work and focus, especially in the next mandate.

The Committee had long discussions on the effect of clause 16 and the extension of the statutory assistance and support provided under section 18 of the 2015 Act to potential adult victims of slavery, servitude or forced or compulsory labour where there is no element of trafficking. Support to such victims has been in place in Northern Ireland since March 2016 but not as a statutory requirement. A number of organisations raised the point that the provision could be extended, as we heard that victims of human trafficking in Northern Ireland had experienced destitution and homelessness despite a positive national referral mechanism outcome. We have, however, heard a mix of positions on whether to make legislative change and, if it is needed, what it could be or look like. There were many discussions on social security support, and it is my understanding that the Minister of Justice cannot legislate on that. I encourage the Minister for Communities to

investigate what can be done in her Department on the provision of social security support.

The Committee also tabled amendment No 12, which uses the words "based on need". Whilst the Department has flexibility and provides support, the amendment explicitly writes it into primary legislation that support should be based on need. The amendment should not be the end, and I encourage, as requested by the Migration Justice Project, the Department to consult on how better to practically administer support in the post-NRM stage that is based on the individual's need.

I am a bit surprised to see the amendments in the names of the Chair, Mr Newton and Mr Weir. The Committee did not get a chance to discuss them, and I appreciate that timing is always an issue when a Bill is coming to Consideration Stage. However, it is my understanding that amendment Nos 14 and 15 are mutually exclusive to amendment No 13 and that it will be up to Members to decide between them. I know that Mr Weir has provided an explanation, but what is the rationale for creating a 12-month basis if what is proposed in the Committee amendment is support based on need? Surely support should be given to people on the basis of need. I understand the concept of a minimum floor, as it were, but, if someone does not need support after 12 months, will we have a situation, which others have touched on, where they have to continue receiving support under amendment No 14? What if the person is out of the country? What if the person is no longer in Northern Ireland? How will that work with amendment No 14? Is it good practice?

The Committee discussed and deliberated on those issues and settled on a needs-based approach, which is what we have in amendment No 12. I know that the Department has discretion and exercises it, but amendment No 12 makes it much more specific. Have the Members who have tabled the amendments considered, in the crudest way — I am not one to make that kind of comment — the potential impact of amendment No 14 on public expenditure?

I am still at a loss about what amendment No 15 does and why it has been tabled. I will happily take an intervention from any of the Members who tabled it so that they can explain what gap it closes.

I fully support amendment No 17, which was tabled by the Committee. I am glad to see future protective measures for the victims of slavery and trafficking being debated today. We have not specifically mentioned only risk orders and notices on the Bill, and I welcome the commitment from the Department to consult on those, albeit before the end of the mandate. However, there is work to be done on their effectiveness for Northern Ireland, especially in recognising the cross-border issues and learning from experiences in Great Britain. Amendment No 17 is, therefore, an enabling provision, much like what we did on protection orders and notices in the Domestic Abuse and Civil Proceedings Act.

Finally, I will support amendment No 16, which will provide adequate protection for victims of an emerging form of exploitation by extending the statutory defence on exploitation to include class A drugs. It makes no sense to differentiate or to have any uncertainty over the application of the non-punishment principle.

We heard that from the Migration Justice Project, when it pointed out that having that gap in law does not meet the Organization for Security and Co-operation in Europe and UN special rapporteur's advice on the non-punishment principle, given the finite number of offences to which it applies. I thank them for the excellent briefings and information provided to the Committee throughout the process, which were of great assistance.

6.00 pm

I hope that Members will agree that we need to decriminalise drugs fully in our society, given that it is a healthcare matter rather than one that should rest with the criminal justice system. I would welcome debate on that in the future.

I will finish with some things that were not brought forward by the Committee but are relevant to the amendments and can be picked up at a later stage, perhaps in part 2, and support and assistance for victims of trafficking and modern slavery. A number of organisations stated that the statutory defence does not provide a remedy for recognised victims who have prior convictions relating to exploitation related to prostitution and that makes it extremely difficult for trafficked women to exit prostitution and move into mainstream employment, even if they are recognised as having been trafficked. After we questioned officials, it became clear that the number affected in Northern Ireland is likely to be no more than 50, given that prostitution has not been an offence since 2015. However, it is worth looking at.

The national referral mechanism is also a framework for identifying and referring potential victims of modern slavery and ensuring that they receive appropriate support. We have had that discussion around clause 16 and the associated amendments that we are debating in the group. We are looking at expanding the support available for those with a positive decision. We also looked at what happens to those who are assessed under the NRM but get a negative grounds decision. We discussed a possible amendment, but it was stated that there is no appeal mechanism. The only option for someone to challenge that decision is through a judicial review. I hope that that can be looked at in the Department's modern slavery strategy and action plan.

Finally, on family reunion rights, we know that that sits with Westminster, as it falls under immigration. However, I urge all Executive Ministers to make representations to the UK Government on the need for safe and legal routes for family reunions for victims of trafficking and asylum seekers in Northern Ireland. There are well-known issues with asylum claims, the backlog and the process of seeking asylum and refuge in Northern Ireland, and those must be determined without undue delay.

That concludes my remarks on group 2.

Mrs Long: I will speak to the amendments in the group as they appear on the Marshalled List.

The Committee has tabled two amendments to clause 16 relating to the support for victims of trafficking and exploitation. The amendments are twofold, proposing to amend the existing discretionary power afforded to the Department to support those who are seeking a conclusive grounds determination under the national referral mechanism. The first amendment, amendment No 12, would specify that support can be provided beyond the 45 days specified in the Act. The second amendment, amendment No 13, would place a duty on the Department to provide support following a positive conclusive grounds decision under the NRM process for 12 months or less if not required.

The existing provisions in the legislation already give the Department the power to provide support to a victim or potential victim beyond the time specified in the legislation for such time as the Department considers it necessary. In practice, the Department has continued to provide support beyond 45 days, until the NRM process has reached a decision on conclusive grounds. The Department has also continued to provide support beyond a positive decision in a number of cases where the Department assessed that that was necessary.

Introducing a specified period is unnecessary and may, mistakenly, be seen by some as meaning the provision must be made for 12 months. That would have significant resource implications, given the sharp rise in the number of potential victims of trafficking in this current year and the pressure that that creates on existing budgets. The Department will continue to provide support where necessary, but there is a danger that a specified period of 12 months could create a perception that there is a blanket provision of support for all, regardless of assessed need. I am satisfied that the Department's discharge of its duties to provide support under the existing provisions is appropriate and flexible enough to ensure that victims and potential victims are given adequate support in line with our resources. However, I am mindful of the Committee's concerns regarding the provision of appropriate support for vulnerable people who have been trafficked in their transition back to normal life. On that basis, I am prepared to support the amendment.

Amendment Nos 14 and 15, tabled by Mr Storey and his party colleagues on the Committee, are competing amendments to other amendments tabled to clause 16. Amendment Nos 14 and 15 conflict with those tabled on behalf of the Committee. Amendment No 14 would go further than the Committee's amendment No 12, as it would require the Department to provide support, post a conclusive grounds decision, "for at least 12 months". That would remove any element of discretion from the Department and mean that there would be no assessment of need undertaken and no power to cease to provide support where it is no longer needed. I am therefore opposed to that amendment. It would encourage victims to remain on the support provided by the Department for at least 12 months, not on the basis of need but because of a blanket provision that the amendment provides.

The wording in the amendment also opens up the prospect of support having to be provided on an open-ended basis through the inclusion of the words "at least 12 months". That is irrespective of need. I argue that that would not be a good use of limited public funds, which should be targeted on the basis of need. It could also lead to double payment in the circumstances that I described in my earlier interventions, where someone may have moved

beyond the need for support and be in paid employment but may be in receipt of in-work benefits and also entitled to the payment from the Department for at least 12 months. That is a disincentive for victims to seek to move towards what we all desire, which is a new life that is stable, and it may open up the possibility of abuse of the system of support.

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

There is no uniformity in the circumstances of victims of trafficking. Each case has its own unique needs, and the flexibility of the existing provisions and, indeed, the provisions that the Committee has proposed gives the Department the ability to tailor support to those needs. In recent years, after a conclusive grounds decision, the support has not been required in every case for as long as 12 months. Where additional support has been required, however, the Department has not been found wanting. The case of Lucas, as outlined by the Member for Strangford, is, of course, a concerning case. I stress, however, that someone in those circumstances as described by the Member would already be supported by the Department if it were made aware of the circumstances. Support is already provided well in excess of the statutory limits as a matter of discretion.

There are a number of ways forward for some victims of trafficking when they leave the NRM process. Some will be able to find employment and begin the process of rebuilding their lives. Some may be seeking asylum under that system, and they may be able to avail themselves of the benefits system for a range of support. As I said, the discretionary support that the Department provides is there to help those victims who may need help to bridge the gaps until such a time as they are able to move forward.

Furthermore, amendment No 14 would have significant resource implications, as the increase in potential victims seeking to enter the NRM has risen sharply this year, with many claiming to have been exploited or trafficked in third countries, where it is not easy to verify any such claim. It is not the case that that would apply to a small number of victims. It could reach into the hundreds, if people seek to claim that they are in that situation. The Department will continue to support those who are given a conclusive grounds decision based on need, but, if the amendment is made, its outworking would be that the Department will have to provide support to a much larger number, even when it is not required.

As I noted earlier, the Department has not been found wanting in providing support generously and judiciously where there is need. The amendment would take away the Department's discretionary power to support victims of trafficking who are most in need. The consequence of that may be that we end up affording support to people who do not need it at the expense of targeting our resources at catching those who are responsible for trafficking in the first place. An open-ended pot of money is not available. As with all public spend, we need to ensure that it is targeted at the right people. None of us in the Chamber disputes the need to support victims of trafficking and to do so in a way that is proportionate to their need. There is no dispute about that, but it has to be proportionate to need and not an open-ended undertaking.

The second amendment proposed by Mr Storey and his party colleagues — amendment No 15 — does not appear to add anything to the existing provisions in section 18 of the 2015 Act. Therefore, I oppose that amendment on those grounds.

I am sympathetic to the Committee's amendment No 16, which is also to clause 16 and seeks to widen the statutory defence for trafficking and exploitation offences to include class A drugs. As that is in line with the equivalent provisions that apply in other jurisdictions in the UK, I support the amendment and recognise that class A drugs, as well as other classes of drugs, can be used to coerce an individual. It is right that we should not find people guilty where they have undertaken actions as a result of coercive control.

The last of amendments to Part 2 is amendment No 17, which introduces a new clause to allow the Department to introduce measures through regulations within 24 months of the commencement of the Bill to protect a person from slavery or trafficking. I am supportive of the amendments relating to the provision of powers for the Department to introduce those additional measures. The amendment will facilitate any changes to the existing legislation that may be brought forward on slavery and trafficking risk orders and duty to notify provisions, which will be subject to a consultation exercise that is due to launch shortly. There has been pressure to introduce STROs from some of those who made submissions to the Committee, and it may also have been the desire of some on the Committee to introduce them. However, the amendment, as drafted, allows the Department to conclude the consultation exercise and take

a decision on the issue based on the best evidence. I support the amendment on that basis.

That brings my remarks on the amendments in group 2 to a conclusion. Again, I express my gratitude to the Committee for the detailed consideration its members have given the entire Bill. I appreciate the Committee's desire to make the legislation as robust and wide-reaching as possible, but I also welcome its genuine intention to support vulnerable individuals in our community and to work closely with my Department to ensure that the Bill is able to reach its conclusion within this mandate. That has been my goal since becoming Minister of Justice, and I consider it a major achievement to have brought the Bill to and through Consideration Stage.

This is the last of five Justice Bills progressed during this mandate. It has been a challenging programme of legislation, but the amendments tabled to the Bill that have been debated today will make our community safer by further strengthening existing law and introducing new offences.

The Bill represents the last piece of legislation in a suite of Bills that aim to provide greater protection across our community from those who seek to blight people's lives through demeaning, controlling, coercive, threatening or aggressive behaviour, through stalking and through sexual and domestic abuse. I look forward to a time when such behaviours are no longer a cause for concern. We are not there yet — there is much work still to be done — but the Bill, as it stands today and as, I trust, it will stand when amended, will be a good step forward.

Mr Storey: I thank Members and the Minister for their contributions to the debate on the group 2 amendments, particularly those who spoke in support of the Committee amendments, including the Minister. As I indicated earlier, the Committee is happy to work with the Department on any minor, technical or drafting amendments that it proposes for the Further Consideration Stage that improve the amendments that we have debated today, assuming that they are made.

It is worth remembering that this Part of the Bill and these amendments aim to provide support and assistance to some of the most vulnerable people in society, who have been subjected to some of the most horrendous crimes. In relation to the Committee amendments — amendment Nos 12 and 13 — and those tabled in my name and the names of my colleagues — amendment Nos 14 and 15 — there is a clear consensus among Members that victims should be provided with the support and services that they require and deserve.

I take the point that was made by Rachel Woods. It was probably just one of the reflections of the pressure of time that, when you get to this point in a mandate and this point with a piece of legislation of this magnitude, there is probably more that you could have taken time to explore further. However, that is just one of the indications of how we need to be cautious and careful in the way that we approach these things.

6.15 pm

That having been said, I want — I say this as a Member and not as the Chair — to assure other Members that this is not a party political issue and is not being done, as I said earlier, to try to undermine the Department or be in any way clever in playing with the Bill. It is genuinely to ensure — I will come to the Minister's comments in a minute or two — that support is given. I think that there is a consensus on that right across the House. The difference of opinion is on which amendment, whether amendment No 13 or 14, does that best. The House will decide that this evening. We will leave that with Members to decide. We will then look at the Bill as it progresses to Further Consideration Stage. As Chair of the Committee, I appreciate the support of Members and the Minister for the Committee's amendments. I trust that we will be able to continue to work to ensure that we see delivery on the issues.

I turn to the other Committee amendments, namely amendment Nos 16 and 17. I welcome the support across the House for both of those amendments. They will, I trust, enhance protection, as described by Sinéad Bradley. They will provide the foundation stone for the STROs but also for other protective measures to be taken forward by the Department within a set time frame, given the delays that have been experienced in the provision of STROs to date.

I will conclude with a few comments as a Member of the House. I go back to the points that were made about the amendments that are tabled in my name. I want to address the Minister's comment about the support provided under amendment No 14. I want to stress that that support would be provided on the basis of assessed need, not because we say that but because of what is in section 18(5) of the Human Trafficking and Exploitation Act 2015.

The level of support will be proportional to what a victim needs.

Mrs Long: Will the Member give way?

Mr Storey: Yes, I will; just let me make this point.

Contrary to the Minister's point, victims would not get more than they need at the expense of others who need more. I want Members, who will have to make a decision, to be clear on the intent: it is not just that we have put that in the amendment; it relates to section 18(5) of the Human Trafficking and Exploitation Act 2015.

Mrs Long: I accept the Member's integrity in tabling the amendment, but I believe that he is reading this incorrectly. The requirement to provide support for at least 12 months cuts across the need case. You are correct that we could reduce the level of support, but we could not remove support from any victim within 12 months, even if we have the proof that that is no longer needed. You are right that the previous legislation set in place that it is a needs-based test. However, by saying that it becomes a date-based test, which is what you are introducing in your amendment, the needs base is overridden. Essentially, we do not have the opportunity to say, "This person no longer needs support. We will stop". Within 12 months, they are entitled to that support irrespective of whether it is needed or not. That is the challenge, and that is why I prefer the Committee amendment. The Committee amendment allows us to do that and gives us the discretion to continue it for as long as the Member would wish, and certainly for as long as the Department sees as absolutely necessary.

Mr Storey: I thank the Minister for that, although we still have a difference in our interpretations. I do not want to labour the point, because I do not want to give anyone the impression that, somehow, this is about anything other than ensuring that we make the best possible provision to meet the needs of those who find themselves in the horrendous situation of being trafficked.

It was interesting that the Government at Westminster recently acknowledged that those who receive a positive conclusive grounds decision and are in need of tailored support will receive appropriate individualised support for a minimum of 12 months. I suppose that the point was made by my colleague: if that is applicable to victims in England and Wales, it is also applicable to victims in Northern Ireland.

I conclude my comments there. The amendments are before the House. As always, that will determine what the outcome of this piece of legislation will be at this stage, and we look forward to how we will finally shape the Bill at Further Consideration Stage.

Mr Deputy Speaker (Mr McGlone): OK, Members. We will work our way through the various amendments.

Amendment No 12 agreed to.

Amendment No 13 proposed:

In page 20, line 6, at end insert—

"(ab) in subsection (9) leave out 'such further period as the Department thinks necessary' and insert 'for 12 months (or less if not required)':".— [Mr Storey (The Chairperson of the Committee for Justice).]

Question put, That amendment No 13 be made.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): Judging by that, I think that the Ayes have it.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): No? OK. Clear the Lobbies. The Question will be put again in three minutes. I remind Members to continue to uphold social distancing and that those who have proxy voting arrangements in place should not come to the Chamber.

Before I put the Question again, I remind Members present that, if possible, it would be preferable to avoid a Division

Question, That amendment No 13 be made, put a second time.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): Before the Assembly divides, I remind Members that, as per Standing Order 112, the Assembly has proxy voting arrangements in place. Members who have authorised another Member to vote

on their behalf are not entitled to vote in person and should not enter the Lobbies. I also remind Members of the requirement for social distancing while the Division takes place, and I ask that you ensure that you retain a gap of at least 2 metres between you and other people when moving around in the Chamber or the Rotunda, and especially in the Lobbies. Please be patient at all times, observe the signage and follow the instructions of the Lobby Clerks.

The Assembly divided:

Ayes 46; Noes 37.

AYES

Dr Archibald, Ms Armstrong, Ms Bailey, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Catney, Mr Delargy, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Ferguson, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lyttle, Mr McAleer, Mr McCrossan, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Á Murphy, Mr C Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Miss Reilly, Ms Rogan, Mr Sheehan, Ms Sheerin, Miss Woods.

Tellers for the Ayes: Mr Blair and Mr Dickson

NOES

Dr Aiken, Mr Allen, Mr Allister, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Erskine, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stewart, Mr Storey, Mr Swann, Mr Weir, Mr Wells.

Tellers for the Noes: Mr Storey and Mr Weir

Question accordingly agreed to.

Mr Deputy Speaker (Mr McGlone): I will not call amendment No 14 as it is mutually exclusive to amendment No 13, which has just been made.

Amendment No 15 proposed:

In page 20, line 6, at end insert—

"(ac) after subsection (9) insert—

'(9A) In determining the assistance that is necessary under subsection (9) the Department must have regard to subsections (5) to (7).'".— [Mr Weir.]

Question put, That the amendment be made.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr McGlone): OK, Members. For clarity, we will see whether this needs to go to a Division.

Question, that the amendment be made, put a second time.

Some Members: Aye.

Some Members: No.

Mr O'Dowd: Members do not want to divide.

Mr Deputy Speaker (Mr McGlone): Are Members OK? You do not want to divide. All right. Finally, for that purpose, I will put the Question again.

Question, That the amendment be made, put a third time and negatived.

Amendment No 16 made:

In page 20, line 12, at end insert—

"(4) In section 22 (Defence for slavery and trafficking victims in relation to certain offences)—

(a) in subsection (9)(a)(i) after 'of a' insert 'Class A,',

(b) In subsection (9)(a)(ii) after 'of a' insert 'Class A or,'".— [Mr Storey (The Chairperson of the Committee for Justice).]

Clause 16, as amended, ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

New Clause

Amendment No 17 made:

After clause 17 insert—

*"**Protective measures for victims of slavery or trafficking***

***17A.**—(1) The Department of Justice may by regulations, within 24 months of Royal Assent, make provision—*

(a) enabling or requiring steps to be taken or measures to be imposed for protecting a person from slavery or trafficking,

(b) for the purpose of or in connection with such steps or measures for protecting a person from slavery or trafficking.

(2) Steps or measures which may be provided for in regulations under this section are not limited to notices or orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Assembly."— [Mr Storey (The Chairperson of the Committee for Justice).]

New clause ordered to stand part of the Bill.

Clauses 18 and 19 ordered to stand part of the Bill.

New Clause

Amendment No 18 made:

After clause 19 insert—

"CHAPTER 2

CAUSING OR RISKING SERIOUS HARM

Consent to harm for sexual gratification is no defence

***19A.**—(1) For the purpose of determining whether a person ('A') who inflicts serious harm on another person ('B') is guilty of a relevant offence, it is not a defence that B consented to the infliction of the serious harm for the purpose of obtaining sexual gratification.*

(2) The reference in subsection (1) to obtaining sexual gratification is to obtaining it for any person (whether for A, B or some other person).

(3) In this section—

'the 1861 Act' is the Offences Against the Person Act 1861,

'relevant offence' means any of these—

(a) an offence under section 18 of the 1861 Act,

(b) an offence under section 20 of the 1861 Act,

(c) an offence (but not common assault) under section 47 of the 1861 Act,

'serious harm' means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act.

(4) However, this section does not apply in the case of an offence under section 20 or 47 of the 1861 Act where—

(a) the serious harm consists of, or is a result of, the infection of B with a sexually transmitted infection in the course of sexual activity, and

(b) B consented to the sexual activity in the knowledge or belief that A had the sexually transmitted infection.

(5) Nothing in this section affects the operation of any rule of law, or any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954), relating to other circumstances in which a person's consent to the infliction of serious harm may, or may not, be a defence to a relevant offence."— [Mrs Long (The Minister of Justice).]

New clause ordered to stand part of the Bill.

New Clause

Amendment No 19 made:

After clause 19 insert—

*"**Offence of non-fatal strangulation or asphyxiation***

***19B.**—(1) A person ('A') commits an offence if the first and the second conditions are met.*

(2) The first condition is that A intentionally—

(a) applies pressure on or to the throat or neck of another person ('B'), or

(b) does something to B, of any other sort, amounting to battery of B.

(3) The second condition is that A—

(a) intends A's act to affect B's ability to breathe or the flow of blood to B's brain, or

(b) is reckless as to whether A's act would affect B's ability to breathe or the flow of blood to B's brain.

(4) An offence under this section is committed irrespective of whether in fact A's act affects B's ability to breathe or the flow of blood to B's brain.

(5) An offence under this section can be constituted by virtue of A's act irrespective of how A's act is done (for example, by use of a hand or another part of A's body or by A making use in any way of an object of any kind).

(6) It is a defence to an offence under this section for A to show that B consented to A's act, but the defence is not available if—

(a) B suffers serious harm as a result of A's act, and

(b) A—

(i) intended A's act to cause B to suffer serious harm, or

(ii) was reckless as to whether A's act would cause B to suffer serious harm.

(7) No question as to B's consent to A's act may be considered for the purpose of this section unless the question is relevant in relation to the defence in this section.

(8) The matter of B's consent on which the defence in this section may be based is to be taken to be shown by A if—

(a) evidence adduced is enough to raise an issue with respect to the matter, and

(b) the contrary with respect to the matter is not proved beyond reasonable doubt.

(9) If—

(a) an act is done in a country or territory outside the United Kingdom,

(b) an offence under this section would be constituted by virtue of the act if done in Northern Ireland, and

(c) the person who does the act is a United Kingdom national or is habitually resident in Northern Ireland,

the person commits an offence under this section as if the act is done in Northern Ireland.

(10) A person who commits an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 2 years or a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 14 years or a fine (or both).

(11) In this section—

'the 1861 Act' is the Offences Against the Person Act 1861,

'serious harm' means any of these—

(a) wounding within the meaning of section 18 of the 1861 Act,

(b) grievous bodily harm within the meaning of section 18 of the 1861 Act,

(c) actual bodily harm within the meaning of section 47 of the 1861 Act,

'United Kingdom national' means an individual who is—

(a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,

(b) a person who under the British Nationality Act 1981 is a British subject, or

(c) a British protected person within the meaning of the British Nationality Act 1981.

(12) Schedule 4 contains consequential amendments in connection with this section."— [Mrs Long (The Minister of Justice).]

New clause ordered to stand part of the Bill.

Clause 20 ordered to stand part of the Bill.

Clause 21 (Commencement)

Amendment No 20 made:

In page 21, line 20, leave out paragraph (a) and insert—

"(a) sections 16 to 19A,".— [Mrs Long (The Minister of Justice).]

Clause 21, as amended, ordered to stand part of the Bill.

Clause 22 ordered to stand part of the Bill.

Schedules 1 and 2 agreed to.

Schedule 3 (Offence of breach of anonymity: Providers of information society services)

Amendment No 21 made:

In page 27, leave out lines 18 to 28 and insert—

"'information society service;' means any service normally provided—

(a) for remuneration,

(b) at a distance (namely, the service is provided without the parties being simultaneously present),

(c) by electronic means (namely, the service is—

(i) sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and

(ii) entirely transmitted, conveyed and received by wire, radio, optical means or other electromagnetic means), and

(d) at the individual request of a recipient of services (namely, the service is provided through the transmission of data on individual request);".— [Mrs Long (The Minister of Justice).]

Amendment No 22 made:

In page 27, leave out lines 33 to 36.— *[Mrs Long (The Minister of Justice).]*

Schedule 3, as amended, agreed to.

6.45 pm

New Schedule

Amendment No 23 made:

After schedule 3 insert—

"SCHEDULE 4

OFFENCE OF NON-FATAL STRANGULATION OR ASPHYXIATION: CONSEQUENTIAL AMENDMENTS

Police and Criminal Evidence (Northern Ireland) Order 1989 (NI 12)

1. In Article 53A (qualifying offences for particular investigative purposes), in paragraph (2)—

(a) the second of the two sub-paragraphs numbered as (t) is renumbered as (u),

(b) after the second of those two sub-paragraphs insert—

'(v) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Sexual Offences Act 2003 (c. 42)

2. In Schedule 5 (lists of offences for making particular orders), after paragraph 171G insert—

'171H An offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Criminal Justice (Northern Ireland) Order 2008 (NI 1)

3. In Schedule 2 (lists of offences for sentencing matters), in Part 1—

(a) the second of the two paragraphs numbered as 31A is renumbered as 31B,

(b) after the second of those two paragraphs insert—

'The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

31C An offence under section 19B (non-fatal strangulation or asphyxiation).'

Domestic Violence, Crime and Victims Act 2004 (c. 28)

4. In section 7A (certain rules of evidence and procedure), after paragraph (b) of subsection (2) insert—

'(c) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'

Law Reform (Miscellaneous Provisions) (Northern Ireland) Order 2006 (NI 14)

5. In Article 2 (unjustifiable punishment of children), in paragraph (2)—

(a) omit the 'and' preceding sub-paragraph (e),

(b) after sub-paragraph (e) insert—

'(f) an offence under section 19B of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 (non-fatal strangulation or asphyxiation).'"— [Mrs Long (The Minister of Justice).]

New schedule agreed to.

Long Title

Amendment No 24 made:

Leave out "rules applying with respect to certain sexual or violent offences prevention orders" and insert—

"certain rules of law and procedure for the purpose of protecting people from harm".— [Mrs Long (The Minister of Justice).]

Long title, as amended, agreed to.

Mr Deputy Speaker (Mr McGlone): That concludes the Consideration Stage of the Justice (Sexual Offences and Trafficking Victims) Bill. The Bill stands referred to the Speaker.

Members should take their ease while we move to the next item of business.

Betting, Gaming, Lotteries and Amusements (Amendment) Bill: Consideration Stage

Mr Deputy Speaker (Mr McGlone): I call the Minister for Communities, Ms Deirdre Hargey, to formally move the Consideration Stage of the Bill. Glaoim ar an Aire Pobal, Deirdre Hargey, leis an Bhille a mholadh.

Moved. — [Ms Hargey (The Minister for Communities).]

Mr Deputy Speaker (Mr McGlone): Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in the provisional grouping of amendments selected list. There is a single group of six amendments, which deal with measures to limit and address problem gambling, and opposition to clauses 2 and 6 stand part.

I remind Members who intend to speak that, during the debate on the single group of amendments, they should address the amendments and the opposition to clauses stand part on which they wish to comment. Once the debate is completed, any further amendments in the group will be moved formally as we go through the Bill and the Question on each will be put without further debate. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

No amendments have been tabled to clause 1.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Opening of licensed offices on Sunday and Good Friday)

Mr Deputy Speaker (Mr McGlone): We now come to the single group of amendments for debate, which concerns opposition to clauses 2 and 6 stand part and six amendments. Amendment No 3 is mutually exclusive to amendment No 2.

I call Mr Jim Allister to address his opposition to clause 2 stand part, his opposition to clause 6 stand part and the amendments in the group.

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

The following amendments stood on the Marshalled List:

No 1: In clause 9, page 4, line 5, leave out paragraph (a) and insert—

"(a) in paragraph (5) (price limit on tickets) for '£1' substitute '£100'."— [Ms Hargey (The Minister for Communities).]

No 2: In clause 14, page 6, leave out from line 9 to line 15 on page 7 and insert—

"172A.It shall be a condition of all relevant licences, certificate or permits that the holder of a relevant licence, certificate or permit must make an annual financial contribution of 1% of their annual gross gambling yield to one or more organisations approved by the Department, which between them deliver or support research into the prevention and treatment of gambling-related harm, harm prevention approaches and treatment for those harmed by gambling."— [Mr Durkan.]

No 3: In clause 14, page 7, line 7, leave out from "the gambling" to end of line 7 and insert—

"(a) persons who have suffered from, or been affected by, addiction to gambling or other forms of harm or exploitation associated with gambling;

(b) persons who have experience or knowledge of issues relating to such addiction, harm or exploitation; and

(c) the gambling industry in Northern Ireland."— [Ms Hargey (The Minister for Communities).]

No 4: In clause 15, page 7, line 25, leave out "for the purposes of" and insert—

"to meet an expected duty of care to those using the facilities to include, but not be limited to".— [Ms P Bradley.]

No 5: In clause 15, page 8, line 22, at end insert—

"(10A) Serious, significant, continuing or multiple breaches of a code is a ground of revocation or cancellation of a licence registration or permit under articles 27, 42, 92, 103 or, 121."— [Ms P Bradley.]

No 6: After clause 15 insert—

*"**Ban on credit cards***

***15A.**In paragraph 2 of Article 2 of the 1985 Order at the end of the definition of 'money', after 'order', insert 'but not a credit card'."— [Ms P Bradley.]*

Mr Allister: My continuing disappointment with this legislation is that, although it is acknowledged that there is an invasive and disturbing level of gambling addiction in Northern Ireland, the Bill does nothing to address it. The Bill came to the House without even a public health assessment of its impact having been done. We have a rising tide of oppressive gambling addiction that puts a huge cost on various services. It also visits immense hardship on many families, because, like any addiction, it affects not just the person addicted but the household and family in which that person lives. Undoubtedly, there are many men and women whose addiction to gambling is inflicting huge difficulties, costs, anguish and hardship on their family.

When I approach such a Bill, which contains no provisions to set out a strategy or to seek to regulate gambling for those who face gambling harms, I find it very disappointing, and very striking, that the first and foremost thing that it does is to widen the availability of betting shop gambling across the Province, in that it will make gambling a seven-day-a-week opportunity. At a stroke, it will increase access levels by 17%. That is the Bill's most detrimental aspect.

It is only through proper regulation and proper control, not through the liberalising of gambling laws, that we stand any chance of tackling the issue. Clauses 2 and 6 throw open the gates of every day to betting shop facilities, and that is why I am indicating my opposition to them. That opposition is not a sabbatarian issue. Rather, it pertains to the fact that we are embracing an extra 17% availability in a sector that causes huge harm. Of course it is right to say that our present legislation is significantly out of date and not fit for purpose. It is therefore most disappointing that, in those circumstances, the Bill fails to advance any meaningful protection for those who suffer as a result of gambling and who will now suffer more because of its further liberalisation.

It is not as if the Committee and others were without evidence on the matter.

The Public Health Agency (PHA), in its correspondence of 9 December last, was clear. The letter from its chief executive states:

"However increased opening hours within the proposed draft Bill could exacerbate financial pressures for families which include those with problem gambling."

In its response to specific clauses in the Bill, the PHA states:

"Clause 2 - Opening of licensed offices on Sunday and Good Friday.

PHA would highlight concerns that increased availability of gambling through additional opening hours may exacerbate existing harms.

Weekend opening will increase the accessibility of gambling to a wider proportion of society, such as working-age adults, children and young people."

I do not think that anyone will challenge the fact that, in Northern Ireland, we have an unacceptably high level of gambling addiction. The survey from 2016, which still seems to stand, indicates that there are as many as 40,000 people in that category, which is a phenomenal coterie of individuals. It is not just 40,000 individuals; as I have alluded to, in many cases, it is 40,000 families. That is a huge issue, yet the approach of the Bill is to make it easier to gamble and create more facilities, thereby inevitably increasing that number, which is a huge disappointment. That is why I say to the House that we need to stop and think about whether we are doing the right thing by liberalising laws and increasing availability in circumstances where we are doing nothing else of any substance to tackle the problem.

For those reasons, I say that gambling, which is ruining so many lives, is not something that we should make easier and more widely available. It something that we should be regulating, not liberalising. For that reason, I oppose clauses 2 and 6.

Ms P Bradley (The Chairperson of the Committee for Communities): I will make some remarks on behalf of the Committee before going on to talk about amendment Nos 4 and 5 on behalf of myself and my party colleagues.

On behalf of the Committee for Communities, I welcome the Consideration Stage of the Bill. With your indulgence, Mr Deputy Speaker, before I turn to the amendments, I will say a few words about the Committee's scrutiny of the Bill and some of the wider issues that we considered.

The Committee received 51 responses to its call for evidence from a diverse range of organisations, businesses, government bodies, researchers and individuals. Responses were received from bookmakers, bingo halls, public health bodies, the PSNI, Church representatives, charities, the all-party group on reducing harm related to gambling and sports associations. We held 12 oral evidence sessions and considered the Bill at 11 meetings, concluding with formal clause-by-clause consideration on 25 January 2022.

We explored the range of issues raised in the written and oral evidence with departmental officials through oral briefings and written responses. The Committee also held a Zoom event, organised by the Assembly's Engagement team, with an invited group of under-18s to discuss the potential impact of the Bill on young people. We found the views expressed to be very informative.

As a result of its deliberations, the Committee requested amendments to clauses 9 and 14, and we thank the Minister for taking them forward. We also requested significant amendments to the explanatory and financial memorandum (EFM) in relation to clauses 8 and 11 and the schedule to ensure better explanation of the forms of payment and of what does or does not constitute payment to participate in a prize draw or competition. We also requested amendments to the draft code of practice, and I will come to those in more detail shortly.

We all know that the Bill is limited in its scope and that a much wider overhaul of regulatory controls on gambling is long overdue, as the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 has remained largely unchanged, even though gambling habits and access to gambling have drastically changed.

7.00 pm

Phase 1 of the reform is the Bill that is before us. It will, among other things, amend certain aspects of the Order, including the opening days of licensed bookmakers and bingo halls; the rules on society lotteries; the granting of certain licences; the operation of promotional prize competitions; the definition of "cheating"; and the enforceability of gambling contracts. The Bill also enables a financial levy to be imposed on the gambling industry, and the issuing of mandatory codes of practice. We know that phase 2 will be a much larger piece of work; it will revamp the law completely. A future Bill will likely be the largest Bill ever to

come before the Assembly and will consider the issues of regulation, online gambling, and wider protections for children and young people.

Given the limited scope of this Bill, the Committee was very keen to consider, as far as possible, the wider and long-term issues that were highlighted to us in written and oral evidence. Many of those issues were pertinent to the second phase of reforms or touched on reserved matters, and so we made a substantial number of comments and recommendations in our report on the Bill. I am sure that you have all read those, but it is worth highlighting a few today.

We are concerned about the lack of substantial data gathering on the gambling industry and its impact on the economy, public health, and children and young people. We are also concerned that the school curriculum lacks sufficient education on, and awareness raising of, gambling and its harms. There is a need to build on the recommendations of the all-party group on gambling-related harm, and we are concerned about the advertising of gambling.

In terms of a gambling regulator for Northern Ireland, the Committee, after consideration, stopped short of pursuing an enabling clause in the Bill. However, we recommended that, for the second phase of reforms, the Department should revisit all possible options on the roles and functions of such regulators in other jurisdictions.

I now turn to the opposition that clauses 2 and 6 stand part of the Bill, and the other amendments. The majority of the Committee supports clauses 2 and 6 standing part of the Bill. The Committee divided on both clauses, the results being five Ayes and three Noes. The divisions were due to concerns around the public health advice that had been received by the Committee relating to providing any additional hours for gambling. Members who supported the clauses also expressed concern regarding the public health evidence but supported the clauses from the viewpoint of dealing with the current imbalance between land-based and online gambling and bingo, which can operate 24/7, 365 days a year, and bringing those premises into line with counterpart secure operating at Sunday fixtures, dog tracks and racecourses. The rights of workers who have to work in those premises was considered. Officials assured the Committee that the Minister had the agreement of the then Economy Minister that those workers will receive the same rights as those already in post at racetracks or amusement arcades on a Sunday.

The Committee supports amendment No 1, the Minister's amendment to clause 9, which concerns rules for society lotteries. Based on the evidence that it received in relation to the ticket price limit for society lotteries, the Committee requested that the Minister increase that to a suitable level. The Minister proposed to increase the maximum ticket price from £1 to £100. The Committee supports that amendment.

The Committee had been somewhat concerned that societies may attempt to run fewer, highly priced lotteries that would exclude those with less money to spend. However, members were reassured that the 1985 Order contains existing powers in article 137 to vary the frequency of lotteries and the power to amend amounts, if needed, to prohibit societies from running too many draws with tickets at, or close to, the upper limit of the proposed £100. In their submissions to the Committee, sports clubs and charities highlighted that they rely on the income that is generated from the sale of such tickets, and stated that the removal of the £1 ticket price was welcome. The Chartered Institute of Fundraising highlighted that society lotteries raised much-needed income for good causes.

Amendment Nos 2 and 3 focus on the industry levy. It was highlighted to the Committee that a levy on the gambling industry is considered international best practice to fund problem gambling, prevention, treatment, education and research.

The Committee supports such a levy that would go towards addressing the issue of problem gambling to further provide a better-funded treatment programme, including debt and money management coaching. However, members were concerned about the wording of the clause around which groups would be consulted on the levy and requested an amendment, which was accepted by the Minister. The amendment will ensure that the Department consults persons who have suffered from or been affected by addiction to gambling or other forms of harm or exploitation associated with gambling; persons who have experience or knowledge of issues that relate to such addiction, harm or exploitation; and also the gambling industry.

To further bolster clause 14, the Department agreed to the Committee's request to enhance the explanatory and financial memorandum concerning reference to the levy's being used for education, research and treatment. With regard to the design of the levy, the model in New Zealand was highlighted to the Committee

as good practice. In our report, we recommended that research and consultation be carried out by the Department with regard to how the levy is to be calculated and administered.

Amendment Nos 4 and 5 focus on clause 15. The Committee did not seek any amendments to clause 15 and, therefore, has no Committee position on the amendments proposed. However, it is worth highlighting the discussions and agreements that the Committee sought on the code or codes of practice.
The Minister is well aware that the Committee was not at all satisfied with being asked to agree that enabling clause for a mandatory code or codes of practice before such codes are even close to being finalised. The Committee Stage was completed before the six-week focused consultation on the first draft code was complete. The first consultation is then to be followed by a longer consultation and the finalised draft codes of practice. The Committee deliberated at length on a range of concerns that were brought to its attention generally by stakeholders on the first draft of the code, and we sought assurances on a range of issues pertaining to the codes and the consultation process.

In response to those issues, the Committee sought and got agreement from the Department to enhance the current draft code in a range of areas, including the use of higher-stakes gaming machines by under-18s; amendment of the draft code to ensure that it states that a notice should be placed on the machine if possible or, if not, as close to the machine as possible, stating that it is for the use of over-18s only; inclusion of advice for premises with gaming machines in the draft code of practice; and a review of its gaming machines leaflet and draft code of practice with a view to enhancing safety for under-18s regarding signage on doors, machines, the situation of machines etc, and encouraging premises owners to be responsible and think 21.

The Committee deliberated on a number of other issues that we concluded were best dealt with in the code or codes, including spending limits in gambling premises, self-exclusion and affordability checks. Including such issues in the Bill might have a detrimental effect, pushing people into illegal gambling or enabling problem gamblers to go undetected by visiting numerous bookmakers.

I note that amendment No 5 deals with breaches to the code. On breaches and compliance, the Committee has requested that the codes and the Department's website highlight an email address to which members of the public can send complaints. If a criminal offence is being alleged, the Department will refer it to the PSNI. Depending on the nature of the complaint, the Department will write to the operator enclosing a copy of the code and reminding them of their responsibilities. In exceptional or persistent cases, the Department will lodge an objection to the licence. The Committee also recommended that the legislation regarding fixed-odds betting terminals be reviewed thoroughly by the Department in preparation for phase 2 reforms, and, in the meantime, that the code or codes of practice deal with that matter as fully as possible.

I note that amendment No 6 proposes a new clause 15A and a ban on the use of credit cards. During its deliberations, the Committee considered a ban on the use of credit cards. However, after discussion with officials, it was felt that that was better placed in the code of practice.

Before I finish my remarks on this part, I highlight the fact that the Committee also deliberated at length on clauses 8 and 11 and the connected schedule. We focused on the two key issues of promotional prize draws and prize competitions.

Members wished it to be clear that companies can include Northern Ireland residents in such draws and competitions. Agreement was reached with the Department to enhance the EFM and schedule with fuller explanations of the intentions of the law and general examples, and a leaflet will be compiled on prize draws to set out more detailed worked examples, as part of the provision of additional material with clearly worked examples.

The Committee would wish to have seen a more ambitious Bill in this mandate, but we are also keen to see the outcome of reviews of gambling legislation in neighbouring jurisdictions to see what the impacts will be for Northern Ireland and to inform the second phase of reforms here.

On behalf of the Committee, I record our sincere thanks to all those who provided evidence to the Committee and express gratitude to the young people who participated in a Zoom focus group for taking the time to engage with us at a busy time in their academic year. Thanks must also go to the departmental officials, who worked well with us to ensure a flow of timely information to allow the Committee to meet its tight deadline for reporting. Finally, thanks should go to the Bill

Office staff and the Committee office team, who have all worked so diligently to get this to the Chamber today.

Mr Deputy Speaker, you will be glad to hear that I will now speak on amendment Nos 4 and 5.

On amendment No 4, if a code of practice is to have any value, it needs to be enforceable. A code of practice cannot be just a document that outlines what the Department deems to be best practice for the gambling industry; it needs to have robust statutory underpinning that brings with it meaningful sanction. Unfortunately, the draft code of practice presented to the Committee falls woefully short of what is required. Amendment No 4 is short, but it could provide a means to hold the gambling industry to account. The amendment is designed to elevate the code of practice from being simply a good practice guide to a document that, if breached in a serious or significant way, could lead to civil action on the part of the person harmed.

A bookmaker owes a general duty of care to all its customers. That general duty of care is the same one as is owed by any business. All shops owe a duty of care to people who come to their premises to buy services or goods, but a bookmaker's shop is not like any other premises on the high street. The service that is sold on such premises is proven to be addictive and dangerous and to cause real and lasting harm to people's lives. That is why the duty of care owed by the gambling industry to its customers should be set at a higher standard.

Amendment No 4 proposes a statutory duty of care. The amendment elevates the code of practice from being a regulatory manual for the gambling industry to a document that must be followed by the industry, and, if it is not adhered to, it creates a potential civil case for damages on the part of the person harmed. The amendment covers the whole of the code of practice, and, if it is passed, a licence holder would be not just morally but legally responsible for the harm that they cause. The amendment would place a duty on the licence or permit holder to ensure that they follow the code.

The draft code, as published by the Department at Committee Stage, outlines good practice for customer care. The code requires that training be provided to staff to identify customers who may be addicted, that licence holders take steps to ensure that affordability checks are in place and that people are able to self-exclude. On the face of it, the code seems to be good advice on how a bookmaker's business should operate, but the code has one fatal flaw. Without meaningful sanction, the code leaves the gambling industry to regulate itself. The reality is that the gambling industry has failed time and time again to regulate itself. The gambling industry is incapable of putting in place simple measures to protect customers from gambling harm. That is because the gambling industry needs people to lose. It is not in the interests of gambling companies to stop people betting. I fear that, without meaningful sanction, licence holders will not take their obligations seriously.

The journalist Aaron Rogan describes what the gambling industry does as "addictive by design". He has uncovered evidence that the gambling industry builds addiction into the service that it offers. The gambling industry knowingly structures itself to promote addiction. Aaron Rogan recounts the story of one punter, whom he calls "John". John decided to stop gambling and self-exclude. He closed all his accounts and believed that he wanted to end his habit.

A few weeks later, addiction got the better of him, and he opened his account using the same name, address and phone number as before — the very details he had used to self-exclude from the gambling company. He used a different username, and the gambling company stated that it was a new username and did not trigger in their system. For the gambling business, the reality is that John's return was good for business. Within a matter of weeks, John had lost £30,000. Rather than looking into the reasons for such a large and rapid loss, John, who wanted to self-exclude, was made a VIP customer. When John's losses hit £60,000, affordability measures were triggered. The measures consisted of an email being sent to him that simply asked whether he could afford his gambling. There was no account suspension, no check on his details to find out who he was and whether he had previously attempted to stop gambling. John continued to be given free bets, inducements to gamble, free tickets to sports events and all-expenses-paid trips. During all that time, John kept losing money. On 12 occasions, he triggered the internal warning indicators that the company had set up; on 12 occasions, the gambling company did nothing. John racked up losses, and the gambling company stood by and collected its profit.

7.15 pm

Do we really think that this is an industry that can regulate itself? Gambling companies want

people's money; they want people to lose. John is far from alone. Figures from the Gambling Commission show that almost 10% of people who have self-excluded have been induced to bet again. If the code of practice carried a duty of care for customers to help actively to alleviate gambling harm, the duty would be enforceable in court. The losses suffered by people who tried to stop, who clearly cannot afford their gambling habit, may well be recoverable against the bookie. The amendment is potentially groundbreaking and will ensure that licence holders take the code seriously because a breach of the code could hit the bookie in the one place that they do not like to be hit: their pocket.

The gambling industry does not often lose, but a duty of care could shift the burden from the customer to the people who are causing the problem: the industry. That, of course, is only one small step. What is needed are improved affordability checks, self-exclusion that results in that person being able to walk away for good and staff who are trained to help people who clearly need to stop. Amendment No 4 will not deliver that. Clearly, a regulator and greater regulation are needed. One thing is clear: the industry is incapable of self-regulation. The amendment is merely a small step towards ensuring that people get some level of meaningful protection when they walk through the door of a bookmaker's shop.

On amendment No 5, it is vital that any code of practice, if it is to be of use, must have some teeth. If a code of practice is to be meaningful and taken seriously by the industry, any breaches must carry a sanction. The code of practice, as proposed in the Bill and outlined in draft to the Committee, falls woefully short of what is needed. The draft code contains no civil or criminal sanctions for any breach; it is merely an aspirational document. The draft code states:

> *"The Codes will build on and support good practice already existing within the gambling industry and help the public more readily identify responsible and reputable gambling operators."*

On reading that introduction to the code, you might be forgiven for thinking that Northern Ireland does not have a gambling problem and that the only issue here is a few rogue traders. We all know that that is far from the truth. The draft code will do little to help to alleviate the highest prevalence of gambling harm in the UK.

Amendment No 5 is by no means perfect, but it is a start. The amendment is an attempt to make up for the lack of any sanction in the Bill. If a licence or permit holder fails to uphold the code, the only proposed sanction is a breach that can be used as evidence in court to oppose the licence or permit being renewed. That is simply not good enough. There needs to be immediate sanction for serious or repeated breaches of the code.

The draft code presents its own problems. In the absence of a regulator to ensure that the code is followed, will the Department send out officials to inspect premises to ensure that proper signage is in place, that age verification is practised, that staff are properly trained to identify gambling harm and to intervene if they are concerned about affordability?

Even if the Department plans to properly inspect for compliance and enforce the code, the lack of ambition in the draft code is of particular concern. When speaking about amendment No 4, I referred to the gambling industry's inability to self-regulate. This code will do little to increase public confidence that the industry will be regulated here.

The draft code on marketing states:

> *"marketing schemes which are designed to induce customers to gamble through incentives such as VIP programmes, free bets or spins ... and free bonuses present wider societal risks. Therefore these should always be avoided."*

Does the House seriously believe that, without sanction, the gambling industry here will stop giving free bets? Are we to believe that, if we just ask nicely, the scourge of VIP programmes and betting inducements will simply be stopped? That is just one part of the draft code; that approach is endemic. The Department seems to believe that the gambling industry is doing OK and that all that is needed is some way to weed out the unscrupulous bookie.

On gambling harm, the draft code states:

> *"agents and staff should also receive training and guidance on how to interact with customers who may be at risk of, or already known to have developed, a gambling problem. This training and guidance should include ways to discreetly signpost problem gamblers to relevant support services."*

The Department's plan to address gambling harm is for people to be identified and then discreetly signposted to help — that is it. Would

it not be better for the code to state that staff who identify affordability issues must not take money from such individuals? Should it not state that the gambling licence holder, having identified a person in the grip of gambling harm, must be proactive and exclude that person? Never mind the draft code having no sanctions for breaches, the code itself will do little to reform the gambling industry. The reality is that, even if the code required the gambling industry to exclude people facing gambling harm from premises, it would not do it. As already stated, the gambling industry needs losers. Unless, through the threat of sanction, the industry is forced to exclude people and help them with their addiction, it will simply carry on doing what it has always done and ignore the issues of gambling harm.

Amendment No 5 does not provide a rigorous civil or criminal sanction for licence holders who breach the code. At least, however, it is a tool that could be employed against licence holders who breach the code in a significant way or are guilty of multiple breaches. It allows for action to be taken before the licence or permit is renewed. If amendment No 5 is passed, the PSNI, a member of the public who has been harmed, the Department or even people who live in the vicinity of bookmaking premises could apply to the court to have the licence or permit revoked. Although not a perfect solution, it offers some measures of redress. A licensed premises that continually exploits people who cannot afford to gamble should be sanctioned. A licence holder who allows a person who has asked to be excluded to place a bet should face legal redress. Premises that do not verify the age of customers and are casual in fulfilling their obligations to stop underage gambling should not have a licence. Amendment No 5 seeks to give the power to a court to revoke or cancel a licence or permit issued under the 1985 Order when there are significant, continuing or multiple breaches of the code. The amendment would allow a person to apply to the court, under schedule 7 of the 1985 Order, to have a licence or permit revoked. Amendment No 5 by no means goes far enough. Much more is needed, not least of which is that a meaningful code needs to be produced. I urge the Minister to revisit the draft code and to make significant changes to it. Amendment No 5 provides, at least, some means to force the industry to take the code seriously.

Ms Á Murphy: I welcome the opportunity to speak this evening on the Consideration Stage of the Betting, Gaming, Lotteries and Amusements (Amendment) Bill. From the outset, I want to make it clear that we all recognise that many enjoy the activity of betting and do so in moderation and remain responsible while doing so. We must not, however, underestimate the issue or dress up the fact that urgent action is required to tackle problem gambling. Problem gambling has destroyed many lives, and it branches out and has a knock-on impact on families and loved ones.

The North of Ireland has the highest rate of problem gambling when compared with England, Scotland and Wales. The current gambling legislation is 37 years old. It is not fit for purpose, nor does it reflect the changing trends in gambling and betting that we have seen over recent years.

Due to the requirement for urgent reform, Minister Hargey has taken steps to begin the transformation of legislation here. Of course, that has been stated before, and it will be done as a two-phased approach. Everyone in the Chamber recognises that the legislation needs to be updated urgently, and that is clear from the engagement that we had from parties at Committee Stage and in the amendments that have been tabled for this evening. The Minister has stated on numerous occasions that this is only the first phase of transforming the legislation. I therefore welcome her amendments.

The Committee requested that the Minister increase the ticket price limit for society lotteries to a suitable level based on the evidence that it had received. That request was taken forward by the Department and the Minister. They will increase the limit on a society lottery ticket to £100. That will give many organisations and clubs a much-needed boost by increasing their revenue and helping them to maintain their organisation for many years into the future. Likewise, the Minister's second amendment also strengthens clause 14 by adding substance to the relevant definitions.

I thank Minister Hargey for her commitment to modernising betting and gambling laws here as well as tackling head-on the issues that surround gambling. The Bill will begin to help strengthen and radically reform outdated legislation.

Mr Durkan: The evidence is unequivocal: Northern Ireland has the highest incidence of gambling-related harm across these islands. It is estimated that around 40,000 people here have problems with gambling. Vulnerable individuals and their families have been left for almost four decades without updated, fit-for-purpose legislation. The failure to advance

meaningful protections for people suffering from gambling addiction to date, the consequences of which have devastated countless lives, is unacceptable.

At Second Stage, like others, I outlined my disappointment at a perceived lack of ambition or substance in the Bill. Essentially, it is legislation without much bite. The lack of provision for regulation is particularly disheartening. However, we recognise the limitations caused by a truncated mandate, and we support the Bill as a first and important step towards dealing with problem gambling. We look forward hopefully to the next mandate and to working on the next Bill, should we get the opportunity to do so.

I will touch on the amendments. The Chair detailed much of the Committee deliberation. We had extensive consultation and listened to evidence from a wide range of groups and individuals. I will start by speaking to amendment No 2, which is tabled in my name. I will not move that amendment today, but I will outline the intent behind it.

Until a more robust levy could be considered, I thought that it was important to have a levy in the Bill. Placing the obligation on licence holders to pay a levy of 1% of their annual gross gambling yield means that gambling companies must pay that contribution towards healthcare costs in order to address gambling-related harm and get help as soon as possible to those who need it. That 1% does not begin to scratch the surface of what is needed, but it would provide more than the current £30,000 per year that is paid to gambling-related research projects and treatment programmes, as confirmed to the Committee by the Turf Guardians' Association. The Department estimates that we would need somewhere in the realm of £23 million per annum to adequately address problem gambling. In that context, that £30,000 figure is peanuts.

I am acutely aware that my amendment is not perfect. If I was not aware of that before, I certainly am aware of it now, following meetings with officials and the Minister. However, I believe that it would have been a start.

Clause 14 in its current form is, essentially, a copy and paste of GB regulations under Gambling Act 2005. While I appreciate the complexities —

7.30 pm

Mr Butler: I thank the Member for giving way. I was looking through the voting matrix, and my party was minded to support the amendment that you proposed. Is the Member in a position to indicate what may come? I am passionate about this. I am understanding of the work that went into it and what might come at the next stage. What is your estimate of what a levy might be? I agree with you that your amendment maybe lacked ambition rather than anything else.

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

Mr Durkan: I thank the Member for his intervention and the fact that he would have supported my amendment. While 1% may appear to lack ambition, those in the industry evidently do not think so, because, although it was included in the 2005 GB Act, it has still not been implemented; I will touch on that now. There was even a bit of panic locally when the amendment was tabled.

Seventeen years since that Act across the water, no mandatory levy has been introduced; in fact, little progress has been made. I have concerns that clause 14, like section 123 of the 2005 Act, will never be utilised. Lessons should be learned from failures across the water. Their gambling legislation, objectively speaking, talked the talked but, to date, has failed to walk the walk.

Given that, as of 2016, the problem gambling rate in Northern Ireland was over four and a half times greater than that of England, it is clear that the severity of the situation here demands immediate action. The Department has to be brave and take action on a fixed levy amount now. We cannot afford to wait for regulation that may never come. Those were my thoughts even before we were staring into the abyss of perhaps a prolonged period without government and the ability to take it forward.

I recognise, as I said, that my amendment throws up a myriad of technical issues that, apparently, cannot be addressed now or particularly at the next stage within the scope of agreed Executive policy. Introducing a mandatory levy is a complex process but one that is worth doing and worth doing right. However, I have received assurances from the Minister that officials will work with me at Further Consideration Stage to discuss what is achievable. On that basis, I will not move amendment No 2 today.

At this point, it should also be noted that any levy will be land-based, as the Chair of the Committee outlined, and not applicable to

online betting. Currently, operators pay a voluntary levy to the GB regulator in order to sell online product across the UK, inclusive of Northern Ireland. The North must get its fair share of that money. I ask the Minister to continue pushing the matter with the Department for Digital, Culture, Media and Sport (DCMS) and the GB Gambling Commission.

We do not support Mr Allister's opposition to clauses 2 and 6, which relate to extended opening hours for bingo halls and betting shops on Sundays and Good Friday. I appreciate that that was a wee bit of a bone of contention at Committee. The rules on opening hours are outdated, and the betting industry has changed radically since the 1985 Order. To dwell on that one element is maybe to lose sight of the real issues: for example, as I touched on, the regulation of online gambling, which can be accessed at your fingertips any time, anywhere. I am also mindful that the gambling industry, despite the issues with it and the serious problems that so many people have with gambling, is an important employer in the North and that gambling can be and for the most part is enjoyed responsibly. That should be a key consideration when enshrining protections in law.

There has to be a bit of balance. I have always been of the view that Sunday opening should be permitted. A degree of fairness informs my position on that. In my constituency, for example, there are bookmakers two minutes down the road over the border in Donegal. They do a fair bit of business on a Sunday because many major sporting occasions reach their crescendo on a Sunday.

People are either going across the border or online, and I am aware of people having gone to illegal bookmakers on a Sunday. In that scenario, people perhaps run the risk of losing more than a bet.

We support the DUP's amendments, which will strengthen provisions made around the code of practice, including by imposing a legal duty on licence holders to act in customers' best interests and by introducing sanctions for breaches of the code.

We are content to support both amendments that the Minister tabled. We recognise the benefits that amendment No 1 will bring to many organisations, clubs and societies, through an increased ability to fundraise. That will need to be closely monitored, however, and I would like to hear a wee bit from the Minister on how it will be done.

I am a wee bit disappointed that amendment No 6, which the DUP tabled, has, like my amendment, been deemed technically deficient. I am surprised that that has come to light only now, given the length of time that the Committee spent discussing eradicating the use of credit cards in betting establishments. I welcome the fact that it will be included in the code of practice, however.

I will bring my remarks to a close. The reforms that the Bill provides are welcome, but we recognise its shortcomings. It is regrettable that it does not go further or provide a bespoke and robust set of safeguards for those at risk of gambling-related harm across the North. Nevertheless, I look forward to working with the Minister and her Department in the short time available before Further Consideration Stage. I also look forward to working with officials and a Minister — hopefully — in the time after that on the all-singing, all-dancing, strong, robust, fit-for-purpose, modern legislation that we need to tackle the problem.

Mr Butler: I thank the departmental officials, particularly Ciarán and Martina, for the work that they have done and for sitting in on just about every all-party group meeting that we had, and we had many. I also thank the Minister and her Department for bringing forward the Bill. It is a really important Bill. We had the Consideration Stage of two Bills yesterday — the Adoption and Children Bill and the School Age Bill — and today we have had the Consideration Stage of the Justice (Sexual Offences and Trafficking Victims) Bill and are now having this Bill's Consideration Stage. It just shows what we can do when we put our minds to it.

Some of the input tonight has been really good. Mark Durkan mentioned the thought given and the collegiate approach taken to working on amendments. Trying to get the Bill right is really important. It is more important that we get legislation right than rush legislation through. This is not just any legislation but good legislation that will impact on people's lives, so, although I possibly criticised the Minister or the Department — my apologies if I did — in the previous debate that we had on the Bill for perhaps not being ambitious enough, it is important that we get this Bill right. We have a chance to do so, and that applies to any legislation. That is just the way that it should be.

Our laws on gambling and betting are tremendously out of date, as has already been mentioned. The legislation in Northern Ireland is around 40 years old, which is just 10 years younger than me, so it is pretty grey.

Mr Frew: What?

A Member: Are you sure?

Mr Butler: That is hard to believe.

Mr Frew: You are meant to be truthful in the House.

Mr Butler: No points of order on that one. *[Laughter.]* The reality is that the means and methods by which gambling is offered and partaken in have dramatically changed over those 40 years, and legislation, as has been pointed out, has not caught up in any meaningful way whatsoever. As the Member across the House pointed out — I do not want to keep pointing at him and making him feel good about himself — even the GB legislation is out of date, and MPs were not able to do what they wanted with that. That therefore puts us in a position in which we need to get the legislation absolutely right for Northern Ireland and for the people here who need legislation to prevent them from coming to harm.

The societal experiences of gambling and betting over the years, and how we have dealt with them, will be a point of record, because we are moving on. A prime example of that is the fact that we have had no regulation of fixed-odds betting terminals, or, as they are known, FOBTs. Those machines have had a huge impact on the sector in recent years, and the Gambling Act 2005 does not apply to Northern Ireland, so there is a regulatory black hole in that area. If I am to criticise anything, it is that it is regrettable that the legislation before us does not address that key point. It is my hope, however, that the Assembly can look at that in this and, indeed, future mandates.

The result is that the potential harm in the sector and the societal impacts, as they are today, are not catered for or considered in a statutory manner. Sadly, there is no statutory regulation on many aspects of gambling and betting services in Northern Ireland, so I welcome the fact that the Bill will, in some way, bring in measures that we can implement to tackle that.

Gambling-related harm is of particular concern in Northern Ireland because of our society's unfortunate and, in many cases, unhealthy relationship with gambling. Northern Ireland has the worst rates of gambling on these islands, suffering from a rate of problem gambling that is three times that in the Republic and four times that in England. In Northern Ireland, not only do we suffer from a higher rate of gambling-related harm but the impact on individuals and families is significantly higher and has a greater singular impact. The all-party groups have met collegiately a number of times to discuss dual addiction, problem-related gambling, mental health and suicide prevention because of the commonalities in those areas. That is why the Bill is so important. As you know — if you did not know, you will be told again — I chair the all-party group on reducing harm related to gambling, and I have heard countless testimonies of just how destructive the problem can be on individuals and families.

It is in that context that I look at the contents of the Bill. I certainly welcome the Bill as a means of updating our gambling and betting legislation, given that an update is long, long overdue. I would have liked the Bill to go further with additional safeguards and regulations, a more robust levy mechanism — as we heard, the amendment on that will not be moved — and some form of statutory commitment to naming the level of reduction in gambling-relating harm. Notwithstanding those points, the Bill is a step towards modernising, legislating for and regulating the sector in a progressive and meaningful way. The Bill should not and will not be seen as a final piece. It should be the start of serious engagement by this place with the sector and, in particular, with those who are impacted and harmed by problem gambling. I hope that we can review and enhance the legislation accordingly in the coming mandate.

I want to focus on a few of the clauses and amendments. Clause 10 deals with permits. I draw Members' attention to that clause, which deals with the qualification of licences, certificates and permits. Clause 10(4) and (5) will amend the 1985 Order and limit permits, not to a registered company but to "a body corporate". Perhaps the Minister will explain what that means in her closing remarks, because it is not defined anywhere in the Bill. If it is, I certainly have not been able to find it.

I would like to think that one of the aims of the Bill is to enhance the regulation of and safeguards for the sector. That goes back to a point that perhaps has been raised already: it is not just the regulated establishments that we need to be conscious of. There are many forms of illegal and illicit gambling in Northern Ireland with considerable prizes at stake. Those, too, prey on people who have an addiction. We also know that, in a lot of areas, people do not have a lot of money. I want to find out whether, with the change to body corporates, any group or individual could avail of a permit without joint liability. I am sure that that is not the intention of

the Bill, but we need to tie that down to get the definition right.

Clause 14 deals with the industry levy and is a crucial part of the legislation. An industry levy is much needed and will bring us more into line with the UK. Amendment No 2 will not be moved, so that messes up my words, Mr Durkan; I will have to leave out a paragraph. You have explained why, and I accept your rationale for that. However, we have to ask whether the levy went far enough and whether it was appropriate. Those are fair enough questions, and I look forward to the further deliberations and, hopefully, conversations in the Committee, which will be brought back to the Chamber. I ask that those conversations be fed through to Members. Chair, perhaps you could do that, because you attend the all-party group at times. That would be really useful.

Clause 15 deals with the code of practice, and I certainly welcome the inclusion of a code of practice for the industry. I hope that that will be another mechanism with which to regulate and best ensure good practice in the industry, with a view to protecting end users in particular. I welcome that some judicial weight will be added to the code. However, without the inclusion of outcomes for a breach of the code, I fear that that will not be as robust as we would like it to be.

I also lend my support to amendment No 4 to clause 15, which is a step in the preferred direction and will, in essence, maintain a focus on a duty of care for end users.

It is a crucial amendment, as we cannot overstate the need to ensure that, in every step of the process, we try to mitigate the damage caused by problem gambling.

7.45 pm

In conclusion, I welcome the Bill and the amendments proposed. I hope that it will provide some measures of help to reduce gambling-related harm through people-centric regulation and bring forward some much-needed regulation of the sector.

Ms Armstrong: As the Alliance Party spokesperson for communities, I will, first, speak generally about the Betting, Gaming, Lotteries and Amusements (Amendment) Bill, and then about each of the amendments.

The purpose of the Bill, which contains 16 clauses and one schedule, is to amend certain provisions within the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985, with the overarching objective to address anomalies in the Order regarding the regulation of land-based betting, gaming, lottery and amusement activities. New regulatory controls on gambling are long overdue and need to address the protection of young people and other vulnerable members of society. They are also needed now to consider the technical advance of online or remote gambling. Online gambling is available 24 hours a day, seven days a week. It is easy to access: we have the opportunity to bet through our phone; it is with us everywhere we go. There are few controls or limits to online gambling, and there is no mechanism to force it to contribute to an industry levy that is used to prevent addiction to gambling and support those who are addicted. As much as I would have preferred the Bill to control online gambling, that was not within the scope of the Bill. The Minister has confirmed that a second phase of gambling legislation will be brought forward in the next mandate. It will aim to address those concerns.

I have also been vocal about the National Lottery. Its point-of-contact scratch cards and online activities contribute to gambling addiction in Northern Ireland, yet it is outside the remit of the Northern Ireland Assembly. It is for Westminster to legislate upon. Many people see its contributions to the community and voluntary sector, heritage projects and other activities, but it cannot be forgotten that it is a gambling product, and point-of-sale scratch cards are often a very easy way for those who have addictive personalities to access gambling in their corner shop.

Mr Durkan: Will the Member give way?

Ms Armstrong: I will indeed.

Mr Durkan: I very much concur with the Member's thoughts, particularly on scratch cards. They are often seen as an impulse buy. They are placed at tills, where everyone has to go when they are in a shop. We have seen public health interventions being made in other areas. Cigarettes were packaged in plain packaging, and then eventually removed from view, and some sugary and unhealthy snacks have been moved away from checkouts. Does the Member agree that that is the route that we would have liked to have taken with scratch cards, had we the power to do so? We will all be familiar with the good causes that the lottery contributes towards and supports, but only 9% of the yield from point-of-sale scratch cards goes to good causes, whereas your normal raffle-type lottery contributes 32%.

Ms Armstrong: I agree, and the frustration is that it is not for our Minister or the Department for Communities to deal with the National Lottery. As I said, it will be for Westminster to review and look at that. When we are talking about gambling addiction, we cannot forget all the products that are available in Northern Ireland and, unfortunately, outside of our control: online gambling and the National Lottery activities.

The Bill is designed to strengthen the existing regulatory protections for operators and consumers by amending current provisions within the 1985 Order in relation to the opening days of licensed bookmakers' offices and bingo clubs, the requirements for membership of bingo clubs, rules on society lotteries, qualification and requirements for the granting of certain licences, the operation of promotional prize competitions, a definition of cheating and the enforceability of gambling contracts.

I move now to the amendments. Clause 9 addresses the ticket price limit for societies' lotteries. The Committee requested that the Minister increase that to a suitable level, based on the evidence received. The Minister proposed an increase in the maximum ticket price from £1 to £100. The Committee agreed to that amendment. Members, including myself, were reassured that the 1985 Order contains existing powers in article 137(4) — the power to vary the frequency of lotteries — together with article 137(21) — the power to amend amounts — to meet the policy intention of prohibiting societies from running too many draws with tickets at, or close to, the upper limit of the proposed £100. I will therefore support amendment No 1 as brought forward by the Minister.

On clause 14, there are concerns about the wording of new article 172A(6), which deals with which groups will be consulted about the levy. Those concerns were accepted by the Minister and are addressed today in amendment No 3. I am pleased that the Minister and the Department will ensure that they will consult persons who have suffered from or been affected by addiction to gambling or other forms of harm or exploitation associated with gambling, and persons who have experience or knowledge of issues relating to such addiction, harm or exploitation. This includes the families and loved ones of the person who is suffering from the addiction. The Department will also consult the gambling industry. I have to say that I am not best pleased about that, because I think that a levy should be set for the industry rather than with the industry.

Amendment No 2, tabled by the SDLP, would have required licence holders to contribute 1% of their annual gross gambling income to support the industry levy. As it is not going to be moved, unfortunately, I will not be able to support that. I would have supported that because, having spoken to a number of gambling operators, I have to say that the 1% does not seem too extreme but could bring in a significant amount of money to support the levy. However, I understand where there are concerns, because online gambling providers will not be required to pay anything towards the levy. Is it fair that our land-based operators — people who are working here in Northern Ireland and employing people in Northern Ireland — would be asked to contribute to a levy when the people who are making the most money — the online companies — would not have to contribute anything?

I will support the DUP's amendments. Amendment No 4 adds a duty of care. That is always a good move. Every time you see "duty of care", you just go, "Yes, that is no problem". Amendment No 5 links the revocations contained in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 with this amending legislation. I have asked why article 28 was not included in amendment No 5. Article 28 provides for the revocation of bookmaking office licences, and I think that that may be something that we will work on at Further Consideration Stage. I have discussed it with the proposers of that amendment, and it is something that I think will be worthwhile considering if we are bringing in the other revocation parts. Amendment No 6 would have tied in the ban on the use of credit cards by updating the definition of "money" in article 2 of the 1985 Order. As we know, that is a technical issue. There are other pieces of information that we will, I am sure, hear from the Department as we move forward.

Finally, I cannot support Mr Allister's wishes to remove clauses from the Bill. I say that because I did ask questions in Committee. In particular, I asked why Easter Sunday was not included, for instance, as one of the days that would not be included. It came back to the fact that the sector and other people said, "But what about the significant sports that are played on Sundays, with betting taking place on them?" That could be football or GAA matches. I do not go into betting offices often, and I do not go into bingo halls often, so I have taken my lead from people who I have spoken to and the wider input that we have had. Again, I do not think that it is fair for companies and people who work in betting offices, who are protected from Sunday working, to have that ability removed from them

when online gambling is available every Sunday. While online gambling keeps making money and taking money out of the Northern Ireland economy, I do not think that it is fair that we take that opportunity away from some of our more viable gambling providers in Northern Ireland.

Mr McGuigan: Some 86% of gambling profit comes from 5% of the customers. If you understand that statistic, you realise that there is little incentive for gambling companies to regulate themselves. That is why legislation is vital. We need to see responsible policy and legislation from government, followed by responsible provision by operators, to allow and assist responsible consumption by customers. I recognise, as others have said, that the Bill is only the first step and the smallest part of the Minister's proposed gambling reform package and deals solely with land-based gambling. The legislation and the process of reform is long overdue, and this is a much-needed start.

It is not an exaggeration to say that reforming our gambling laws has the potential to improve the lives of many families and to save lives potentially lost through addiction and gambling harm. We need a socially responsible gambling industry and a much better balance between the freedom to gamble and protection from the social and financial risks that gambling entails. The Bill is part of that process.

I declare at the outset an interest as a member of the APG on reducing harm related to gambling. I welcome the clauses in the Minister's Bill and her amendments. I will also support amendment Nos 4 and 5. I do not intend to go into detail on all the clauses and amendments but will highlight a few issues.

We absolutely need a levy on the gambling industry, so I welcome clause 14, which proposes such a levy to go towards projects related to gambling addiction and other forms of harm or exploitation associated with gambling. I welcome amendment No 3, tabled by the Minister to extend the list of those who are to be consulted on the outworking of the levy to include those who have experienced harm and those who are knowledgeable about the treatment of gambling harm.

I note that the Committee asked that, under clause 14, paragraphs (4)(a) and (4)(b), which deal with the proceeds of the levy, cover education, treatment and research. The APG also raised that issue and considers it to be important. We are a long way behind where we need to be in the North on having useful data on gambling, so we need to improve research and data gathering on gambling practices and activities, just as we must improve the gathering of statistics in the Department of Health on those who present as or could be suffering as a result of gambling harm. In Health, that data is currently pretty much non-existent.

From a public health perspective, gambling-related harm needs to be put on a level with other addictions such as alcohol and drugs, including in how potential dangers are taught to our children in the education system. To that end, I congratulate the charity Gambling with Lives on its welcome pilot education programme that is being delivered in a small number of schools in the North. The programme is aimed at preventing harm in young people. It is, potentially, the type of project that could benefit from a levy and expand its reach. Any decisions on where the funding from a levy goes obviously need to be completely independent, from the industry in particular.

I welcome clause 15 and the introduction of codes of practice. That is vital. It is right and proper that, when designing the codes, there be an exploration of issues that could reduce harm. The Department's draft codes state, among their objectives, that they are to:

> *"protect those under the legal age for gambling and other vulnerable persons from being harmed or exploited by gambling; and (c) assist persons who are or may be affected by problems relating to gambling."*

In the APG inquiry, affordability checks, spending limits and self-exclusion practices were continuously raised as important factors in reducing harm. I note their inclusion in the consultation on the draft codes of practice, and I hope that all the measures will be strengthened as a result of the consultation process. I accept that those aspects may be more easily addressed in online than in land-based gambling, but there are examples of how, in other jurisdictions, for example, multi-premise self-exclusion schemes work. I hope that that is given due consideration by the Minister in developing the codes.

In the APG, when looking at affordability checks, we considered, among other options, the equivalent of a membership-type card that can check the affordability of an individual's gambling, taking into account all premises visited, to ensure that those placing bets are not doing so beyond their means. That is crucial. People should not bet beyond their means. Data protection issues mean that legislation

would be needed, so that could, potentially, be included in phase 2.

I welcome the inclusion in the draft codes of action on reverse withdrawals. From experience, I am all too aware of how gambling companies try to impede customers or discourage them from withdrawing their winnings by, among other things, placing a limit on the amount that they can withdraw or, perhaps, by placing a delay of up to 72 hours on their being able to receive their winnings. All those practices are undertaken not to protect the gambler but in the hope and expectation that the gambler will continue to gamble with their winnings and, ultimately, lose.

8.00 pm

I also welcome all aspects of the draft code that are aimed at protecting children and young people from exposure to harmful products. Some aspects of the code that deal with gaming machines will be crucial here. We must do everything that we can to ensure that those protections are as strong as possible and are enforced. As someone who was, unfortunately, able to rack up a substantial debt using a range of credit cards solely on gambling with no restriction, I welcome the draft code ban on credit cards for gambling. I have no doubt that the inclusion of such a ban in the code will offer much protection and reduce gambling harm to individuals. Finally, I expect the development of a regulator to oversee the code of practice to be included in phase 2. I agree that a regulator will be essential to the development, operation, regulation and enforcement of future gambling legislation.

The Bill is a good start, and I certainly hope that it becomes law before the end of this mandate.

Mr Frew: The Bill was scrutinised in Committee over many weeks, and I enjoyed my time questioning the officials — as I always do — and I value the engagement. I put on record my thanks to the Minister, the Department and the officials for their work and steadfastness in coming forward with answers and for engaging with the Committee. That is always valuable and leads to a far better legislative outcome.

The Bill represents the first major change in gambling law in Northern Ireland since the 1985 Order. The current legislation is clearly out of date and not fit for purpose. I do not want to give away Robbie Butler's age, but I was 11 and looking forward to Northern Ireland playing in the Mexico World Cup. I was not necessarily concerned about going to big school. I was more worried about —

Mr Durkan: Was that the 1970 World Cup? *[Laughter.]*

Mr Frew: I will clarify that, because that is a good point of record. It was the 1986 World Cup that I was looking forward to. That was very good, Mark. We did not qualify for the 1970 World Cup, unfortunately.

Mr Deputy Speaker (Mr Beggs): I hope that this is relevant to the amendments. *[Laughter.]*

Mr Frew: Thank you very much for bringing me back, Mr Deputy Speaker. I was just putting into context the length of time that it has taken us to amend this legislation.

The law in Northern Ireland has not kept pace with technology. That is one of the fundamental problems with trying to legislate in that regard. We are not trying to legislate for an enemy at the gate. We are now, unfortunately, trying to legislate for an enemy in our pockets. That is the blind side of all this. That is where we cannot effect the meaningful change that we want to make. I recognise that that has to be done at a higher station for a global problem.

That said, we could have done so much more with this Bill. As I stand here and see the Bill going into law, I will have an eternal regret because I believe that it is a missed opportunity. In my engagement with the Minister and the Department in my time on the Committee, I have had one fundamental win, which is the fact, the promise and the commitment that, in order to do something about problem gambling, we will need to repeal the 1985 Order completely. We need to rip it up and start afresh. That will mean ripping up this Bill. That is OK, because I do not believe that we repeal enough law in this place in order to make better law. So, I suppose that that is a big win for me. If, however, you recognise that problem gambling in Northern Ireland is an issue, you must realise that the Bill is a failure in that regard. It does not touch it or cope with it.

The prevalence of gambling-related harm in Northern Ireland is well known. We all know it. Anyone engaged in the debate knows only too well the damage that gambling does in our communities. It causes issues with debt, public health, family breakdown and increased risk of suicide. It is all there.

It is difficult to believe that the most recent data that we have available on gambling-related harm is from 2016. A study undertaken by the Department found that 2·3% of adults surveyed were deemed to be problem gamblers. If scaled up to the population as a whole, the number of individuals experiencing gambling-related harm would equate to more than 40,000 adults. As my colleague from North Antrim said earlier, it is not just 40,000 adults; it is 40,000 adults and their families and friends. It affects not just the person who gambles but everyone around them, including, probably, employers and employees. That is how big a problem this is.

Look at our figures compared with those of England, Wales, Scotland and even the Republic of Ireland. We must realise that we have a massive problem, not only with problem gamblers but with people at moderate and low risk. Look at the figures: for Northern Ireland, moderate risk is at 4·9%; in England, it is 0·7%; in Scotland, it is 0·9%. For low risk, the figure for Northern Ireland is 6·7%; the figure for England is 1·9%. What is wrong? Is it just our nature, or is it the support that we give those people?

There are many issues. When the Department reported in 2016, the problem gambling rate in England was 0·5%; it was 0·7% in Scotland; and it was 1·1% in Wales. All the other jurisdictions have reported improvements since. Where are our improvements? Do we know? We have not collected that data since 2016. My guess is that, given COVID and all the restrictions that were imposed, the problem may be worse now. Consider the mental health issues connected to the COVID restrictions and lockdowns. Have we even tried to measure the problem? If you do not measure it, you do not know its scale, and, if you do not know that, you do not know how to overcome or beat it.

Those are the worries that I have. With those worries in mind, when I look at the Bill, I do so with sadness.

Mr Butler: I thank the Member for giving way. He is absolutely right to be passionate about this. He mentions the impact of COVID. Does he also recognise the impact of not having a functioning Executive to introduce good legislation in the new mandate?

Mr Deputy Speaker (Mr Beggs): Order, Members. The debate is widening considerably. It reminds me of the type of debate that we might have had at Second Stage. Consideration Stage is about making decisions on the amendments that are in front of us, and I urge Members to comment on those.

Mr Frew: I will bow to that order, rise to the challenge and speak about the amendments. I thought it important, however, to set the context and describe the scale of the problem at hand.

I thank the Minister for her amendments. True to form, and true to the commitment that she gave to the Committee, she intends to amend clauses 9 and 14.

I will now address clauses 2 and 6, which are on the further opening of bookies and bingo halls on Sundays. Having said that the enemy is in our pockets, I will add that there is a massive issue with people's betting in their homes, at their kitchen tables and in their bedrooms at all hours of the day any day of the week. That is a major problem. We will not fix that problem by allowing further access to bookmakers on Sundays. To me, that does not solve any issue.

I know that the bookmakers will say, "You can bet on a Sunday through your phone, so why not let us open?". I get that argument, because it is perverse that people can bet on a phone at any time of the day. You have to then take into consideration the advice of the Public Health Agency, the Institute of Public Health and groups like CARE, which have all said that they do not agree with Sunday opening. The Public Health Agency states that Sunday opening may exacerbate existing harms. If we recognise that there is a problem and that it is a very big one, why would we do anything that could escalate and exacerbate it? I do not understand the logic of that. I therefore do not support clause 2 or clause 6, although bingo, which is dealt with in clause 6, is not as harmful in any shape or form as gambling per se; it is more of a social event. I get that.

I live in the real world. We can all crack jokes about bingo, bets and everything else, but I do not see how I or my party can support those clauses, because they add further access to bookmakers, which will not solve the problem. If there was more in the Bill, you could understand Sunday opening. I think that it was the Institute of Public Health that said that it would not support Sunday opening without there being a gambling strategy and a regulator in place. You can understand that balance, but it has not been met, so I will not and cannot support clause 2 and clause 6.

Clause 3 speaks of workers' protection. That is another issue that is to do with Sunday opening. It is not about a Christian ethos or a sabbatarian mindset but about time off in common. Bookies already have unsocial hours. They open in late morning and remain open

until late evening. Those are already unsocial hours for people who have youngsters coming home with homework that needs to be addressed, and, of course, when those people get home, their children who are of a very young age will be going to bed. Sundays may therefore be the only day that a family like that, as a complete unit, will have a day off in common. That is a massive issue. We in the House talk about work-life balance. Why are we not catering for it here? I will say that the instruments in clause 3 will assist in allowing for protections in that regard.

I will take things in order and move on to talk about the amendment to clause 9. I thank the Minister for her amendment. It is right that the £1 limit had to be repealed; I get that. As we went through the deliberations, I thought that it was important that we put another figure on that. You could argue about what the figure should be. The Department and the Minister have come up with £100, and we will not divide over that. Am I right that £100 is the right limit? I honestly do not know, but it had to be set at something. A decision had to be made to put a figure in, and I respect the Department and the Minister for that.

8.15 pm

I will move on to clauses 8 and 11, which have been dear to my heart. I created bit of havoc over this issue in the Committee, because I believe that it is fundamentally important. There are constituents of ours — let us say that they live in Ballymena — who are treated differently from people in Bristol simply because the bank, building society or financial institution that they put their money into will not offer them the same service that it offers to customers in Bristol. That, in turn, is simply because, in this country, those institutions are not allowed to offer prize draws without payment.

I am glad that clause 8, "Arrangements not requiring persons to pay to participate", and clause 11, "Prize competitions not requiring persons to pay to participate", both of which refer to schedule 15A, are in there. Is that easy to read? No, it is not; it is quite difficult to read. I am glad, therefore, that the Department has committed to changing the explanatory and financial memorandum to make it easier for ordinary folk — not least bank managers and customers — to read. We will need more than that, however, because not every bank manager lifts an EFM; it is only us sad folk who do that. There needs to be a customer leaflet to make sure that all staff and customers of banks, building societies and every other financial institution know exactly what their rights are and know that they will now be able to partake in UK-wide customer draws; that is probably the best way to put it. That has been very important to me as we have gone through the Bill. It is important to some of my constituents who have raised the issue with me time and time again.

I will go on to talk about clause 14, "Industry levy". I again thank the Minister for tabling amendment No 3. The amendment was required, because of the issues and the problems around that clause. Amendment No 3 would insert:

> *"(a) persons who have suffered from, or been affected by, addiction to gambling or other forms of harm or exploitation associated with gambling;*
> *(b) persons who have experience of knowledge of issues relating to such addiction, harm or exploitation; and*
> *(c) the gambling industry in Northern Ireland."*

I agree with the principle of a levy but I have this issue: where does the money go? Where does that money go if we do not know the scale and depth of the problem and do not have a gambling regulator to ensure that it is well spent? To be truthful, I usually take the default position that a pound of anybody's money is better in their own pocket than in government coffers, because, nine times out of 10, it is not spent effectively from government coffers. I want to know exactly how the money from the levy will get to the heart of the problem and solve it for folk. The Gambling Commission in GB regulates:

> *"arcades, betting, bingo, casinos, gaming machine providers, gambling software providers, lottery operators, external lottery managers and remote gambling (online and by phone) that use British-based equipment."*

We need a gambling commissioner in Northern Ireland. That is the only way that I could really be sure that the money raised through a levy would be spent effectively and not wasted on programmes that do not hit the target. We can all tick boxes and talk about this or that programme and about how we spent £2 million here, £10 million there and £100 million there, but do we ever really assess the output and the effectiveness of that? It is not good enough to say that you spent it all; did you spend it effectively?

On clause 15, I have problems and worries about the code of practice. Even though amendments have been tabled that would give

it more teeth, we have to ensure that the code of practice is correct and balanced. This is a perverse thing about the issue: if a problem gambler is going to gamble, I would honestly rather that problem gambler to be in the bookie's than in their bedroom, gambling on a phone.

There are times when gambling establishments look after their punters in that regard. They will take their money off them — do not worry about that — but, sometimes, they keep an eye on people or get them home safely. We do not want something in the code of practice that disperses that problem, resulting in punters bouncing from one bookies to another, with nobody keeping an eye on them, or, worse still, hiding in their bedroom and gambling away all their money on their phone.

There is therefore a place for bookmakers, as perverse as that may sound when I am talking about problem gamblers. We have to acknowledge the nuance and try to work with it in the code of practice. I support strengthening the code of practice, but we have to make sure that the balance struck is correct so that we do not do something that affects bookmakers disproportionately. Remember that the levy will disproportionately affect land-based bookmakers. It will not touch the gambling companies everywhere that go into your heart and eyes through your phone. It will not affect the National Lottery. I agree 100% on the issue about the availability of scratch cards. If you are an impulse gambler, every time that you enter a newsagent's, a shop or a supermarket to buy ordinary groceries, you will be enticed into walking out of there with at least one scratch card. That is an issue not only for problem gamblers but for people who spend money on scratch cards every week. They might not think that it is a great amount, but that money would be far better in their bank account, accruing interest, albeit a very small amount, than being given to the National Lottery, as those people do not have control over where that money goes. That is very important to say.

Our amendment No 6 concerns a ban on credit cards. It has caused the Department a bit of concern since we tabled it. Yes, I know that it is to be in the code of conduct, but I am not satisfied with that. Bookies tell me and others that they do not accept credit cards. They did not really accept debit cards until COVID came along. Most of the transactions were in cash, but, when transmission of the virus from cash became a problem, they allowed debit cards. Even though bookies have a voluntary ban on credit, that needs to be strengthened. It is about the signal that it sends. No one should be able to gamble with money that they do not have. That should be fundamental. If a problem gambler is given access to money that is not his or her own, it will be spent. It could be spent in minutes. There therefore should be an amendment made to the Bill to ban credit cards. I do not know how we work in such an amendment. I will work with the Department to do so. Having it in the code of conduct is not strong enough, however. It needs to be in the Bill.

There was an issue with the way in which we worded amendment No 6 and with what it would do. The amendment would change the definition of "money" in the Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985 to remove using a credit card. I get how that might ripple through the 1985 Order, which is pretty extensive. We may well have missed things, because we are not perfect. If the amendment were to pass, it could lead to gaming machines that accept only credit cards falling out of the definition and not being regulated. My goodness. I sit on the Committee, and I have not heard of any gaming machine that takes only a credit card. That would be perverse. In fact, article 108(6) of the 1985 Order states:

> *"The charge for playing a game once by means of the gaming machine shall be 1 or more coins inserted in the gaming machine".*

And so it goes on. Where are we getting the invention that there are gaming machines out there that only take credit cards? That is a scary thought. Where are they? How many are in Northern Ireland? If they are in Northern Ireland, I want to know about them because I think that they should be banned, not regulated. There has to be a more meaningful, deeper conversation on that. I know that this issue is coming late because we have tabled an amendment, but we need to explore it. I want to see in the Bill a ban on the use of credit cards for gambling. You should not be able to gamble with someone else's money. That should not be allowed.

I had thought about tabling an amendment on debit cards, but I realised very quickly that it would only disperse the problem. How could you ever enforce it? If you put a limit on the use of debit cards, people would bounce around all the bookies until they had reached their limit of £200, or whatever. If you banned the use of debit cards, there could be an issue with a future virus and future restrictions on the use of cash. I get that, so I reversed out of tabling that amendment.

There has been much food for thought in the contributions tonight. Whilst it is a step, I do not know how big a step it is. I look forward to the day when the 1985 Order is repealed and we start with a fresh canvas in tackling problem gambling. It affects 40,000 households, which means 40,000 families and their friends. We need to deal with that effectively and efficiently in the next term.

It is only fair that I raise an issue about clause 14. We should distinguish between on-course bookmakers, who only operate 22 days a year, and land-based bookmakers, who are open every week. I will be honest: when you go to a course, it is more of a social event. You go there and you know that you will spend only, say, £45 or £70 on so many races, and you stick to that. It is more of a social event. Whilst there should be a levy on on-course bookmakers, it should not be of the same value as the levy for ordinary, land-based bookmakers. That is one thing that I would say on the development of a levy. I will leave it there.

Mr Dunne: At every stage when the Bill has been debated, either in the House or in the Committee for Communities, almost every person who has spoken has raised the important and central issue of the high prevalence of gambling harm throughout our country. We all know people who have been adversely impacted by problem gambling. I commend the work of the support groups and of well-known personalities, including local sports stars, who influence people and have certainly helped to highlight the risks that are associated with gambling harm by bravely coming forward to speak up and speak out on their gambling addictions. I also thank all the organisations and bodies who made various submissions to the Committee on this important Bill, the departmental officials and the Committee team. I also acknowledge the work of the all-party group on reducing harm related to gambling.

Whilst I acknowledge that the Bill is the first step in gambling reform within the mandate, I am disappointed that the Minister has not gone further. The number of people who find themselves in the grip of gambling harm is truly shocking. Gambling can lead to debt, depression, job loss, family breakdown and major financial issues, to name but a few such harms. Around one in six people here are directly or indirectly impacted by gambling-related harm. That is a public health crisis. The painful truth in this debate is the fact that the Bill does very little to help those people who are most impacted. We are told: "Do not worry. Wait for the next mandate. Another Bill is coming that will solve the problem". That will be too late for many of the 200,000 to 400,000 people who need help today. The Minister is asking us to move forward with the first piece of major legislative change in respect of gambling in 37 years, since 1985, against the backdrop of a gambling harm crisis.

8.30 pm

The Minister and her Department made the choice that the first substantive clause of the Bill would not be a clause to help those in gambling harm. That is very regrettable. Rather, the very first substantive clause of the Bill increases the hours that bookmakers are open across Northern Ireland. What signal does that send out? I do not believe that it shows that we are facing a public health crisis.

Many Members will legitimately echo the words of the Turf Guardians' Association when it gave evidence to the Committee. It was pointed out that people can gamble by phone, over the internet and at a race track, and they can even travel across the border to bet, so there is no logical reason to keep shops shut here. However, tone is important. What tone is being set by the Bill? If the first substantive clause is one that helps the bookie and not the person who needs our help, I believe that the wrong tone has been set.

If, after clauses 2 and 6, the Bill had gone on to outline provisions for a regulator, a robust strategy to address gambling harm, provisions to ensure that the Health Department had the tools to address public health concerns, a means to help people exclude themselves from gambling, a code of practice with teeth or even a levy that would fully pay for the harm caused, then perhaps clauses 2 and 6 would be uncontroversial, but, unfortunately, the Bill contains none of those things.

It has been left to individual Members of the House to work with charities and other organisations to try to amend the Bill to at least put some clauses in the legislation that directly address gambling harm. It is disappointing that some of the amendments that would have helped to address the problems were not selected for debate this evening.

What we have is a Bill that seeks to give people more opportunity to gamble. If clauses 2 and 6 stand, people will be afforded a 17% increase in shop opening hours in which to gamble. The written evidence submitted to our Committee was very interesting, with submissions from the Institute of Public Health in Ireland and charities such as Gambling with Lives, which does

excellent work right across the UK. I just want to put that on record. Awareness has really been raised over the last number of years through the work of that group and other important groups. That group was very clear in its concerns around the longer opening hours contained in the two clauses. During the COVID pandemic, we have seen the central emphasis correctly placed on following public health advice. However, that does not appear to be the case on this issue.

An employee of a local bookmaker spoke to me recently in my constituency office. He expressed serious concerns around longer opening hours, purely on the basis of wanting to spend valuable time off with his family at the weekend. People do not believe that there is a lack of available opening hours, and they do not sense that there is a real appetite out there for longer opening hours. I want to register my concerns around that as we try our best to support those with gambling addictions and, ultimately, reduce gambling harm.

Gambling addiction is not like other addictions. Sadly, people with a gambling addiction are 15 times more likely to take their own life. Some 20% of problem gamblers have considered taking their own life over the past year alone. The harms of gambling are devastating. That is why the tone that we set in the House today with the Bill is very important.

There is often only one winner, and it is not the individual placing the bet. The reality is that it is very difficult for people in the grips of gambling harm to escape. The gambling industry knows that, and it is often relentless in how it exploits it.

In evidence to our Committee, the Department gave the rationale that Sunday opening is all about sport. The Committee was told that sports happen on Sundays — football, GAA, American sports and golf — and people place bets, but betting on sport is not the only gambling that occurs in a betting shop. Does the Assembly really want to increase the risk of gambling harm by opening up bookmakers for an extra day a week with no protections in place?

I will oppose clauses 2 and 6 and urge other Members to do so as well.

As was mentioned, the digital revolution has undoubtedly transformed the gambling industry. Almost every mobile phone has the ability to have a gambling app installed. Those apps have no set opening or closing times and no doormen to monitor age restrictions and policies. The betting shops are in people's pockets day and night, 24/7. Online gambling has brought gambling from the high street to our homes. Easy accessibility can be the biggest issue for problem gamblers and those with addictions.

Another example is the popular Football Index gambling scheme, which collapsed in March 2021, leaving over £90 million of stakes trapped right across the United Kingdom.

That is an example of a betting scheme that attracted many people as it operated under the guise of being a football stock market where people could buy shares in footballers.

Mr Deputy Speaker (Mr Beggs): I draw the Member back to the amendments and consideration of the Bill, rather than the wider issues that he is addressing.

Mr Dunne: Yes. That was an example where individuals lost thousands and thousands of pounds with not a penny in return.

I turn to amendment Nos 4 and 5, which stand in my name and those of and my party colleagues. The amendments have been tabled in an attempt to deal with a glaring omission in the current code of practice: the Bill makes no provision for the code to be enforced. The draft code contains no civil or criminal sanction for any breaches of the code. The draft code reads more like a best practice manual than a serious code of practice. Just this past weekend, 'The Guardian' published an article entitled:

> *"What gambling firms don't want you to know - and how they keep you hooked".*

The article is a real eye-opener, and it describes how the gambling industry ensures that people become addicted and addicts keep coming back to gamble. It is an industry that ensures that people become addicted to its product, but, more than that, it designs its product to ensure that punters lose. Amendment No 4 is potentially groundbreaking for the United Kingdom, as it seeks to ensure that the gambling industry cannot be cavalier with people who are in the grip of gambling harm. By imposing a duty of care on the industry, it places a legal liability on gambling licence holders. If the licence holder fails to uphold the code of conduct, that could be a breach of the duty of care they owe to a customer and give rise to potential civil proceedings and an award of damages.

The Bill does not provide legal sanction for a breach of the code of practice. Amendment No 5 does not remedy that defect, but it allows anyone who has identified multiple or significant breaches of the code to apply to the court to have a licence or permit revoked. The Bill allows the code of practice and adherence to the code to be used in court proceedings only when a licence or permit is being renewed. Amendment No 5 will give a power to the Department, the PSNI, a person affected by gambling harm or any other concerned member of the public to apply to the court to have a licence or permit revoked in the case of multiple or serious breaches of the code.

The amendments, while not providing the remedy that the Bill should contain, provide some teeth to the disappointingly benign draft code of practice that the Department placed before the Committee. I urge Members to support the amendments.

Ms Hargey (The Minister for Communities): First, I thank the Committee for Communities, the Chair and the Deputy Chair for their assistance in progressing this much awaited Bill to Consideration Stage. Of course, I thank all of the Committee's staff team and the teams in my Department for their work to get the Bill to this point. The scrutiny has obviously been robust and diligent. We have the two amendments that I am moving and the other amendments, and I have always said that I want to work with the Committee in this shortened mandate to make the first stage of the legislation as robust as possible.

Some members have commented about the sequencing of the Bill and what moves first. I do not dictate that; it is dictated by the 1985 Order. Maybe the Member will raise that with the British Minister who brought in that Order in 1985. I do not make the sequencing arrangements; I have to base that on the existing legislation, and that is what I have done.

There has been some opposition to clauses 2 and 6. It is important to say that gambling is already allowed on Sundays and on Good Friday at racetracks, at gaming arcades and, of course, online. Treating bookmakers and commercial bingo clubs differently is not consistent with having the same approach across the board. There was an inconsistency in the legislation and a difference in how different gambling routes were treated. I am attempting to make sure that we address that. Of course, bookmakers' shops will continue to be prohibited from opening on Christmas Day, including Christmas Days that fall on Sundays. Indeed, the majority of respondents to the Department's public consultation expressed support for relaxing bookmakers' office opening hours.

With regard to the risks that have been highlighted, I have listened to many family members who have lost loved ones or whose loved ones have been impacted. Indeed, we have heard from some Members who have been impacted by gambling. It is important that clauses 2 and 6 are not seen as stand-alone. They have to be seen as part of the broader Bill and the changes that we seek to make, which impose new controls on the betting industry through the code of practice and the creation of new offences in relation to cheating and allowing people under the age of 18 to use high-stake gaming machines.

The bookies are already allowed to open on Sundays in the South of Ireland and all the other jurisdictions; yet, according to the available statistics, the rates of gambling harm in those jurisdictions are significantly lower than here and continue to fall. We need the research; it is not just an issue of opening on Sundays, because that has not driven up the numbers. The numbers in those other jurisdictions are actually falling. Again, more work needs to be done on the causes of gambling harm and why people find themselves in that predicament.

With regard to the issue around the rights of betting office workers, I raised that during the previous stages of the Bill. Indeed, clause 3 is designed to protect betting office employees from being forced to work on Sundays against their will. As stated by the Chair of the Committee, I consulted the then Minister for the Economy who advised that she was satisfied that clause 3 would protect workers from being forced to work on Sundays against their will. She added that a refusal to grant workers time off for bank holidays or days of religious significance, for example, Good Friday, could amount to indirect religious discrimination. Bookmakers' offices, as I said, will still be required to close on Christmas Day and where that falls on a Sunday. The same applies to clause 6 for commercial bingo halls.

I moved amendment No 1 and will cover others. In response to concerns that were raised by the Committee about clause 9(a), which proposes to repeal article 137(5) of the Betting, Gaming, Lotteries and Amusements Order 1985, I agreed to table an amendment that would retain article 137(5) but still deliver my overall policy of helping societies' lotteries to raise more money for good causes in the community. At the

moment, societies' lotteries are heavily constrained by article 137(5) in that the maximum amount of money that they can charge for a lottery ticket is currently set at no more than £1. That limit has not been reviewed in over 30 years. It is much too restrictive, in my view, and wholly unrealistic given the economic realities that the voluntary and community sectors face. I am convinced that there is a more pragmatic option; namely, to maintain a ticket limit provision for society lotteries in the 1985 Order but to set it at a greatly enhanced level. That is why I propose to amend clause 9(a) to include a maximum ticket price of £100. I am satisfied that that change remains consistent with helping society lotteries to raise more money for good causes in the community.

Increasing the maximum allowable ticket price from £1 to £100 might seem, at first glance, to represent a massive leap, but I do not envisage that every lottery ticket will be sold at £100 or close to that amount. I expect activities such as the normal £1, or close to £1, weekly lotteries to continue as before, even after the change, should it be made. The £100 represents a maximum price; it would be rarely used, for example, if a society was running a major capital project or large annual draw. Of course, I have considered the possibility that individuals may seek to abuse the higher limit, proposed in amendment No 1, for example, by running multiple or continuous draws at £100, or even £80 or £90 a ticket. Therefore, before tabling the amendment, I wanted to make sure that my Department could, at any time necessary, impose general limits on the frequency of ticket sales at certain high prices.

Having reviewed the 1985 Order and taken appropriate advice, I am satisfied that, if required, the Department has sufficient power under articles 137(4) and 137(21) to prohibit societies from running constant or too many draws with tickets at or close to the proposed upper limit of £100.

8.45 pm

The Assembly should draw reassurance not only from the legal protection but from the many voluntary organisations and sports and community bodies that run the lotteries. They do so not for selfish reasons but in the interests of the community in which they are based or work. Lotteries are not about personal profit. In that context, they are about assisting others, and most organisers of societies lotteries want to continue to run low-priced lottery draws. Many of them have said that it would be counterproductive for their cause only to sell tickets at £100, £80 or £90 in the future.

Although amendment No 1 alters clause 9, I am satisfied that it remains consistent with the original policy intent, which has always been to increase fundraising opportunities for societies lotteries. Therefore, I propose amendment No 1, which will introduce a maximum ticket price of £100 for society lottery tickets.

I turn to amendment No 3. I agreed with the Communities Committee that the list of consultees proposed in clause 14, which relates to the powers around the creation of an industry levy, should be expanded to include organisations that deal with health and social issues relating to problem gambling and any other relevant organisations that appear to the Department to represent the interests of those impacted by gambling harm. That is the purpose of the amendment. I take the point made during Committee Stage that the objectives of the levy demand that any future consultation on it should include those who have experience of or are working to combat gambling harm.

I am satisfied that amendment No 3 strikes the right balance between the interests of the industry more broadly and, of course, those who are meant to be served by any levy: those who are suffering or have experienced gambling harm and those who have knowledge of the health and social problems that arise from it. The amendment remains consistent with the original policy objective of creating a means through which government may impose a statutory levy on the gambling industry, the proceeds of which must be used to fund education, treatment and research. That levy will be critical going forward. On that basis, I propose amendment No 3.

I thank Members for tabling the remaining amendments. I fully understand their reasons for doing so. However, as has been said, I raised some concerns about how the amendments were drafted, and I will go through those now, although, obviously, some of them will not be moved tonight.

There were concerns about amendment No 2 and how it was drafted. It would remove the current proposed requirement for the Department to make regulations as to the amount of the levy, the formula and its payment. The Bill states that the regulations will be subject to consultation with stakeholders and, ultimately, agreement in the Assembly through the affirmative resolution procedure. Consultation on the amount and structure of the

levy is designed to ensure that all relevant interests and ideas are taken account of before any proposed levy amount or calculation formula is set in law. If that amendment had been passed — obviously, it will not be passed now — there was a concern that it would have fallen short of what may have been needed. The proposer said that he wants to continue to work with the Department to look at what can be done, and I have given a commitment to do that in the time ahead.

I acknowledge that amendment No 4 is proposed in the best interests of people who gamble and may be vulnerable to gambling harm. I completely understand the reasons that it was tabled. The segment of clause 15 that amendment No 4 would alter refers specifically to arrangements for the code of practice. Arrangements in themselves do not owe a duty of care; the duty of care will be owed by the facility provider, as stated at the beginning of clause 15 — the holder of the relevant licence, certificate or permit — but the duty should be absolute not expected. Therefore, it is for the Department to clarify for the industry and licensing authorities, through the code of practice, what those absolutes should be. Also, the amendment does not make it clear precisely who would expect the duty of care to be exercised: "expected" by whom or of whom? Again, the arrangement cannot "expect". I recognise that that is technical and perhaps I am picking at the word, but the technical is important in getting the legislation right. That said, it is not right or in the public interest for me to oppose the amendment out of hand. I am willing to work with the proposers, moving towards Further Consideration Stage, to fix any technical issues to reflect the thrust of the amendment.

As with amendment No 4, I had misgivings about amendment No 5. I would like to be sure that, if we proceed with amendment No 5, it will achieve its intention, which is to make it easier for the courts and the licensing and enforcement authorities to take due account of clause 15's proposed code of practice in the way that all of us would want. At the same time, I want to make sure that we do not lose whatever strength already lies in the code. I want to avoid a situation where the Assembly, in doing its best, inadvertently encroaches on the territory of the licensing authorities and courts. Again, I am happy to work with the proposers to find, at Further Consideration Stage, a way to progress the amendment.

I know that amendment No 6 will not be moved. There has been discussion and consideration of the issue, and I completely understand the thrust and reasoning behind the amendment. I assumed that it was crafted in a roundabout way to ban the use of credit cards. As stated earlier, I agree with the intent of the amendment, which is that credit cards should never be accepted by operators as a means of paying for gambling. As the Minister with responsibility for setting the regulatory framework for the industry, I believe that the use of credit cards in gambling should be prohibited. In that context and when I introduced the Bill to the Assembly last September, I made it clear that I wanted to deal with credit cards through the code of practice proposed in clause 15. Members will be aware that my Department is consulting on the draft codes, and they include a provision to prohibit operators from accepting credit cards directly or indirectly as a form of payment for gambling. I worried about the possible effect of amendment No 6 — I know that it will not now be moved — on slot machines and their use in the form of cash or tokens. Concerns and queries were raised by the proposers of the amendment, and I want to continue to work with them to see whether we can strengthen the legislation at Further Consideration Stage.

A couple of Members asked about the limits of the Bill. I have been clear since I came into post two years ago that I wanted to see changes. When the pandemic hit and our focus turned to the emergency response, I recognised that we needed a completely new Order; the 1985 Order is completely out of date. People recognise, however, that, within a restricted mandate of not even two and a half years, there is not enough time to completely rewrite an Order. I was left with that circumstance and this question: do I move nothing, or do I try to get some additional protections through and continue to build on what the second part of the legislation will begin to look like? I know from talking to our staff team in the Department today that we are already having those discussions and working with individuals and organisations that support people who have been impacted by problem gambling and thinking of what the next stages will be.

I was five years old when the 1985 Order was created, and I am coming 42 in April. In that time, I am the only Minister who has made any changes to the legislation. I am not saying that to score points, but I did it in a shortened mandate of less than two and a half years and during a global pandemic. The Bill is not everything, but I have given a firm commitment. I know that the Department is geared up to look at the next stage of the legislation, but, as was mentioned, it is important that we get something through. The community and those

campaigners expect us to get something through in this mandate to give those additional protections, and then, in a new mandate, we can focus on phase 2 of the legislation.

Mr Allister: I did not hear anyone during the debate dispute the fact that there is a huge public health issue arising from gambling addiction. Almost every Member espoused that as a fact, yet, for most, there was a corresponding eagerness to find reasons to do nothing about reducing access to land-based gambling. That is sad commentary in itself. Mr Dunne put his finger on it when he said that, when you have a Bill the opening substantive clause of which is to liberalise and extend the facility for gambling in circumstances where there is a supposed acknowledgement of the problems created by gambling, that sets the wrong tone. That is to put it at its mildest. That is where the legislation gets off entirely on the wrong foot.

Ms Hargey: Will the Member give way?

Mr Allister: Yes.

Ms Hargey: That is not through intent, as I said. I have to bring the sequencing of the Bill on the basis of the 1985 Order, so maybe you would like to take up with the direct rule Minister from 1985 why they placed the sequencing of the legislation in that order. Of course, the priority is to protect those people, but I have to take the legislation in the order that it is based, and that is from 1985.

Mr Allister: If the Minister is telling us that she is in office but not in power, that is a fairly poor reflection on the post that she holds. The Minister has it in her power to bring any legislation within the transferred ambit on the subject matters that lie in her Department, so that is a lame excuse that does not stand up.

The fundamental issue is that the House knows that there is a huge problem pertaining to problem gambling, yet, tonight, the House is presented with a Bill that, instead of tackling that, deliberately ignores the Public Health Agency's advice on it and, in fact, will embrace the opportunity to make the problem worse by increasing the hours of availability.

Mr McGuigan referred to Gambling with Lives, which had a poignant comment to make about the issue. Some said, "Oh, we cannot really do anything about the land-based gambling because people will then simply go to online gambling". Let me read you what Gambling with Lives said in two short paragraphs about that:

> *"Gambling with Lives is concerned that extending opening hours for any gambling establishments in Northern Ireland will lead to an increase in gambling-related harm. The recent Public Health England report 'Gambling-related harms: evidence review' found that increasing the availability of gambling is a key factor in increasing not only gambling activity but also gambling harm."*

I pause there to say that I am surprised that anyone would seek to take issue with that patently obvious fact.

9.00 pm

It goes on:

> *"As far as we are aware, there is no public outcry for greater availability of gambling in Northern Ireland, so we find this proposal both concerning and unnecessary. Whilst we are aware of the threat posed by the 24/7 availability of online gambling, land-based gambling venues provide those suffering with gambling disorder with the means to bypass any online or bank blocking tools that could significantly aid their recovery. Extending opening hours of betting shops will therefore inevitably lead to increased harm, especially increased access to fixed-odds betting terminals (FOBTs) which have addiction and at-risk rate of FOBTs is over 50 per cent".*

There you have it. The existence of online gambling is no excuse for increasing land gambling. Of course, it needs to be tightened and tackled, but the fundamental choice that the House will make tonight is whether we are just talking in platitudes about being concerned about the increased risks from gambling, or we are prepared to do something about it by signalling that we will follow the logical public health authority indication and not increase the availability of betting shop gambling because we know that it inevitably leads to greater problems. If we do not follow that indication, we will embrace greater problems, and the issue will resolve to questions of platitudes rather than a serious intent to deal with it. That is why I urge on the House the practical and necessary step, which is important of itself but also signals very directly the direction of travel and intent of the House, and recommend that it rejects clauses 2 and 6.

Mr Deputy Speaker (Mr Beggs): Before I put the Question, I remind Members that we have debated the Member's opposition to clause 2

stand part, but the Question will be put in the positive as usual.

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

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr Beggs): I think that the Noes have it.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr Beggs): Clear the Lobbies. The Question will be put again in three minutes. I remind Members to continue to uphold social distancing and that those who have proxy voting arrangements in place should not come to the Chamber.

Before I put the Question again, I remind Members present that, if possible, it would be preferable to avoid a Division.

Question put a second time.

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr Beggs): Before the Assembly divides, I remind Members that, as per Standing Order 112, the Assembly has proxy voting arrangements in place. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. I remind all Members of the requirement for social distancing while the Division takes place, and I ask that you ensure that you retain a gap of at least 2 metres between you and other people when moving around in the Chamber or the Rotunda and especially in the Lobbies. Please be patient at all times, observe the signage and follow the instructions of the Lobby Clerks.

The Assembly divided.

Mr Deputy Speaker (Mr Beggs): Members, there has been a technical error. We will have to run the Division again. Apologies for that.

The Assembly divided:

Ayes 53; Noes 29.

AYES

Dr Aiken, Mr Allen, Dr Archibald, Ms Armstrong, Mrs Barton, Mr Beattie, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Butler, Mr Catney, Mr Chambers, Mr Delargy, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Ferguson, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lyttle, Mr McAleer, Mr McCrossan, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Á Murphy, Mr C Murphy, Mr Nesbitt, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Miss Reilly, Ms Rogan, Mr Sheehan, Ms Sheerin, Mr Stewart, Mr Swann.

Tellers for the Ayes: Mr McGuigan and Miss Reilly

NOES

Mr Allister, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mrs Cameron, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Erskine, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Newton, Mr Poots, Mr Robinson, Mr Stalford, Mr Storey, Mr Weir, Mr Wells.

Tellers for the Noes: Mr Allister and Mr Frew

Question accordingly agreed to.

Clause 2 ordered to stand part of the Bill.

Clauses 3 to 5 ordered to stand part of the Bill.

Clause 6 (Days when bingo and use of gaming machines permitted on bingo club premises)

Mr Deputy Speaker (Mr Beggs): Before I put the Question, I remind Members that we have debated the Member's opposition to clause 6 stand part, but the Question will be put in the positive, as usual.

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

Some Members: Aye.

Some Members: No.

Mr Deputy Speaker (Mr Beggs): Although I can hear Noes from the TUV Member and the DUP Benches, I think that the Ayes have it.

Clause 6 ordered to stand part of the Bill.

Clauses 7 and 8 ordered to stand part of the Bill.

Clause 9 (Rules for societies' lotteries)

Amendment No 1 made:

In page 4, line 5, leave out paragraph (a) and insert—

"(a) in paragraph (5) (price limit on tickets) for '£1' substitute '£100'."— [Ms Hargey (The Minister for Communities).]

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

Clauses 10 and 13 ordered to stand part of the Bill.

Clause 14 (Industry levy)

Amendment No 2 not moved.

Amendment No 3 made:

In page 7, line 7, leave out from "the gambling" to end of line 7 and insert—

"(a) persons who have suffered from, or been affected by, addiction to gambling or other forms of harm or exploitation associated with gambling;

(b) persons who have experience or knowledge of issues relating to such addiction, harm or exploitation; and

(c) the gambling industry in Northern Ireland."— [Ms Hargey (The Minister for Communities).]

Clause 14, as amended, ordered to stand part of the Bill.

Clause 15 (Code of practice)

Amendment No 4 made:

In page 7, line 25, leave out "for the purposes of" and insert—

"to meet an expected duty of care to those using the facilities to include, but not be limited to".— [Ms P Bradley.]

Amendment No 5 made:

In page 8, line 22, at end insert—

'(10A) Serious, significant, continuing or multiple breaches of a code is a ground of revocation or cancellation of a licence registration or permit under articles 27, 42, 92, 103 or,121.'— *[Ms P Bradley.]*

Clause 15, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 6 not moved.

Clause 16 ordered to stand part of the Bill.

Schedule agreed to.

Long title agreed to.

Mr Deputy Speaker (Mr Beggs): That concludes the Consideration Stage of the Betting, Gaming, Lotteries and Amusements (Amendment) Bill. The Bill stands referred to the Speaker.

I ask Members to take their ease for a few moments.

(Mr Speaker in the Chair)

Private Members' Business

Autism (Amendment) Bill: Consideration Stage

Mr Speaker: Members, I want to make a point that I think it is important to make at this stage. It is very late in the evening. I have been very sorely tempted to reschedule this business to tomorrow morning, but, if I did that, the Bill's Further Consideration Stage could not be tabled for next week, and the week beginning 28 February will be a very busy week. I do want to do anything to put the Bill in jeopardy.

Today, I have heard quite a number of speeches that were nothing more than Second Stage contributions. That is an abuse of the privileges that we all have here in making our contributions, which are very important — each and every one of them. Members are making their points passionately. However, spending so much time doing that has taken us now to almost 10.00 pm. It is grossly unfair that there are people in the Chamber, Members and officials, who will be travelling the roads at midnight. That is simply not good enough. Our office and team has done a lot of work with all the party Whips. There has been great cooperation. There was very good cooperation today at the Business Committee, at which we tried to schedule as much legislation as possible. To be fair, all Members, staff and party teams have been working to prepare the legislative programme to see us to the end of the mandate, with as much legislation being passed as possible. That is the common endeavour that we have all agreed to, but, yet again, we had what happened today. I have to be honest and say that I have been quite disappointed today with what I consider to be a breakdown of discipline, with Members clearly speaking as if they were engaged in a Second Stage debate.

9.45 pm

We should all be mature enough and long enough in the tooth to be competent, mature and passionate about the issues, but also disciplined enough in order to get the business conducted. A lot of very important Bills are outstanding. Everybody has agreed that we want to complete as many of those Bills as possible. I urge Members to be passionate — obviously, this is an emotive and important issue for many people, and I want see the Bill processed successfully — but also to remember that it is the Consideration Stage and to deal with the Bill in that capacity. If we do that, we will end the debate earlier, which will allow people to travel the roads more safely. I urge Members to do that. On that basis, we will resume business.

I call Mrs Pam Cameron to move the Consideration Stage of the Autism (Amendment) Bill.

Moved. — [Mrs Cameron.]

Mr Speaker: Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in the provisional grouping of amendments selected list. There is a single group of seven amendments, which deals with the autism strategy and reviewer. I remind Members who intend to speak that, during the debate on the single group of amendments, they should address all the amendments in the group on which they wish to comment. Once the debate is completed, any further amendments in the group will be moved formally as we go through the Bill and the Question on each will be put without further debate. The Questions on stand part will be taken at the appropriate points in the Bill. If that is clear, we shall proceed.

Clause 1 ordered to stand part of the Bill.

Clause 2 (Additional components of autism strategy)

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 7. I call the Chairperson of the Committee for Health, Mr Colm Gildernew, to move amendment No 1 and to address the other amendments in the group.

Mr Gildernew (The Chairperson of the Committee for Health): I beg to move amendment No 1: In page 1, line 17, after "autism" insert "support and".

The following amendments stood on the Marshalled List:

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

"(ca) physical health,".— [Mr Gildernew (The Chairperson of the Committee for Health).]

No 3: In page 2, line 9, at end insert—

"(f) housing."— [Mr Gildernew (The Chairperson of the Committee for Health).]

No 4: In page 2, line 9, at end insert—

"(4E) The autism strategy must set out how the Department will reduce waiting times for autism assessment and treatment services provided by HSC trusts."— [Mr Gildernew (The Chairperson of the Committee for Health).]

No 5: In clause 3, page 2, line 17, after "multidisciplinary" insert "and cross-departmental".— *[Mr Gildernew (The Chairperson of the Committee for Health).]*

No 6: In clause 3, page 2, leave out lines 18 and 19 and insert—

"(4) The autism strategy must set out how consistency of practice is to be achieved across—

(a) HSC trusts, and

(b) education services."— [Mr Gildernew (The Chairperson of the Committee for Health).]

No 7: In clause 5, page 3, line 16, at end insert—

"(1A) The autism reviewer must not be a person employed by a Northern Ireland department.

(1B) The autism reviewer is not subject to the direction or control of the Northern Ireland departments.

(1C) But this is subject to the requirement under this section for the Department to pay the autism reviewer's expenses and allowances."— [Mr Gildernew (The Chairperson of the Committee for Health).]

Mr Gildernew: A Cheann Comhairle, I will just make my remarks as Chairperson. Even though it is an area in which I am passionately involved, I will forgo making remarks as Sinn Féin's spokesperson for health. I have colleagues here who are also passionately involved in the area and can pick up on those issues. I apologise in advance for the length of my remarks, but they will outline the Committee's consideration, and, therefore, have to be made. Go raibh maith agat mar sin. It is great to see in the Chamber people who have fought and campaigned so arduously on the issue for such a long time.

I will give a brief outline of the Committee's scrutiny of the Bill, and then provide further information on each of the Committee's proposed amendments. When the Autism Act 2011 was introduced, its main objective was to enhance the provision of services to, and support for, people with a condition on the autism spectrum. The Act sought to achieve that by amending the Disability Discrimination Act 1995 to resolve any ambiguity as to whether the term "disability" applied to autism spectrum conditions. The Act also required the preparation and implementation of an autism strategy.

At Second Stage, the Bill sponsor outlined the key issues that the Bill seeks to resolve. Through the work of the all-party group (APG) on autism, a number of issues were identified, including that only one of the three action plans in the autism strategy had been completed, and the absence of any measurable outcomes or targets. The purpose of the Bill is, therefore, to amend the Autism Act 2011 to enhance the autism strategy by strengthening the consultation process and collection of data; providing information on autism training for staff of public bodies; setting out details of an autism early-intervention service; providing details of a new autism information service; specifying information on the needs of adults with autism; and requiring the appointment of an autism reviewer.

The Autism (Amendment) Bill was introduced in the Assembly on 5 July 2021 by the Bill sponsor, Pam Cameron MLA, and was referred to the Committee for Health for consideration on completion of Second Stage on 21 September 2021. I know that many others on the APG have done significant work. Pam has been very generous in emphasising that fact. I also recognise my colleague Cathal Boylan's work on the issue over many years.

Owing to the limited time available before the end of the mandate and its workload with six other Bills, the Committee agreed to issue its call for evidence at the end of July, prior to the Bill's Second Stage. That allowed for a longer consultation period and meant that organisations had sufficient time in which to provide detailed responses to the call for evidence. The Committee received a total of 11 written submissions. I thank all those organisations and individuals that provided written evidence to the Committee.

The Committee held a total of four formal evidence sessions on the Bill. It was briefed on two occasions by the Bill sponsor, Pam Cameron, and Kerry from Autism NI, who is

present in the Chamber. It also heard evidence from the Human Rights Commission (HRC), the National Autistic Society (NAS), Ulster University academics, the health and social care trusts and the Department of Health. I place on record my thanks to those organisations for providing the Committee with their views on the Bill. Many of the issues raised in evidence have been reflected in the Committee's amendments, and we thank each and every one of them for their input.

As the Bill is relatively short, with five main clauses, I will outline the Committee's consideration of the clauses and provide further information on its proposed amendments to the relevant clauses.

No Committee amendments were tabled to clause 1, which seeks to place an additional obligation on the Department to consult not only other Departments but other persons before preparing the autism strategy. It also seeks to place a duty on the Department to request data from trusts on the prevalence of autism in children and adults.

In its evidence, the Human Rights Commission outlined the importance of consulting on the strategy, including the need to consult people with autism, parents and carers of children and adults with autism, and representative organisations. The Committee recognises the importance of directly consulting those who are most impacted on and affected when developing strategies. We have referred to that in the past, and it is relevant. They are experts by experience, and that is what they should be considered to be.

The Committee sees great value in co-design and co-production processes that would allow people with autism and their families and carers to play an active role in the design and implementation of the strategy. The Committee recommends that the Department put the necessary processes in place to ensure that voices are heard in the design and implementation phase. The Committee recommends that consultation be an area that the autism reviewer consider and report on.

The Committee tabled amendment Nos 1, 2, 3 and 4 to clause 2. The clause will add a number of components to the autism strategy: it must include information on the training on autism that is to be provided to civil servants and staff of all public bodies; it must set out details of an autism early intervention service; it must include information on a new autism information service; and it must include information on the needs of adults with autism.

The Committee considered evidence from the National Autistic Society that the Bill should contain a mechanism to make autism training for education staff and health and social care staff mandatory. The Committee considered the proposal but felt that having a duty for mandatory training to be provided for all staff was possibly outside the scope of the Bill. The Committee recognises, however, the importance of providing autism training to staff and recommends that the Department of Health and the Department of Education consider mandatory autism training for relevant front-line staff, including trainee teachers, teachers and classroom assistants. That will ensure that training resources are targeted at those who have direct contact with the public and with children and young people.

On amendment No 1, the Committee considered the early intervention service. The National Autistic Society had outlined how autistic people are diagnosed at different ages, including in adulthood, and how "early intervention" can imply that it means only young children. The Committee agreed that the role of an early intervention service is to intervene at the earliest opportunity, no matter what a person's age. The Committee therefore suggests that early intervention is key to providing support to people and families going through the autism assessment and diagnosis process.

The Committee tabled amendment No 1 in order to clarify the role of the early intervention service. The Committee's amendment places the words "support and" into the clause, which would then read "autism support and early intervention service". The Committee agreed that that provides better clarity on the role, with it being to support all people and their families no matter at what age they have been identified as needing support.

Mr Boylan: I thank the Member for giving way. Will he clearly identify that the assessment process should include adult services, because that is a key element and has been lacking in previous strategies?

Mr Gildernew: Yes, that is relevant. We must provide services to everyone who needs them in a way that is appropriate to their needs. Thank you for that intervention.

Clause 2 includes a list of the needs of adults with autism, and, in particular, references their needs in respect of lifelong learning, employment support, recreation, emotional and well-being support and supported living. The Committee has proposed two amendments to

clause 2 — amendment Nos 2 and 3 — that add physical health and housing to the list of needs. The Committee agreed that it was important to reference physical health as a particular need for adults with autism. There has been a growing understanding that physical health needs can sometimes be neglected when there are other significant challenges. That is why we felt that it was important to reference physical health.

The Committee also agreed on an amendment to include housing in the list. That amendment clarifies that there are different housing options that autistic adults may want to avail themselves of, not just supported living. The amendment is an attempt to widen the scope of the supports that will follow for people's needs.

The Committee also agreed on a fourth amendment to clause 2, which provides a statutory duty for the strategy to set out how waiting times for assessment and treatment services will be reduced. We heard evidence during our consideration of the Bill, and in correspondence before its introduction, that waiting times for autism assessments are increasing. We also heard that there are huge differences and discrepancies in waiting times across trusts, which, effectively, has created a postcode lottery.

The Committee is concerned that there has been an increase in the number of people who are having to go private to get assessments completed in a timely manner in order to provide the necessary support for children and adults with autism and their families and carers. In effect, that is a very unequal and inequitable system, where those who can afford to pay can get the assessment and those who cannot may not.

As I highlighted previously, early intervention is key to providing support and help to those with autism or those who are waiting on assessments. We get better outcomes when early intervention support assessments are carried out at the earliest stage. The Committee is keen to see a reduction in the waiting times for assessments and agrees that amendment No 4 will provide clarity on the work that the Department and the trusts are undertaking to address the waiting lists.

The Committee has tabled two amendments to clause 3: amendment Nos 5 and 6. Clause 3 amends the 2011 Act by inserting a new section on the methodology required for the preparation of the autism strategy. The Committee received evidence that there needed to be regional consistency across trusts in their approach to autism, and that there is a need for an autism strategy to contain hard targets that can be measured to see if the strategy has been successful.

Amendment No 5 seeks to highlight that not only is a multidisciplinary approach to autism needed but a cross-departmental approach across Health, Education, Communities and Economy. Each and every Department needs to take autism into consideration. Amendment No 5, therefore, inserts "cross-departmental" into the clause.

Amendment No 6 seeks to strengthen the Bill by outlining that the autism strategy must set out how consistency of practice will be achieved across areas and trusts when there is evidence of a postcode lottery in waiting times for assessments and services. The amendment also outlines that there should be a consistent approach in education services.

The Committee considered how the strategy would specifically address the needs of under-represented groups in both diagnosis and support, including by gender, ethnicity, language and age. The Committee is concerned at the discrepancy in the rates of diagnosis between males and females and is keen to ensure that there is equality of access across all section 75 groups. The Committee agreed that equality of access to assessment, diagnosis and treatment is an area that the reviewer should also consider in their work.

There are no Committee amendments to clause 4, which amends the 2011 Act by establishing a new requirement for the Minister to prepare an annual report that sets out information on the funding of autism. The Committee previously highlighted to the Department the difficulty in identifying the total resource that is being allocated to a particular stream as the funding can come from many sources. The Committee outlines that the Department needs to consider how total funding for different streams can be identified and reported. That is essential to allow the money to be tracked to see whether the strategy is effective and how it evolves. The Committee is keen to see how the funding reports will work in practice and, therefore, asked a number of questions of the Department to get some clarity on how it will be implemented and taken forward. A response to those questions was received late last week and indicated that annual funding reports were undeliverable. It will be good to hear from the Minister how clause 4 will work in practice and what amendments the Minister is considering bringing forward at Further Consideration Stage, because, while it may be difficult, these

are the challenges that need to be faced in order to make improvements in this area of life.

10.00 pm

The Committee has proposed one amendment to clause 5, which is amendment No 7. Clause 5 amends the Autism Act 2011 by requiring the appointment of an autism reviewer. The Bill sponsor outlined in evidence that she had proposed the appointment of an autism reviewer, with a budget allocation similar to that of the mental health champion but with duties that protect the independence of the post from departmental influence or interference. The Explanatory and Financial Memorandum (EFM) of the Bill outlines that the role of the autism reviewer currently has no comparators. It also outlines that the cost of the non-statutory, mental health champion role, including staff, is estimated at between £300,000 and £500,000 per year. A number of organisations commented on that and, specifically, on ensuring the independence of the reviewer from the Department.

The Committee shared the concerns of stakeholders that the Bill would not provide adequate assurance that the role will be independent. Therefore, the Committee agreed to table amendment No 7, which will ensure that the reviewer must not be employed by a Department and will not be subject to the direction or control of a Department. The Committee thinks that that will provide the necessary assurances.

The Committee outlines the important role of the reviewer and the need for the reviewer to be able to consult widely, both with the sector and with those diagnosed with autism, their families and carers. The Committee recommends that the reviewer works closely with the Department's autism forum and is able to use the forum's expertise to inform their work. The Committee envisages the role of the reviewer as being reflective of the whole sector and the reviewer should be independent of any single organisation. The reviewer should engage widely with the sector and directly with people with autism, their parents and carers.

I want to thank a number of people, starting with the Bill sponsor, Pam Cameron MLA, and representatives from Autism NI for their engagement with the Committee on the Bill. Pam brought the Bill to the Assembly on behalf of the all-party group on autism, and we thank the all-party group for its advocacy for children and adults with autism. At times, it has been difficult for Pam, as the Deputy Chair of the Committee as well as the Bill sponsor on behalf of the all-party group. However, she and the Committee managed that process well. I also thank the stakeholders, particularly those who engaged with the Committee throughout the Bill's stages. The guidance and information received were invaluable for the Committee. I thank Committee members for their work on the Bill, which was considered during an extremely busy period. The Committee has come forward with a number of robust recommendations that will strengthen the Bill. I also want to place on record my thanks to the Committee team and the Bill Clerk for supporting members through the scrutiny of the Bill. I commend the Committee's proposed amendments to the Bill.

The only thing that I will say on behalf of Sinn Féin is that the party supports the amendments and the Bill. Sin é. That is it.

Mrs Erskine: I thank my friend and colleague Pam Cameron for her efforts in bringing her private Member's Bill forward. The fact that the Autism (Amendment) Bill aims to amend a previous private Member's Bill, by Mr Dominic Bradley and the all-party group on autism, is testament to the passionate work of the all-party group on autism, Autism NI and the secretariat. I commend them for their work.

As a member of the Health Committee, I was very pleased to be part of the process of scrutinising this legislation. The Committee received evidence from different individuals and organisations, along with evidence from researchers and clinicians who work in our trusts. I echo Colm in thanking everyone who gave evidence to the Committee for their invaluable insight and contribution to the process.

The evidence highlighted circumstances that we, as MLAs, were already becoming aware of, in that individuals on the autism spectrum and the families and carers of autistic individuals were facing incredibly long and harmful waiting lists for the right help and supports. Again, I thank some of our clinicians in our trusts who gave evidence to the Committee to help us to understand the current picture and the need in ASD services.

Our clinicians highlighted the fact that adult ASD services were significantly and severely challenged and in need of significant investment in services and measurable targets with which to judge their efficacy. That concern was echoed by the National Autistic Society. Clinicians working in our trusts also said that current services for the assessment and diagnosis of children are inadequate to meet the current need. Unfortunately, that is not new

information for us. Reports such as those by the Northern Ireland Commissioner for Children and Young People (NICCY) highlight serious concerns about timely access to appropriate specialist care for children. The result is detrimental impacts not only for those in need of services but for our incredibly driven, passionate and compassionate NHS staff, who are becoming overwhelmed due to burnout and the extent of the task. We need to adequately fund and streamline services to ensure that supports are accessible in a timely manner. In my home constituency of Fermanagh and South Tyrone, we are particularly concerned about the postcode lottery for some services, and the stipulation in the Bill that services will need to be accessible regionally and equally across the trusts is welcome. We need to ensure the same consistency in schools, and I am pleased that amendment No 6 highlights that.

It is also important to note that another element of the Bill is the provision of training to staff in Northern Ireland Departments and bodies. The idea of that training is that it has two tiers to fit the needs of the individual from basic understanding and awareness to understanding intensive interventions, depending on the staff member's needs. The Committee report highlighted the need for the Department of Health and the Department of Education to consider mandatory training for front-line staff, including teachers. It is incredibly important that we provide individuals with the tools that they need to carry out their role.

The Bill is designed to tackle the stark picture that we have of current ASD services, which have been severely impacted by COVID. The creation of an autism reviewer will be an invaluable scrutiny mechanism not only to hold Departments to account but to be a driver of research, to ensure best practice and to engage with advocacy organisations and bodies.

I am pleased to support the seven amendments outlined by the Chair of the Health Committee. All the amendments strengthen the Bill. However, amendment No 4, which adds a statutory duty for the autism strategy to outline how the Department will reduce waiting lists, and amendment No 7, which strengthens the independence of the autism reviewer, are particularly important.

The Bill is about strengthening and improving service provision to make a real difference in people's lives. I am pleased to support the Autism (Amendment) Bill and the amendments tabled by the Health Committee.

Mr McGrath: I am grateful for the opportunity to speak at Consideration Stage of the Autism (Amendment) Bill and to address amendment Nos 1 to 7, which have been submitted as a result of the Health Committee's scrutiny process. When my SDLP colleague, the former MLA Dominic Bradley, introduced the Autism Bill to the House 11 years ago, he paid tribute to the late John Fee, a former SDLP MLA for Newry and Armagh, who introduced the first autism motion to the Assembly in 2002. It is only right that we recognise the contribution of Dominic Bradley and hope that Pam Cameron's version does justice to that and to the cause that John Fee brought in many years ago.

The Bill, which has been taken forward by my Health Committee colleague Pam Cameron, has five substantive clauses and would enhance the autism strategy as we progress through the new decade. Thanks must go to the all-party group on autism, Autism NI and other groups and stakeholders that contributed to the development of the Bill.

Children and young people and, indeed, adults who are diagnosed with autism need all the support that we can offer them, but there is also much that we can learn from them. There is an important need for the collection of data and consultation. Those are key components of the Bill and form the basis of clause 1, which the Committee was satisfied with.

Clause 2 is concerned with additional components of the autism strategy, and it is here that the Committee proposes amendment Nos 1 to 4. A key component of such data collection is early intervention. The earlier we identify where a child is on the spectrum, the better placed we are to identify what resources they need. Amendment No 1 clarifies that. The second amendment is concerned with adults who have received a diagnosis of autism and the importance of their physical health. The third amendment is also concerned with clause 2 and addresses the provision for housing by inserting "housing" into the list of the needs of adults. That is critical for many of the families that I meet in my constituency of South Down who have an adult family member with autism who needs and seeks the independence and autonomy that housing can provide. The fourth amendment is concerned with a duty on the Department of Health to reduce waiting times for autism assessment and treatment services provided by trusts. The need for the amendment is a symptom of our health system as a whole and the extensive waiting lists that we see across the board. However, it is of particular importance to those with autism, as structure is so important for such individuals. If

the Department gives a date for an assessment, it is essential for that person's well-being that the Department honours that.

Amendment Nos 5 and 6 relate to clause 3, which details the methodology of the autism strategy. With regard to amendment No 5, whilst the Bill and the strategy are led by the Department of Health, the nature of autism is such that it requires a cross-departmental response. For instance, how does the Department of Education adequately provide support systems in our schools for those with autism, and how does the Department for Communities respond to adults with autism who struggle to get the personal independence payment (PIP) because they have a limitation not on their physical health but on their emotional and social faculties? Those are important issues that Departments need to consider. I hope that an incoming Executive will address that. A number of components to the draft Programme for Government outcomes frameworks would fit in well with that. Clause 6 namechecks the Department of Health and Department of Education specifically, but it would be a matter for a future Executive to deal with as a whole.

The final amendment pertains to clause 5, which concerns an autism reviewer. It was important to the Committee that it was made absolutely clear that an autism reviewer must be independent of the Department; hence the need for the amendment. Such an individual would be able to work with groups and organisations such as those that I mentioned to ensure that the best support was offered across the board. There are similarities with the role, mentioned earlier, of the mental health champion, Professor Siobhán O'Neill, and the tremendous work that she has done.

I thank the Bill's sponsor for her work in bringing the Bill forward, the Committee Clerk and staff and all who gave evidence to help us in our deliberations. We must get it right. Children, young people and adults with autism need to know that government is working for them. The SDLP is happy to support the amendments and to help those with autism.

Mr Chambers: It is a privilege to be working at a late hour to progress this worthy Bill. I am sure that that sentiment is shared by everyone in the Chamber.

The Bill has brought a welcome focus to the delivery of autism services. There is no doubt that there is still much work to be done to improve the support for people with autism, as well as for their families and carers, and to ensure that interventions are delivered at the best possible time.

On the whole, my party and I support each amendment, and I again pay tribute to the Bill sponsor, my Health Committee colleague Pam Cameron, for her efforts to push the Bill forward.

10.15 pm

While there has been good progress in the past couple of years, not least through the publication of the interim autism strategy — hopefully to be followed by the full strategy next year — it is important that we have mechanisms in place to monitor progress properly. Long-term strategies, however, require long-term guaranteed funding commitments, and it is deeply unfortunate that this place appears to be repeating the mistakes of the past. Autism services, like so many other services, fell victim to a decade-long period of underinvestment and a lack of strategic direction. That really should be avoided now.

I recognise that there is a particular issue with autism waiting times in Northern Ireland. I know from talking to the Minister about the matter that he has already tasked officials to speak to the trusts directly and to find out what plans they have to address those times. Importantly, the inconsistency in waits across the region is also being addressed, and, therefore, I very much welcome amendment No 4. One of the reasons that waiting lists have deteriorated to the extent that they have since 2014 is the lack of clear oversight.

I especially welcome the focus that amendment No 6 will, hopefully, place on consistency of practice. There has been much greater cooperation between Health and Education in recent times, but it is important that that momentum be maintained. Early detection and intervention in cases of autism is absolutely critical. Unfortunately, it sometimes takes a period in the school system before families and teachers even realise that there could be a problem. Once that is identified, it is essential that Health and Education move quickly so that long-term learning is not impacted.

My party also welcomes the appointment of an autism reviewer. As I mentioned a few moments ago, it is essential that robust monitoring mechanisms are in place. Amendment No 7 will rightly strengthen the independence of the role.

The Ulster Unionist Party fully supports the Bill.

Ms Bradshaw: I will keep my comments very brief, but that is no reflection of my support for the Bill. Pam Cameron has done an amazing job on behalf of the all-party group on autism in bringing the Bill to this stage.

I will not repeat what is in the Bill — that is on the record — but I will just say that my party will support all seven amendments. I thank Autism NI, the National Autistic Society, all the other contributors, the Health Committee and everyone here tonight.

Mr McNulty: Thank you for giving way. Does the Member agree that it is important for all of us here to recognise the invaluable contribution of my predecessor, Dominic Bradley, in introducing the Autism Act 2011? That Act was described by Dr Arlene Cassidy of Autism NI as "landmark legislation":

> *"It is the most comprehensive, lifelong, cross-departmental single-disability equality legislation in Europe and in the world."*

It is important that we all recognise the brilliant work of my predecessor, Dominic Bradley.

Ms Bradshaw: I think that you spoke for longer than I did. *[Laughter.]* I am happy to support that, and I again record my support for the Bill sponsor in bringing forward this important Bill.

Ms Kimmins: I, too, support of the Bill and the Committee amendments. I acknowledge the considerable work done by the Bill sponsor, Pam Cameron, and the all-party group on autism. I also pay tribute to my colleague Cathal Boylan, because I know that he has been committed to the issue over the past number of years.

The Bill and the amendments aim to strengthen the cross-departmental strategy, as others have said, so that those with autism and their families and carers can be better served by public services. A crucial part of that is better communication across Departments, particularly across Health and Education, to save the need for information being repeated regularly when coming into contact with the many services with which people with autism engage and to prevent things like clashing appointments in different locations at the same time, which can be hugely challenging for many people who require those services. Important changes such as that can simplify the experiences for persons with autism and their families and carers as they try to navigate services and balance those with their daily routines and lives. They can also improve the efficiency and effectiveness of our public services.

Many families whom I have worked with repeatedly emphasised just how stressful a lack of communication across Departments can be and how it can often add to the many daily challenges that they face. Carers, in particular, deal with a wide variety of people, including OTs, speech and language therapists, GPs, social workers and teachers, to name but a few. Having to keep track of all of that whilst repeating the same information over and over again can be exhausting. Better multidisciplinary and cross-departmental working should help to address that.

Building on that, clause 2 sets out additional components of the autism strategy. Each will be beneficial, but I will expand a little on the information service, the amendment to include housing and the early intervention and support service. The inclusion of an information service for people with autism, their families and carers, as well as for professionals who work with people with autism, is to be welcomed. It has the potential to make a huge difference in helping and supporting people to make better-informed choices.

Just two weeks ago, I met a group of carers in the Newry and District Gateway Club. They provided me with clear insight into the real challenges that they, as parents and carers, and their children face in navigating a difficult system. People with autism, parents and carers must be central to the development and provision of services. They are the experts in their situations, and they must be listened to and respected in determining the support and assistance that they need. From speaking to that group and many others, it is clear that there is still a major issue with a lack of knowledge and understanding of autism by the public and professionals. Many people know of autism, not about autism. In my experience, the lack of understanding by others can be extremely frustrating and can create unnecessary barriers for those trying to access the support that they badly need. We must help to break down those barriers and improve inclusivity for those with autism. Hopefully, the Bill will go some way towards doing that.

A regional information service that is accessible in person or remotely should help to provide a real source of support and reliable information to the public and professionals. It will also empower people with autism, their families and carers to access support and up-to-date and accurate information on their changing needs and the needs of their child or family member

without having to rely on others to provide that to them. One of the key asks of many of those whom other Members and I have dealt with is to have a single point of contact. Often, they deal with numerous professionals, agencies and services, and, as I said, that adds a lot of stress to a challenging situation. An information service, as referenced in the Bill, as amended, will go a long way towards helping to cut through a lot of that and create a more streamlined system for many.

The amendment to include housing is also welcome. As other Members have said, it is an important component, as it recognises that one size does not fit all. It is crucial that the strategy is not seen to pigeonhole those with autism as requiring supported living but recognises the needs for housing in general and that every individual will have unique needs and requirements. My office regularly supports many individuals and families to meet their housing needs. It is apparent that there is no blanket solution to address it. Therefore, it is vital that people with autism have options to meet their individual needs.

Housing can also put stress on wider family units. I recently dealt with some complex cases involving children and young adults with autism. One that particularly struck me was a parent who has to carry her seven-year-old child up and down stairs several times a day due to her disabilities. She is waiting for a specially adapted home, which could take up to five years. Obviously, her child's needs are increasing as time goes on, as is the physical, mental and emotional stress that that puts on that parent and the whole family unit. It is an essential need for her child and the whole family to be able to live together in a safe and suitable environment. It is important that housing is addressed, and I really welcome its inclusion in the amendment.

The last component that I want to address is early intervention and support. My office regularly supports the families and parents of young children who are seeking diagnoses through health trusts or schools. It is a major issue across the board. I recognise the point that was made by my colleague about the need for that to be part of adult services. As someone with experience in adult services, I know all too well how important that is. The frustration and challenges that those parents have to go through to be seen, never mind to eventually get help, is unacceptable. The amendments and the wider Bill will strengthen the support that is offered to people with autism and their families at the earliest opportunity. Families are being quoted long waiting times before being seen, and they know only too well the importance of early intervention for their child or family member's well-being and development. Having to wait any longer than necessary can be detrimental to them in the longer term. As others have said, many, in desperation, pay for private assessments to get the support that they need.

It is important to recognise how crucial the progression of the Bill is. Whilst I recognise that the responsibility for the delivery of the strategy essentially rests with the Department of Health, it needs full and genuine input from all Departments to close the gaps that have existed for far too long and achieve better service provision and outcomes for individuals and their families and carers.

Mr Weir: First, I join others in congratulating the Committee on processing the Bill to this stage; the all-party group on autism; Autism NI for its sterling work; and, particularly my friend and colleague Pam Cameron on bringing the Bill forward. The amendments build on what is already a good Bill that would enhance autism services and build on the good work done by Dominic Bradley and John Fee. It is important to get that in before I get an intervention from Mr McNulty. I am looking around the Chamber, Mr Speaker, and you and I might be the only Members in the House tonight who served with John Fee. It was my pleasure to serve with John Fee and Dominic Bradley in their time in the Assembly. There are good foundations, and the Bill builds on them, but the advantage of the seven amendments is that they take those progressive gains and help move the Bill up a gear and make a step change in the delivery of autism services.

Amendment No 1 provides us with additional clarification. Early intervention on autism can be critical, as it is with a range of subjects. It can be critical in changing people's lives. In many ways, it should be obvious that service and support should go alongside early intervention, but the explicit outlining in amendment No 1 of "support" to go alongside that early intervention is an important step in helping to clarify what is needed.

Similarly, clarification lies at the heart of amendment No 5 by adding the term "cross-departmental" to the cooperation that is needed. The idea of helping tackle autism by saying that it should be done on a cross-departmental basis should, in many ways, be a no-brainer; it should be something that is accepted across the board. However, at times, there could be a criticism that, in the delivery of public services in Northern Ireland, there is a

tendency to operate with a silo mentality. The amendment will help to overcome that. The particular advantage of amendment No 5 is that it would ensure that that level of cooperation would, hopefully, happen on a multilayered level and would not simply apply to the multidisciplinary interventions that happen on the ground. Hopefully, the explicit reference to cross-departmental working will embed the spirit of cooperation at the highest level of Departments.

It is important that amendment Nos 2 and 3 make important additional steps in widening the scope of the Bill. There is sometimes a tendency to think of autism in a one- or two-dimensional way, and physical health and housing, for example, can be ignored. It is important that those are mentioned explicitly in the Bill.

Amendment No 4 is also important. The key test of any legislation is its practical implications. Taking the opportunity to place a requirement on tackling waiting times will be an important element of the support that is needed for helping families who are dealing with autism because it will help to give focus and will put it on a statutory basis.

I will move now to amendment No 6. Speaking as an MLA and a former Education Minister, I know that it is important that we get consistency across the piece.

For many years, very good work has been done in education, both within Northern Ireland and on a cross-border basis, by the Middletown Centre for Autism. We need to ensure that that good work on a national basis is replicated effectively on the ground. One of the criticisms that we often hear of our public services is of a lack of consistency and a postcode lottery in difference of approach. The driver of consistency in education there is helpful.

All of us have seen that, at times, with the best will in the world, there are differences of approach within and among trusts. During the recent COVID pandemic, we have seen different approaches being taken from trust to trust on things like visiting times and opportunities. It is important to have a greater opportunity for consistency in the delivery of education and health. Therefore, amendment No 6 takes an important step forward. One of the things that massively frustrates families is where they have contact with others who are in a similar position and, maybe because of that different delivery, see themselves being treated differently. Therefore, any driver of consistency is important.

10.30 pm

Finally, I turn to amendment No 7. Clause 5 makes provisions for review to ensure monitoring of implementation. The steps that the Committee has taken through amendment No 7 tighten up that review. That is important and very helpful. A mistake that we, as legislators, sometimes make — I can be as guilty of this as anyone — is in seeing piece of legislation as simply a finished event. We see a situation of there being a problem and a solution, and, once we reach that point, we almost package it away in a box and say that we do not need to worry about it anymore because we have solved it through that piece of legislation. Legislation, if it is good and working well, should not simply be an event; it should be a process of delivery for people. At the heart of that is ensuring that we have proper implementation, proper monitoring and proper review. The steps taken in amendment No 7, particularly those to ensure the independence of the review, are important.

I welcome the amendments that have been tabled. They will help what is already a good enhancement of autism services and take a further step forward. I wholeheartedly support the Bill and all its clauses. In particular, I welcome the amendments.

Ms Brogan: I welcome the opportunity to participate in the debate. The Bill is of huge significance to families right across the North. It is an issue that I care deeply about, so I am pleased to lend my support to the Bill. I join other Members in thanking the Bill sponsor, Pam Cameron, for bringing the Bill to the Assembly and for the work that the all-party group on autism has done. I thank the Health Committee members for all their work in scrutinising the Bill. I also thank the Committee Clerk's team for its work in drafting the report and on the amendments. I will, of course, support the Bill's passage to the next stage. I am happy to support the seven amendments tabled by the Committee. Those amendments really strengthen the Bill and address some of the issues that were raised during earlier discussions.

On the autism strategy, clause 1 sets out clearly the need for a consultation to include persons other than just Departments. The Committee recommendation to consult people with autism and their families and carers when developing an autism strategy is really important and should be given due consideration. I have spoken with a number of groups and families who have first-hand experience of autism. Their real-life experience

has been invaluable. It has also demonstrated the need for wider consultation and for them to have an input into a future longer-term autism strategy. I met a man with autism who took the time to share his experience of growing up with autism and of moving into the field of work and employment and how autism can affect his work. It is clear from all those conversations that there is no one-size-fits-all approach. A future autism strategy must reflect that, and Departments must acknowledge it.

Amendment No 4 requires the health and social care trusts and the Department of Health to set out clearly how they plan to reduce waiting times for autism assessment and follow-up services. It is a really important amendment. I have raised the issue of lengthy waiting times for ASD assessments on many occasions in the House. I previously explained how members of my family are awaiting an assessment for their son. They, like countless other families in the Western Trust area, have faced lengthy delays in accessing autism assessment.

The delay causes parents and carers of young children with suspected autism huge stress and anxiety. They want to do everything in their power to help their child's development, but they are met with delays in assessment, in diagnosis and in receiving the necessary support and guidance. It is a minefield for parents and carers of those with autism, and the support and guidance offered to them and to people with autism is severely lacking in the North. I hope that the amendment goes some way towards tackling the delays.

Amendment No 6 is also really important. It sets out how health and social care trusts and education services must achieve consistency of practice, and that is a welcome step. As we know, there is huge disparity between health trusts when it comes to ASD assessment and diagnosis. I have spoken before about families in the Western Trust waiting for over two years for an assessment, yet some families in the Southern Trust have been seen within thirteen weeks. That postcode lottery is unfair, and it is letting down our children. It extends to autism services in education services and between sectors. The long-term autism strategy must address the postcode lottery for autism diagnosis and allocation of education provision. Services must be accessible and timely, and they must meet the needs of our young people.

On autism training, I note the Committee's recommendation that the Department of Health and the Department of Education consider mandatory training for front-line staff. It is an important recommendation that should be given serious consideration. On the Education Committee, we previously discussed mandatory autism and special educational needs training. Back in 2020, the Assembly passed a motion calling on the Education Minister to make such training mandatory. Many teachers and school staff would like to be equipped with the necessary skills to support children with autism, and I would like the Education Minister and other Departments to engage with teaching unions and the relevant sectors to work out the best solution for providing the training that is mentioned in clause 2.

To conclude, this is important legislation, and I am happy to support its progress through the Assembly. It is a positive step, and I hope that it leads us in the right direction, which is towards meeting the needs of children, young people and adults with autism and of their families and carers. The Bill will not do that on its own, however. Alongside the Bill and an autism strategy, we need to see long-term investment in our health services and education system. We need political will and political stability in order to deliver for those in our community who most need our support.

Mr Harvey: I thank my colleague Pam Cameron for bringing the legislation to the House. I also thank the all-party group on autism and Autism NI, which provides the APG with its secretariat, for their efforts in bringing the Autism (Amendment) Bill to the Assembly, 10 years on from the Autism Act (Northern Ireland) 2011. We all have loved ones, family members, friends, co-workers and neighbours who are on the autism spectrum. Unfortunately, many of us have witnessed them struggle to find essential information and support. The Bill aims to make practical changes to our systems in order to ensure that everyone in Northern Ireland is able to access appropriate services in a timely manner.

Many of my constituents in Strangford are concerned about the supports available to families, children, young people and adults while they await assessment and diagnosis. They are concerned about how long they will have to wait, not only to receive help but for that help to translate into support in their schools and their work environments. It can be an incredibly difficult time, and it is so important that we get the Bill right by ensuring that we have the service provision to meet the need. The Bill has the ability to translate that into practical help for the people who need it most and into opportunities to equip our incredible front-line staff with the training that they need. I am very pleased to support the Autism

(Amendment) Bill and all seven amendments tabled by the Health Committee.

I thank the Health Committee for its work in bringing about the amendments, and I thank its Chair, Colm Gildernew, for outlining them. They all strengthen what the Bill is trying to achieve, and I am happy to support them. The Bill has the ability to make real change in our communities, and the support that has already been shown for it is testament to how badly that change is needed and wanted.

Mrs Cameron: Thank you, Mr Speaker, for allowing the plenary session to continue to this late hour. I want to record my appreciation to you and all the Assembly staff involved.

I am incredibly proud to bring this essential legislation to the House today. The Bill would not have been possible without the original Autism Act (Northern Ireland) 2011, and I want to acknowledge the previous work by the all-party group on autism, of which I am currently chair, and the work of Dominic Bradley of the SDLP, a former Member, who introduced the first legislation in Northern Ireland to meet the needs of our autistic community.

This is the first piece of legislation that aims to amend a previous private Member's Bill, which speaks to the incredible work of the all-party group's current and previous members and, of course, the work of the secretariat from Autism NI. When we began the journey of looking to update the legislation in Northern Ireland, we knew that services were not adequately meeting the needs of autistic individuals and their families and carers. Unfortunately and horrifically, that position has become much more severe during the COVID-19 pandemic. We saw services stop, with individuals and families left completely unsupported, and now we have the worst waiting lists that we have ever had. Children and adults who need support and services now face the prospect of waiting years before they receive assessment, diagnosis, support and intervention. That is not a position that the House is comfortable with.

I thank Members for their support so far: their support to the all-party group and their support during the Second Stage debate. Of course, I am thankful for the scrutiny and support of the Health Committee, whose amendments we are here to debate this evening. I also want to thank all the individuals and organisations who got in touch to offer their support and input, as well as those who gave evidence to the Health Committee. Specifically, I thank the Ulster University professors, the chief commissioner of the Human Rights Commission, the clinicians who are working in our trusts, health officials and the National Autistic Society for their efforts in contributing to the Committee's scrutiny and for adding to the legislation.

The Bill comprises five clauses that focus on five key areas, which aim to improve autism services. In practical terms, the Bill, as introduced, would mean: prevalence data has to be collected on adults as well as children; autism training is to be provided to NI Departments and bodies; and a regional early intervention service is to be available for people of all ages — children and adults — so that they can access services as soon as they present with need without the requirement of a diagnosis. We know that early intervention provides the best outcomes for individuals, and research has shown that it relieves the burden on services as it reduces the risk of needs going unmet and becoming more complex.

A regional autism information service will be created. The autism strategy will take into account international best practice. The strategy will consider the individualised needs of autistic individuals. Autism is a spectrum condition, with no two people having the same experience. Every individual is different and requires a person-centred approach. There will be a multidisciplinary approach to input in the strategy in order to ensure that it comes from a range of professionals from different fields. The strategy must ensure consistency of practice across health and social care trusts and its success will be assessed against measurable targets that are agreed in consultation. An annual funding report will be laid before the Assembly for each financial year. That has been suggested as a way of monitoring how autism services are provided. We currently have a situation where services are inadequate to meet our existing need. Every health and social care trust gave evidence to the Health Committee that they did not have the service provision that they needed. We are particularly concerned about the lack of adult service provision. This clause is designed to ensure that all Departments step up to their responsibility and bid for funding services that they need be provide.

10.45 pm

There are some concerns as to how these reports will be carried out in practice. This was not designed as a futile, bureaucratic exercise, and there is no intention to divert essential resources from individuals to resource an intensive tick-box exercise. I hope that, together, we can figure out the best way to approach these reports so that they are only as

resource-intense as necessary and appropriate and can be a useful mechanism to inform decision-making.

The Bill will mean that an individual will be appointed as an autism reviewer, independent of government, organisations and charities, to monitor and scrutinise how government approaches autism, with the ability to commission research, make recommendations to the Department, report to the Assembly and, of course, liaise with autism advocate groups, charities and organisations.

There has been some suggestion —

Mr Boylan: Will the Member give way?

Mrs Cameron: I will indeed.

Mr Boylan: I was sorely tempted to speak on this, but the Speaker gave a ruling earlier. The all-party group has recognised every contributor in the past who helped to bring the Bill to this stage. Clearly, the Bill needs to come forward now. Does the Member recognise the hard work of the Committee in bringing seven good amendments that will enhance the Bill and ensure that it will go forward in the proper way to deliver services for those on the autism spectrum?

Mrs Cameron: I thank the Member for his intervention and, yes, absolutely, I do. I also thank the Member for his role as vice chair of the all-party group on autism and the good work that he has done over the years.

There has been some suggestion that the autism forum, created by the Department, could function as a suitable alternative for the reviewer. Although I welcome the creation of the autism forum, which will be a wonderful advocate for autistic people, the reviewer is not intended to be an advocacy body but a scrutiny mechanism. The autism forum was created by the Department and has no legislative standing. The autism reviewer would have such standing. Of course, part of the role of the reviewer would be to liaise with advocacy forums, and the Committee emphasises the need for the reviewer to take full advantage of any such groups and ensure that their voices and opinions are heard and incorporated into the strategy.

I welcome the work of my Health Committee colleagues in scrutinising the Bill and suggesting recommendations and amendments, which I fully support. I thank the Chair, Colm Gildernew, and the members for their important contributions. The Bill comes from the work of the all-party group on autism and the amendments from the Health Committee and all those who gave evidence to it. This legislation shows the power of collaborative working, and I urge all Members to support the amendments outlined by the Chair.

I support amendment No 1, which clarifies that the proposed early intervention service is to be an early intervention and support service. I support amendment Nos 2 and 3, which ensure that physical health and housing needs are also considered in the strategy.

Amendment No 4 places an additional duty on the strategy to set out explicitly how waiting times for autism assessment and treatment services provided by health and social care trusts will be reduced. This is important, given our understanding of the current waiting lists, which leave individuals and their families without essential support for years.
I support amendment No 5, which explicitly states that the strategy must have cross-departmental input, along with input from a range of professionals.

Amendment No 6 places an additional duty on the strategy to state explicitly how consistency of practice is to be achieved across health and social care trusts and education services, strengthening the provision to end the postcode lottery of services.

Amendment No 7 is essential to ensure that the autism reviewer has the independence needed to function as an effective scrutiny mechanism. That amendment ensures that the reviewer cannot be a departmental employee, expected to monitor and scrutinise the work of a Minister, but should have independence from Departments, with the security of the necessary funding to carry out their role.

I welcome the Committee's recommendation that the Department of Health and the Department of Education consider mandatory autism training for relevant front-line staff, including trainee teachers, teachers and classroom assistants. A colleague and I proposed a motion for mandatory teacher training, which was agreed by the House in February 2020. Mandatory training is about equipping our teachers with the knowledge, skills and support needed to understand the experience of their pupils and how best to support them. How can we possibly expect teachers to manage situations for which they have not been prepared? I hope that we will see that put into practice soon.

My final words must go to everybody who contributed to the debate this evening, and particularly to my Health Committee colleagues, my party colleagues, the Bill Office, Autism NI's Kerry Boyd, Dr Arlene Cassidy and Kelly Maxwell, and my own Hannah Lewis for the incredible commitment that they have made and the passion that they have shown for the Bill to reach this stage.

Mr Speaker: I call the Chairperson of the Health Committee, Colm Gildernew, to wind up this debate on the group of amendments.

Mr Gildernew: Go raibh maith agat, a Cheann Comhairle. I will not go into everyone's remarks individually, because I think there has been a high degree of harmony and cooperation on the important issues set out by every Member who has spoken. It is a fantastic example of the Assembly working for people and Members working with people outside the Building to explore difficulties and then do something about them. That is hugely important. In the interests of time, therefore, I will not go into all Members' remarks. I hope that they will forgive me. I will just focus on a couple of issues that struck me as a result of the debate and the work that has gone into the Bill. First, I echo Pam's acknowledgement of and wholehearted support for the sector and all those who gave evidence to improve the lives, outcomes and experiences of persons with autism and, importantly, their carers and families. I acknowledge Kerry Boyd's presence here tonight and thank her and her organisation for their work with the Committee. I also thank the National Autistic Society and all the other organisations.

The PMB sponsored by Pam, with the support of the all-party group on autism, has done a considerable job in raising issues with the autism strategy, the need for better services and the need to improve how those are delivered. I am grateful for the insight provided by the wide range of groups and organisations that I have met in my role as Sinn Féin health spokesperson. Last year, Michelle O'Neill and I hosted an online public meeting on autism services and the strategy, and we committed to listening and to doing whatever we could. That is part of our work here tonight: supporting the Bill that Pam has sponsored.

The same issues come up over and over again. They have been touched on, so I will touch on them again only briefly. They are the waiting lists to get an assessment and then a diagnosis; having to pay to go private; a postcode inequality for support; and — this came across very strongly and is one of the most important issues — carers and parents being absolutely exhausted from having to fight every step of the way for every piece of support and recognition. That cannot continue, Members. We need to provide the supports. In particular, the greater inclusion of carers and families is a huge and welcome change. Sinn Féin has met a range of groups and individuals in connection with the Bill, including Autism NI and the National Autistic Society. I am glad that the Committee agreed to include physical health alongside mental health as a component of future strategies. I am speaking in my Sinn Féin role in that respect.

On the funding reports, it is important to say that there could be difficulties with measuring the full extent of the funding and how it is spent on autism and autism services. A strategy without funding, however, is just empty words. We need to ensure that the strategy has teeth and can make a real difference. The autism reviewer role is huge, and I welcome it. There will be huge responsibility on the reviewer to represent the difficulties and to represent the whole sector, which is complex and diverse. It is, as has been mentioned several times, a spectrum, and that brings additional complexity, so the role will be considerable.

To conclude, this is a great day — or night, as it is now — for the Assembly. I accept that this is not the end of the journey, nor, indeed, as was set out, the start of it, but it is an important staging post in what is a very significant journey and one that impacts so many of our people. I hope that the Bill will help to put some important steps in place for people outside the Building who need them so badly. I thank all Members and conclude with that.

Mr Speaker: I thank the Chairperson for those remarks.

Amendment agreed to.

Amendment No 2 made:

In page 2, line 7, at end insert—

"(ca) physical health,".— [Mr Gildernew (The Chairperson of the Committee for Health).]

Amendment No 3 made:

In page 2, line 9, at end insert—

"(f) housing."— [Mr Gildernew (The Chairperson of the Committee for Health).]

Amendment No 4 made:

In page 2, line 9, at end insert—

"(4E) The autism strategy must set out how the Department will reduce waiting times for autism assessment and treatment services provided by HSC trusts."— [Mr Gildernew (The Chairperson of the Committee for Health).]

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

Clause 3 (Methodology of the autism strategy)

Amendment No 5 made:

In page 2, line 17, after "multidisciplinary" insert "and cross-departmental".— *[Mr Gildernew (The Chairperson of the Committee for Health).]*

Amendment No 6 made:

In page 2, leave out lines 18 and 19 and insert—

"(4) The autism strategy must set out how consistency of practice is to be achieved across—

(a) HSC trusts, and

(b) education services."— [Mr Gildernew (The Chairperson of the Committee for Health).]

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

Clause 4 ordered to stand part of the Bill.

Clause 5 (Autism reviewer)

Amendment No 7 made:

In page 3, line 16, at end insert—

"(1A) The autism reviewer must not be a person employed by a Northern Ireland department.

(1B) The autism reviewer is not subject to the direction or control of the Northern Ireland departments.

(1C) But this is subject to the requirement under this section for the Department to pay the autism reviewer's expenses and allowances."— [Mr Gildernew (The Chairperson of the Committee for Health).]

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

Clauses 6 to 8 ordered to stand part of the Bill.

Long title agreed to.

Mr Speaker: That concludes the Consideration Stage of the Autism (Amendment) Bill. The Bill stands referred to the Speaker.

I join the earlier remarks by thanking all Members for their very thoughtful contributions this evening. Safe home.

Adjourned at 10.58 pm.

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