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Northern Ireland Assembly

Tuesday 17 November 2020

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

Members observed two minutes' silence.

Ministerial Statements

COVID-19: Self-isolation Payment Update

Mr Speaker: I have received notice from the Minister for Communities that she wishes to make a statement. Before I call the Minister, I remind Members that, in light of the 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, of course, been relaxed. Members do still have to make sure that their name is on the speaking list if they wish to be called. They can do that by rising in their place, as well as by notifying the Business Office or the Speaker's Table directly. I ask Members to be concise in asking their questions. Thank you very much.

Ms Ní Chuilín (The Minister for Communities): Go raibh maith agat, a Cheann Comhairle. Thank you, Mr Speaker. I want to update the House today on some of the measures that my party colleague Deirdre Hargey instigated as Minister for Communities to ensure that the Department for Communities could support people who are affected by COVID-19.

As Members will be aware, as part of the response to the current pandemic, my Department introduced a number of emergency changes to the discretionary support scheme. Those measures included increasing the maximum income that a person can receive before becoming ineligible for discretionary support. This means that anybody with an income of up to £20,405, whether they are in work or receiving benefits, may be eligible for a payment.

We introduced a new discretionary support self-isolation grant for people who have been diagnosed with COVID-19 or are advised to self-isolate in accordance with official guidance. With the introduction of that new grant scheme on 25 March 2020, we ensured that people in the North who are on a low income were amongst the first to be able to access specific financial support. There simply has been no comparable support available to most people in Britain.

I am pleased to note that the rapid response of the Assembly in approving the necessary changes to the discretionary support legislation, alongside the effort of my Department in implementing the changes, has had a very real and direct impact on so many people. That is clearly evident by the extent of the support already made available. The latest available information shows that, between 25 March and 31 October 2020, my Department awarded 14,800 self-isolation grants with a total value of £2·1 million. That is money going directly to people who have found themselves in a crisis situation during the pandemic. However, it is clear that we all continue to face unprecedented challenges as the effects of the pandemic show little signs of abating. Therefore, it is essential that we continue to monitor the support that we can provide to ensure that we help the people who need it most.

I have decided that it is appropriate to introduce some enhancements to the scheme. Those changes do not require new legislation, and I have, therefore, instructed my officials to implement the revised policy immediately. The changes that I have made are designed to enhance the level of financial support that is available through the self-isolation grant. It is hoped that that will be of particular benefit to people who are temporarily unable to work.

In practical terms, my Department will now use higher daily rates of benefit when calculating the amount of an award. Decision makers will also be expected to take into account the impact of the financial shock of self-isolation when calculating the number of days for which to make an award. That is appropriate as a sudden and temporary reduction in normal income levels will mean that a person is at greater risk of experiencing hardship. Therefore, an award of living expenses to cover

the whole period of self-isolation should always be considered.

I believe firmly that the discretionary support self-isolation grant offers an enhanced overall package when compared to other areas. For example, the Irish Government have provided support for people who are required to self-isolate that is based on a fixed weekly payment and treated as taxable income. In England, Scotland and Wales, the test-and-trace payment offers fixed amounts of £500 for 14 days, regardless of family circumstances, and the payment is available only to those who have been told to self-isolate by the NHS Test and Trace service. They must prove that they are unable to work and have lost income as a result. The payment is also taxable.

The self-isolation payments that are available here are targeted at those who are in need and are always assessed based on their personal circumstances. That means that, rather than making a fixed payment that does not take account of the size of a family, we will always take into account all dependent children and include them in an award. For example, under the new rules, a couple with three children can receive £683 of discretionary support to cover a period of 14 days. That payment is not taxable and further awards can be made if the family continues to find themselves in a crisis situation. Those payments will also not affect any future applications to the discretionary support scheme. The self-isolation payments can be made if a person is self-isolating because they or someone else in their household is displaying symptoms. Entitlement is not restricted to those who have been contacted and told to self-isolate.

I stress again that if people continue to find themselves in a crisis situation after receiving a self-isolation grant, they can apply for further support. There is no limit to the number of grants that can be awarded. I also believe strongly that the enhancements that have been introduced to the scheme are another important step in strengthening an already comprehensive package of support.

To conclude, the discretionary support self-isolation grant is a very important and accessible means of providing financial support to those who are affected by COVID when they need it most. We know that COVID-19 has widened the gap in our communities and impacted people differently, and it has had a disastrous impact on the people and families who were already struggling. People should be supported to isolate if they need to without fear of going under or being further penalised financially. That is why I have improved the level and duration of financial support that is available to those who are eligible to apply for it. I will continue to keep that under review, and I would welcome Members' feedback as we need to make sure that we keep providing support where and when it is needed.

Ms P Bradley (The Chairperson of the Committee for Communities): I promise that I will be a lot briefer this time than I was the last time, when I asked four questions. I thank the Minister for a very welcome statement and her good manners in calling me last night and informing me of what was in the statement.

The Minister will know that statistics show that 80% of those in part-time employment are female, with some having more than one job and many working in the hospitality sector.

They are already facing real hardship coming up to Christmas, and beyond, owing to the situation with the hospitality sector, without then receiving a notification that they have to self-isolate. This is therefore very welcome, and I am sure that it will help many families.

I want to touch on the issue of fraud. We know that people are missing appointments at our test centres and receiving positive test results from that. Are there any safeguards in here when it comes to fraud? We really want to distinguish between those in need, which is what this is for, and those for whom it is sheer greed.

Ms Ní Chuilín: I thank the Chair for her question. She will know that there have been problems with the test-and-trace app. I have to say, however, that the Department is working with people on the basis of need and what they ask for as part of their application process. If, like with any other benefit, it is later found that there were fraudulent claims, we will have to deal with those, but, up until now, most people who have contacted the Department have been genuine cases. As you said in the preamble to your question, a lot of those people are working two jobs — at least — and if they have to self-isolate, this is a lifeline for them. I therefore imagine that most of the claims, if not them all, are completely genuine, and that is the approach that we will be taking.

Ms Ennis: I thank the Minister for her statement and for her continued good work to ensure that the people who need our support at this time are getting it. The support available here far outweighs what is available in other jurisdictions.

I ask the Minister what her Department is doing to raise awareness of the enhanced support available. We want to make sure that there is maximum uptake of the grant.

Ms Ní Chuilín: The first step is to remind people that this help is out there today, because it is quite clear that, although many people — almost 15,000 — have applied for discretionary support, there are many others who are completely unaware of it or who think that it is a loan rather than a grant. We are all hearing that in our constituency offices. From today therefore, having made the statement, I will also ensure that our media outlets, our advice and welfare networks and, indeed, our constituency offices all have this statement, because they, particularly our constituency offices, are usually the first point of contact for many people. When people contact us, particularly about something like this, they are in distress, so we need to minimise that for people who need our support.

Mr Durkan: I thank the Minister for her statement and very much welcome her decision to increase the amount of support that some people in desperate need can get. What we want to see, however, is an increase in the number of people who can get that support. The prohibitively low income threshold of £20,400 a household means that many working families and individuals remain ineligible for financial assistance. Their bills do not stop as a result of having to self-isolate, and many are left with the extremely difficult decision of either to follow the government guidance or to work to feed their family. Will the Minister consider raising the threshold?

Ms Ní Chuilín: I thank the Member for his question. He will be aware that Deirdre Hargey increased the threshold, and I am going to look at it again. You are right in the sense that we need to have more people applying for the grant, because they need it, but we also need to make sure that it is going to be supportive: that it will be a help rather than a hindrance. I will be talking to officials again this afternoon, and one of the questions that I will be asking them is whether we can do it without impacting on parity. You will know this as a member of the Committee, but, even though this Assembly accepted legislation brought forward to increase the threshold, I am looking to see what I can do within my vires to make it easier for those people who need it most, particularly going into the winter months and particularly if they are at home, where they are eating more and heating more. We need to make it easy for people, not only to get access to the grant but to ensure that they qualify for it.

Mr Allen: I echo the comments of colleagues around the Chamber in welcoming this much-required enhancement. I thank you for bringing it forward.

Minister, my constituency office team and I have supported many constituents to avail themselves of this grant. As you have highlighted, it is a lifeline for many. With that in mind, can you advise on the average time taken to process the claims and on any steps that you have taken within the discretionary support system to ensure that claims are processed efficiently?

10.45 am

Ms Ní Chuilín: I am told by officials that applications are being processed as quickly as possible. However, in my constituency office and on social media, I have received reports to say that that is not the case across the board. My commitment to all of you is that I will review this on an almost weekly basis. I need to ensure that those who need access to these payments get them, and get them in a timely fashion when they need it most. I urge Members to please let me know if they hear any reports to the contrary.

Ms Armstrong: Any enhancements to payments that can be made to people who are vulnerable, at this time, are very welcome, so thank you very much. Your statement indicates that your front-line staff are the decision makers. Ms Ennis asked about promotion and the knowledge that people have. How much training will your decision makers have? Do you have enough money for this and have you enough money set aside pay out because, hopefully, people will take it up?

Ms Ní Chuilín: I thank the Member for her question. For each change that is made regarding this or any other support, the decision makers will have it again and again and again, because we need to ensure that consistent information is going out. Yes, there is enough money in the budget, for now. The important thing is that, between now and the new year, we need to try to give people support to self-isolate. As the Chair of the Committee said, there are people who are making the decision to not self-isolate because they cannot afford to. We know that the rate of people who have to self-isolate, or who are impacted by COVID, has not abated in the way that we would have hoped. We need to try to support people to stay at home and it is our obligation to do that.

Mr Easton: I thank the Minister for her statement. It is a good news story, so well done. Can I reaffirm with the Minister that anybody who has to self-isolate three or four times will still be able to apply for this? Will it also affect those on tax credits?

Ms Ní Chuilín: I thank the Member for his sentiments. As I said in the statement, people can apply for this when they need it. Unfortunately, due to the length of the pandemic, some people have had to isolate at least once; others a lot more than that. It is a non-taxable grant. Therefore, it should not impact on tax credits. We need to make sure that what we give on one hand is seen in the other. That is not the case across other jurisdictions and we do not want that to happen. Many people who are on tax credits are already on a low income. We need to ensure that, after their application and when this support is given to them, they know exactly what they are getting and exactly what they have.

Ms Flynn: Mr Allen has already touched on this. Does the Minister foresee that today's announcement will lead to an increase in claims and possible delays in the processing of further cases?

Ms Ní Chuilín: I really hope that there is an increase in people making applications, because, while almost 15,000 have done so up until now, we know that there are many others who are out of work, self-isolating, impacted and affected by COVID. I hope that there are no further delays. As I said to other Members, if you or anybody else has concerns or are hearing reports that there are undue delays, then get in contact with us. That is not what we want, it is not what I or the officials want — they are processing the applications as quickly as they can to get money into people's bank accounts and pockets as quickly as they need them.

Mrs Cameron: I thank the Minister for her statement. The discretionary support self-isolation grant is a lifeline for many people who are on low incomes and who are required to self-isolate. I welcome the news that the daily allowance payable has been increased. Does the Minister agree that these grants are crucial for encouraging and enabling individuals to complete their period of self-isolation? Is her Department working with the Department of Health or the Public Health Agency (PHA) to take the opportunity to provide additional information as to what is actually required around self-isolation?

Ms Ní Chuilín: I thank the Member for her question, and she is right: it is a lifeline. As MLAs with, I am sure, a busy constituency office, we have all got the distressed phone calls, and our constituency staff have as well. Through the Executive information website and our discussions with colleagues in Health and the PHA we are genuinely trying to ensure that there are no gaps. As I mentioned in response to Mark Durkan's question, that is on my list for discussions with officials just to be sure, to be sure. I have heard too many reports of people still feeling that this is a loan and that is why they did not apply, so something has gone wrong. We need to ensure that any clarification that is needed is provided after the statement this morning and that every aspect of government is aware of it. We are all living in each other's shadow, as we should be, but one Department should not be ringing another Department to find out what this is about; everybody should have the same level of consistency about this information.

Mr Catney: Thank you, Minister, for your statement. It has to be welcomed. I welcome the easier payment method that will be used for the self-isolation payment. I know that 4,800 people were successful with their application up until October, but will the Minister inform me of how many people were unsuccessful?

Ms Ní Chuilín: I do not have that information. It is 14,800 people, Pat, so it is almost 15,000. I do not have the information about how many people were unsuccessful in terms of data from the Department. I have the anecdotal evidence. I have the people who are reaching out by email on our Assembly email, my constituency office and, indeed, on social media to tell me different, so there is an issue. When we get through this, we will start clicking through each of the questions that have been raised and will put this one down for clarification. If we have that data, I will certainly share it with the Member.

Ms Rogan: Minister, you outlined how this support compares with what is available in Britain. Will you give us a brief outline on how it compares with what is available in the South?

Ms Ní Chuilín: The support is taxable in other jurisdictions, including the South. It is also for a fixed period in other jurisdictions, which it is not here. Indeed, the difficulty that I have, certainly with the other jurisdictions, is that they are giving it to people with one hand and taking it off them with the other. That is grossly unjust and grossly unfair.

Mr Clarke: Like others, I welcome the Minister's announcement. Those who are on low incomes will welcome it. It is a very worthy statement for the Minister to make. Given that some of those people are on low incomes and will return to work after the two-week period, is any protection afforded to them through their employer, as I am sure that there are cases of employers who do not want to release them? Whilst money is one thing, they are probably looking for job security as well. Is the Department doing anything on that to give them the guarantees that employers cannot move towards them during their periods of isolation?

Ms Ní Chuilín: The issue that I have always had with the fragility of zero-hours contracts in particular is that people are even more vulnerable and more susceptible to exploitation, if any employer is minded to do that, or, for want of a better term, if any employer wants to chance their arm. Employees have rights, and we will remind them of the rights that they have. If there are any indications or examples of workers feeling that they have not been given the due respect or, indeed, the due entitlement from their employer, I will certainly welcome hearing who they are and where their employer is. I would be happy to share that information with the Member's colleague Diane Dodds, because I am sure that she would not have that either.

Mr O'Dowd: I thank the Minister for her answers thus far. The mantra for months now has been that we need a proper test, trace, isolate and support scheme.

We now have in place a scheme that allows low-paid workers to isolate and receive support. The Minister indicated earlier that she was looking at the level of income that a family can have to be able to claim the support. How quickly will she be able to carry out that review?

Ms Ní Chuilín: I will carry out the review as quickly as possible and look at the questions that have been raised, and I will put the officials on notice. I want to get the data, and, following Pat Catney's question, I will try to capture the data from people who were rejected.

As the Member will be aware, Deirdre Hargey increased the threshold. If I need to do that, and if I can do that, I will look to do that. People may think that £20,400 is a decent enough wage, but if that is your only income and you are paying all your bills and rearing your kids, it all adds up. So, we need to ensure that people who need the support get the support, and we will find out very shortly if the level of income needs to be increased because if it prevented people getting access to support, it is a problem that we need to look at.

Mr McGrath: The 14-day self-isolation period starts from the date that the message is delivered to the COVID app on a person's mobile phone. That is often not 14 days from when the person was last in contact with somebody with COVID-19. Will the Minister agree with me that an urgent and timely roll-out of the update to the app is crucial? That could see the amount of time that somebody is isolating reduced in some instances by 13 days, which would, therefore, ensure that her Department has more money to spend.

Ms Ní Chuilín: I agree that there are issues with the app even for people who get confirmation of a negative or positive test result. The fact that they have gone to get a test means that they have concerns.

With regard to Trevor's question, we want to make sure that employers are adhering to that good practice because we are asking people who have any symptoms to isolate straight away, but we cannot ask people to follow government guidance and then have their salaries deducted because they have to wait for two days for a result from the app. We need to make sure that the app is better, but I want to make sure that, when people apply for the payment, they get it as quickly as possible and they are not held back by further bureaucracy that is not of their making.

Mr McCrossan: I thank the Minister for her much-welcomed statement. It will come as a relief to many, as will her reassurances that she will look at the threshold, which we in the SDLP welcome. There are people out there saying that, when they come into contact with someone and get the alert, they cannot afford to isolate. That is a very difficult place for many to be in. Any support from this Assembly will alleviate that pressure.

The Minister spoke of parity. According to her, this scheme is more generous than elsewhere, but it is much more difficult to access, according to reports. What was the Barnett consequential derived from the introduction in Westminster of the self-isolation grant? Has all that money gone into this scheme?

Ms Ní Chuilín: I received AME, so it is an AME issue rather than a Barnett issue because it is benefits related, so the money is there. If I understand the Member's question properly, there were issues regarding clarity over

whether it was a grant or a loan. We all heard too many stories about people who felt that it was a loan and they did not want to get into any more debt.

The issue is that we, as a Government, are asking people to self-isolate, but we cannot ask people to self-isolate and not support them. That is the bottom line. So, that is what we are trying to do. Will there be lessons learned as a result of this? I am sure that there will be. It is like anything that we bring forward. We need to accept the good parts, change the parts that do not work and try to make it better in the future. Rather than waiting on a perfect fit, we need to get it changed, get it out, get it clarified, and, hopefully, people will get the support that they need.

Mr Carroll: I thank the Minister for her statement. The £2·1 million divided out equally amongst 14,800 people amounts to around £150 each. I assume that some people got less and others got more. Is the Minister aware of the average payment that people received? How many people received £500 or more?

11.00 am

Ms Ní Chuilín: The payment is better than £500. The £500 or €350 are fixed and taxable. If £100, €100 or €140 is taken for tax, the payment is less. If, for example, a couple has three children, they can receive £683 for the 14-day period of one isolation. If the same family has to isolate six or seven weeks later, they can expect to receive the same amount of support. That is not the case elsewhere. As long as the pandemic continues and more families are impacted by COVID, at least, once they have to isolate — I have heard of families having to isolate two and three times — we can ensure that we support them. We are asking them to follow government guidelines, so we need to make sure that the support is there, be it discretionary support, business support or whatever. If there is hardship, we need to get support out to people.

Mr Speaker: That concludes questions on the Minister's statement. I ask Members to take their ease for a couple of moments as we move to the next item of business.

North/South Ministerial Council: Special EU Programmes

Mr Speaker: I have received notice from the Minister of Finance that he wishes to make a statement.

Mr Murphy (The Minister of Finance): In compliance with section 52 of the Northern Ireland Act 1998, I make the following statement on the twenty-first meeting of the North/South Ministerial Council (NSMC) in special EU programmes sectoral format, which was held in the NSMC joint secretariat offices in Armagh on Friday 30 October 2020.

As Minister of Finance, I represented the Executive and was accompanied by the Minister of Education, Peter Weir. The Irish Government were represented by Michael McGrath, the Minister for Public Expenditure and Reform.

At the outset of the meeting, there was a broad discussion on the implications of the EU exit and the impact of, and response to, the COVID-19 pandemic. The Council noted the commitments and guarantees agreed and put in place as part of the withdrawal agreement and political declaration to allow for the current Peace IV and INTERREG Va programmes to continue until completion, and for a successor PEACE PLUS programme to be funded. Those were recognised and welcomed. The impact of COVID-19 on the current Peace IV and INTERREG Va programmes was noted, and the Council welcomed the actions implemented by the SEUPB to assist project delivery and the measures put in place to ensure the continuation of programme implementation. It is noted that the PEACE PLUS programme will incorporate COVID-19 recovery actions and that the programme development process is continuing.

The chief executive of the SEUPB updated the Council on the progress of programme implementation. Some 96 projects worth €277·9 million, which represents 103·1% of total programme value, have been approved for Peace IV, and 34 projects worth €291·1 million, which represents 103·2% of total programme value, have been approved for INTERREG Va. The Council noted that the SEUPB continues to facilitate participation in the INTERREG Vb and Vc regional and transnational and interregional programmes. To date, approximately €16·5 million has been secured by 64 partners under those programmes.

Progress was outlined on the development of the future PEACE PLUS programme. Work will continue in order to deliver an agreed programme. A public consultation will be undertaken to provide for further stakeholder engagement. The Council noted that further discussion with Departments and Ministers will be required to reach an agreed programme. The final PEACE PLUS programme

cooperation document will be submitted to both Administrations, the NSMC and the European Commission for approval.

Ministers noted that the SEUPB had produced draft corporate plans outlining the SEUPB key objectives for 2017-19 and 2020-22, and draft business plans for 2017-2021. The Council then approved those corporate and business plans and noted the budget provision for each. Ministers noted the SEUPB annual reports and accounts for 2016-18. Those were certified by the Comptroller and Auditor General in both jurisdictions and laid before the Assembly and the Houses of the Oireachtas. Ministers were advised that the 2019 SEUPB annual report and accounts will be submitted to the Council and laid before the Assembly and the Houses of the Oireachtas in due course.

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

In closing, Ministers noted that the SEUPB's governance structures continue to operate effectively. The Council agreed that options for an independent organisational review of SEUPB will be considered by sponsor Departments and that draft terms of reference will be submitted to the NSMC for consideration prior to the commencement of any review.

The Council agreed to hold its next Special EU Programmes Body meeting in early in 2021.

Dr Aiken (The Chairperson of the Committee for Finance): I thank the Minister for his remarks and for coming to the House to give his briefing. The Minister noted in his statement that Peace IV and INTERREG Va are both at 103%. Some of us will be concerned about whether we will be able to brief a project that is already anticipated to be at 103%. Perhaps, in his closing remarks, the Minister will comment on that, and on how that is likely to come through. One might ask where the excess funding is going to come from. Will it be divided equally between the Irish Government, the EU and the United Kingdom Government? How will that be done? I welcome the Minister's remarks about progress towards COVID recovery. Will additional funding come to Northern Ireland as part of the COVID recovery actions and process? If that is the case, where is that funding likely to come from?

Mr Murphy: I thank the Chair of the Finance Committee for his questions. There is an overcommitment on both of those. From our discussions with the chief executive of the SEUPB, I think that that is based on the normal expectation and practice that there has always been an underspend. SEUPB is content that it will manage the overcommitment in terms of the final expenditure on the programme without having to seek additional funding to supplement or complement it.

In relation to future funding, PEACE PLUS currently sits at £650 billion — €650 million, sorry; if only it was £650 billion. If there is an additional commitment from London — there is a discussion ongoing between Dublin and London in relation to this — and the multiplier effect of that commitment is there from Dublin, then, if they match the percentage of that, it will take the figure for PEACE PLUS up to £1 billion, which will be very welcome in the time ahead. That discussion has not yet concluded, but I hope that the British Government will come forward and match the offer that has been made by Dublin.

Mr Frew: I thank the Minister and his officials, who gave the Finance Committee a very useful and informative briefing on this last week. Minister, you state that £16·5 million has been secured to date by 64 partners. How much of that money has come to Northern Ireland? Out of the 96 projects for Peace and the 34 projects for INTERREG, how much of that money is forecast to come to Northern Ireland?

Mr Murphy: I will have to get the Member the actual figures; I will ask officials to forward those to him. In terms of contributions, there is a percentage worked out between the Executive, the Dublin Government, the British Government and Europe. The spend always has been largely in the six counties in the North and the six border counties, and I do not believe that there is anything untoward in the breakdown of all that, but I will be happy to get the Member the figures for all of those projects.

Mr McHugh: Ba mhaith liom buíochas a ghlacadh leis an Aire fosta as a ráiteas. I thank the Minister for his statement. As someone who lives ar imeall na teorann — on the edge of the border — I am only too well aware of the significance of the SEUPB and the many projects that have been delivered in our area. I am concerned for the future. What are the implications of Brexit for the current programmes?

Mr Murphy: I share the Member's view on the delivery of that, as a border dweller myself. The prospect is of a very significant delivery through the PEACE PLUS programme, which incorporates, as he will know, Peace and INTERREG as well. We always operate on the basis that this could be the last Peace

programme, and I think we need to ensure that it has that impact in those border communities in particular, where some of the issues of the conflict were felt, and that, given the peripheral nature of communities there on both sides of the border, they are supported. Obviously, good work has been delivered, and I look forward to more good work and consultation with all of the stakeholders to ensure that we get the best possible value and outcome from PEACE PLUS.

There is obviously an initial uncertainty caused by the prospect of Brexit, but the guarantees included within the withdrawal agreement and the political declaration confirm the joint commitment of the EU and the British and Irish Governments to the continuation of the current Peace IV and INTERREG Va and the successor PEACE PLUS programme. Those guarantees will allow the current programmes to continue as normal and to be financed from the EU budget until their formal closure dates. In light of the coronavirus outbreak, the EU has also extended the final declaration dates for projects to fully spend their allocated funding as some recover from delays enforced on them. A financing and administrative agreement that will set out the legal, financial and governance frameworks for PEACE PLUS and, in turn, the SEUPB is currently being negotiated by the EU and the British Government.

Mr O'Toole: I ask the Minister to say a little more about what he just mentioned — that is, the negotiations around the financing agreement and the future structures around this. Is there a worry that, if there is no deal between the UK and the EU on the future trade relationship, there is a risk to the structures in the commitments that were made in the withdrawal agreement and in the political declaration — certain Tory MPs have already cast doubt on many in the political declaration — going forward? Was that discussed at the NSMC?

11.15 am

Mr Murphy: There is always a worry in relation to that. I think that we are right to be cautious, because the process of exiting the European Union has been anything but straightforward with regard to the British Government, and many things that have been — this goes across the whole issue that the Executive have to deal with — committed to and promised by the British Government have been abandoned or there have certainly been threats to abandon them at various stages. While we have the commitments, which were part of that withdrawal agreement and were agreed to, we have to be vigilant and continue to hold the British Government to account in relation to them.

The programme has delivered so much to communities that were so challenged over many years and affected by the impact of partition and then conflict, and that funding was one of the key contributions from the European Union to this part of the world, so we hope that that funding continues and is able to deliver projects that have made such an enormous difference. Both the Peace and INTERREG projects have made such a huge difference in the border area, and we want those to continue. We have to constantly be vigilant and keep a close watch on how these things develop.

Mr Muir: I thank the Minister for his statement and his answers thus far. I remain firmly of the view that Northern Ireland has benefited greatly from its membership of the European Union, and the support funding that has been outlined here is clear example of that. Can the Minister provide an update on the replacement for the EU structural funds in terms of the Shared Prosperity Fund? We are still waiting for clarity on that, and it is an important issue.

Mr Murphy: Yes, the Member is quite right that we are still waiting for clarity on the Shared Prosperity Fund. There is a commitment from the European Union to replace like with like, but we were also operating on the basis, as were Scotland and Wales, that the devolved Administrations would develop the programmes, allocate the money and do all that. There is huge uncertainty because of the legislation that is currently passing through Westminster, and that casts a significant doubt on that.

We have a lack of certainty on two fronts. One is that we have no firm commitment, other than a general one, on how those funds will be replaced, despite repeated requests from me and the Scottish and Welsh Finance Ministers, and a number of meetings where we were to seek clarity on that have been postponed in recent times, which is frustrating. We have not got that certainty, and, as I say, we are very concerned about developments with that legislation at Westminster, because the programmes have been delivered successfully locally by people who know the local issues, know the communities that will benefit most from the programmes and can get that support on the ground. Administering these things, allocating them and applying to programmes in Whitehall will not work for us. Scotland and Wales have the same opinion, and, equally, I

am sure that it will not work for them. We certainly want full replacement, and we want the ability to allocate and design the programmes that will replace the EU funding.

Ms Dolan: Minister, thank you for your statement. Will PEACE PLUS see a reduction in the administrative burden on applicants or projects?

Mr Murphy: That is certainly one objective that I have raised consistently with the Special EU Programmes Body, and it has assured me that it will endeavour to do that. I have been about long enough to have been involved in the original peace and reconciliation fund that was developed and delivered through councils back in the 90s. That funding was very accessible to grassroots community projects. I have had engagements over the last number of months with people who work at the coalface of the community and voluntary sector, and their view is that the funds have progressively become more inaccessible to small and grassroots community organisations and that you almost need to be partnered with a local government organisation or some substantial organisation to access the funding. We assume that, each time one of the programmes comes in, it may be the last one, so it is important that it leaves a valuable legacy and that there is accessibility to the programme.

Peace programmes were designed to get down to the grass roots, to communities on both sides of the border that had suffered as a result of the conflict, and a lot of projects achieved that. If PEACE PLUS is to be the last programme we receive, we need to ensure that it gets to where it is needed, and accessibility is something that I will continue to raise with the SEUPB. It will go to consultation, so I encourage all elected representatives and community groups to make sure that those issues are raised with it as well.

Mr Sheehan: Gabhaim buíochas leis an Aire as ucht a ráitis. I thank the Minister for his statement this morning. What actions have been taken to protect projects and programme expenditure during the COVID pandemic?

Mr Murphy: There has been recognition that COVID has caused some interruption to delivery, although, given our discussion with the SEUPB, it seems that it may not have been much as we had expected. Programmes have rolled on. However, as I said, the uncertainty around that has been dealt with, because we have some guarantee that the EU has recognised the impact of COVID and has allowed some headroom, if you like, to make sure that original time frames for spending the funds have been stretched somewhat. That will ensure that people can continue to spend on programmes held up by reasons genuinely beyond their control.

There is recognition that COVID has had some impact, though, thankfully not the impact that we expected. The EU has extended the final declaration date in order to allow projects to fully spend their allocated funding, and that is to be welcomed.

Mr Catney: Thank you, Minister, and I thank your officials from the Department for briefing the Finance Committee. Brexit has already been mentioned, and there has been a promise of extra money to increase the total to £1 billion. We hear about the consultation and how we will try to get the money out to our community. Minister, are you fairly confident that the British Government will meet their commitment as promised?

Mr Murphy: The original commitment was for €650 million, and we are operating on the basis that that will be honoured. There is an opportunity to increase that amount. The Government in Dublin have indicated that they will make their contribution, and that creates a multiplier effect on the British Government's contribution and contributions from the Executive and the EU. The key to that is the British Government adding to their contribution, and I hope that they do so, because the overall effect will be to create a much bigger pot for PEACE PLUS — an extra 350 million — which, obviously would be very welcome for the communities that can access that funding. The commitment for the initial amount is there: we are trying to secure expanded funding to allow us to generate a much bigger pot across the board.

Mr McGuigan: I thank the Minister for his statement. It is clear from the information that he has brought to the House, the sums mentioned and from what other Members have said that there is clearly commitment from the EU to Peace programme funding and supporting communities across the island, including my constituency. I have nothing but support for that type of programme. However, one issue that I and some of the groups that I am involved with have is the burden of the application. Will there be a reduction in the administrative burden for applicants?

Mr Murphy: We would like to see that. Of course, there is a comprehensive auditing process for the EU, as the Member will

understand. The EU is keen to ensure that the money it allocates and approves through the overall programme is spent in the way that was intended. There is always a balance between meeting auditing requirements to ensure accountability for spending of public funds and making sure that they are accessible, in particular to small, grass-roots community organisations that the initial Peace funding was intended to benefit. It was originally to bring benefit to communities and areas that previously had not received support from government or other programmes. There is always that balance, but I have been discussing that with the SEUPB, because there is a sense that, over the past number of programmes, the balance in the burden of bureaucracy has shifted somewhat to those who access the programmes. I have had conversations with the SEUPB about how to ensure that we get that balance right. As I say, it will go out to consultation. I encourage all groups to come forward with their views, because we want to make sure that we get that balance right and that the money gets to exactly where it is needed and will have most benefit.

Ms Anderson: Minister, following on from that, I acknowledge the fantastic work done by the community sector in Derry. Many of those organisations access the European social fund and are deeply concerned about the loss of that. Minister, you have talked about the consultation. Will there be a role for community organisations in the PEACE PLUS programme?

Mr Murphy: Yes, absolutely. The consultation should be wide and accessible. All those who have issues to put forward or suggestions to make need to make sure that their voices are allowed to be heard in that consultation. That consultation should begin in the not-too-distant future. I encourage Members, particularly those who have a link to community groups, to make sure that, if those groups are not aware of that information, they know when the consultation is happening and how to access it and that they get the opportunity to make their case to it.

Mr McGrath: I thank the Minister for his statement. Minister, in the Executive Office Committee, we met the 11 councils over the last two weeks. Many of them detailed to us their serious concerns about their financial stability and delivering the EU programmes. I welcome your commitment in the statement that the PEACE PLUS programme will continue for the duration of this cycle, but it is not clear whether they will have funding going forward. Would you undertake to meet the 11 councils specifically to try to ease some of their financial concerns?

Mr Murphy: I have no difficulty with that. I meet the councils frequently. I have met NILGA and others. The 11 council chief executives generally come together through the Society of Local Authority Chief Executives (SOLACE). I am absolutely happy to meet them. The commitment is there to spend out the Peace IV and INTERREG Va programmes. Even with Brexit and all the uncertainties, the commitment is there for €650 million for PEACE PLUS. We want to see that increased to much more. As I said in response to a previous question from your party colleague, despite all the uncertainties that come from Brexit and the negotiations, the posturing and the stands that have been taken in relation to some of the issues, we have to hold to that commitment. We have to be vigilant to make sure that that remains. We, from the European, Dublin Government and Executive sides, want to see these commitments being met. We want to see the funding expanded and being available over the next number of years. I am happy to talk to council groups about that.

Mr McNulty: I want to quickly recognise that it is World Prematurity Day. We think about all the mothers and families who have experienced challenges around early birth and recognise the brilliant support of the TinyLife charity.

Minister, thank you for the statement and for coming to the House this morning. Can you provide an update on the current funding for INTERREG programmes? There are concerns that funding may run out for several programmes; for example, the Carlingford to Newry greenway and the Smithborough to Middletown greenway. Can you provide certainty that funding will be provided for the completion of those projects?

Mr Murphy: The current programmes are to run their course. Allowance has been made to make sure that they are not interrupted by Brexit. On the more capital side with INTERREG, the EU has also allowed an extension to the completion and declaration date of programmes that have been interrupted by COVID and had undue delays. I do not think that you were in the Chamber for my first answer to the Chair of the Finance Committee. There is an overcommitment in funding, but the expectation is that there has always been an underspend. From the discussions that Minister McGrath and I had with the SEUPB at this meeting, we know that it fully expects to spend out the programmes. The SEUPB expects to

meet all the programme costs that it has committed to. We will want to continue to monitor that in the time ahead, but those are the assurances that we were given.

11.30 am

Mr Deputy Speaker (Mr Beggs): That concludes questions to the Minister on his statement. We are running approximately an hour ahead of schedule. I have been advised that the AERA Minister is about 10 minutes away. He is due to take the next two items of business.

In fact, he has just arrived. I ask Members to take their ease for a few moments.

British-Irish Council: Environment

Mr Deputy Speaker (Mr Beggs): The Speaker has received notice from the Minister of Agriculture, Environment and Rural Affairs that he wishes to make a statement.

Mr Poots (The Minister of Agriculture, Environment and Rural Affairs): With your permission, Mr Deputy Speaker, and in compliance with section 52 of the Northern Ireland Act 1998, I wish to make the following report on the sixteenth British-Irish Council (BIC) ministerial meeting in environment sector format, which was held in virtual format on Wednesday 4 November 2020. Declan Kearney MLA, junior Minister in the Executive Office, and I represented the Northern Ireland Executive at the meeting. This report has been endorsed by junior Minister Kearney, and he has agreed that I make the statement on behalf of both of us.

The British-Irish Council, established in 1999, is a forum for its members to discuss, consult and use best endeavours to reach agreement on cooperation on matters of mutual interest within the competence of its member Administrations. The BIC environment work sector is led by the UK Government and has proved a constructive and unique forum for facilitating evidence exchange and practical collaboration since the Council was established. The meeting held on 4 November focused on how the Administrations can work together on climate adaptation, to tackle invasive non-native species and to approach the issues connected with the marine environment.

The meeting was chaired by Lord Gardiner of Kimble, Parliamentary Under Secretary of State in the UK Department for Environment, Food and Rural Affairs (DEFRA). The Irish Government were represented by Mr Eamon Ryan TD, Minister for Transport and Minister for the Environment, Climate and Communications. The Scottish Government were represented by Roseanna Cunningham MSP, Cabinet Secretary for Environment, Climate Change and Land Reform. The Welsh Government were represented by Lesley Griffiths MS, Minister for Environment, Energy and Rural Affairs. The Isle of Man Government were represented by Geoffrey Boot MHK, Minister for Environment, Food and Agriculture. The Government of Jersey were represented by Deputy John Young, Minister of the Environment. The Government of Guernsey were represented by Deputy Lindsay de Sausmarez, president of the Committee for the Environment and Infrastructure.

Ministers reaffirmed their commitment to conserve and sustainably use the ocean, seas and marine resources in accordance with UN sustainable development goal 14. The BIC environment work sector has two subgroups to cover the areas of marine litter and marine environment, including biodiversity, marine protected areas and ocean acidification. Ministers discussed priority areas where the two subgroups have been focusing their work and noted progress to date, including on commitments agreed at the BIC marine litter symposium in February 2019. Those commitments are to develop options to help to support sustainable end-of-life fishing gear disposal, support the reduction of plastic pellet loss and raise awareness of marine litter with young people and fishing professionals. Noting the challenges faced by the marine environment in our shared seas, we agreed to continue the ambitious programme of collaborative work, aligned with macro-regional and international obligations. Ministers discussed key aspects of the work being undertaken by the BIC climate adaptation subgroup, including to identify and share adaptation research and evidence and examine mechanisms to improve linkages between adaptation researchers across the BIC region; to foster cooperation and promote shared learning on measuring progress to minimise climate risks to critical infrastructure across the BIC region; and to identify and share information on best practice regarding community and private-sector engagement on climate adaptation, adaptation governance models and monitoring and evaluation of adaptation.

Ministers noted that the subgroup had delivered a virtual climate adaptation symposium on 20 October 2020, which focused on the topic of critical infrastructure and was hosted by the

Irish Government. The symposium was attended by 80 delegates from the BIC member Administrations. It was agreed that further collaboration and engagement would continue via the BIC Environment work sector and its subgroup on climate adaptation.

Ministers were asked to note that BIC invasive non-native species (INNS) officials have been meeting biannually since 2013 to explore and agree areas of cooperation on INNS. The fourth BIC INNS workshop was held in Cardiff on 20 - 21 January 2020 hosted by the BIC secretariat and the Welsh Government. Ministers committed to an ambitious programme of collaboration, including on the Be Plant Wise and Check, Clean, Dry communications campaigns and on marine invasives such as the carpet sea squirt, as well as establishing an Asian hornet task force.

Ministers agreed that the 17th Ministerial meeting will be hosted in 2022 and that the BIC environment work sector would continue its focus on the marine environment, climate adaptation and invasive non-native species.

Mr McAleer (The Chairperson of the Committee for Agriculture, Environment and Rural Affairs): I thank the Minister for his statement. The Minister referred, in paragraphs five and six, to the topic of plastics. He will know that the fishing industry is greatly concerned about that and is prepared to play its part in helping to resolve the issue and protect the marine environment. Will the Minister elaborate on what options are being considered by his Department for the sustainable end of life for fishing gear?

Mr Poots: A decent conversation was held by the Ministers, and it was agreed that we would work with industry to develop solutions for collection and recycling of end-of-life fishing gear from the main fishing ports. There will be engagement with the fishing community to identify the best way forward in each of our areas, but there is a commitment to assisting in ensuring that that end-of-life fishing gear is appropriately and properly disposed of in an environmentally friendly and sustainable way.

Mr Harvey: Minister, I see from your statement that two subgroups have been set up: I assume that they are an Irish subgroup and a British subgroup. What practical work has been carried out to date by the subgroups?

On another point, I see that you are not due to meet again until 2022: would more frequent meetings be beneficial?

Mr Poots: It is for BIC members to decide the frequency of meetings. There are a lot of busy people involved in it.

A series of pieces of work have been done by the subgroups. Developing the issue of plastics and its impact on marine life is a key area: how we better educate the public on the use of plastics and indeed how we respond as individual Administrations in how we deal with plastics to ensure that there is less plastic around to enter the marine system. That is critical. Considerable work has also been done on the issue of invasive species, whether they are plant species or other living organisms. Those issues are of significant concern to us because those things can have a serious detrimental impact on us. There was considerable discussion of the Asian hornet as a consequence of its recent arrival.

Mr O'Toole: Minister, the British-Irish Council is an important forum that brings together some of the smaller jurisdictions — even smaller than Northern Ireland. Did you discuss the climate action plans of the Isle of Man, which has a population slightly larger than Lisburn? The Isle of Man published a climate change Bill earlier this year. Did you discuss how it, a small jurisdiction, managed to do that? Did you raise with Deputy de Sausmarez from Guernsey, which has a smaller population than Lisburn, their intention to put climate change reduction into law. What I am trying to get at is whether the Minister discussed with those very small jurisdictions how they were able to put climate change plans into legislation so quickly.

Mr Poots: That was not on the agenda. One of the downsides of a virtual meeting is that we do not have the opportunity to have discussions afterwards, so I did not have that discussion. However, I am having discussions with my officials about climate change legislation, and that is something that I hope to go out to consult on very soon. That is entirely appropriate, because you do not legislate without going through a public consultation process first. That is how it is set out legally. I will seek the permission of the Executive to move forward on these matters quite soon.

Mrs Barton: Thank you for your statement, Minister. You referred to fostering cooperation, promoting shared learning and measuring progress to minimise climate risks. Have you given any thought to the various rules and regulations in Northern Ireland and in the Republic of Ireland? For example, the two jurisdictions have different planning rules and regulations for ammonia.

Mr Poots: Knowledge sharing is critical to all of us. Therefore, where people have engaged in good practice that has delivered better outcomes than we have, we have to learn and develop from that. Education is not a matter of us seeking to educate the public; education is us learning from people who, in certain circumstances, have moved ahead of us. We may be ahead of others in certain circumstances, and they can learn from us. However, education is something that we should all engage in every day.

Mr Blair: I thank the Minister for his statement and welcome the work being done by the environment work sector in setting up the subgroups on marine litter and marine environment. More specifically, is any work being done or being planned to deal with the environmental risk posed by end-of-life or abandoned vessels?

Mr Poots: Abandoned vessels have been less of an issue in recent years than they were some time ago when part of the fishing fleet was scuttled. No grant has been available to cease fishing, so it has been less desirable, with older boats sometimes being kept in harbours for too long. It certainly is a challenge, and I acknowledge that. Because of the poor incomes, there has not been the replenishment of the fleet that should have taken place, and you can see that in our harbours. Consequently, we have a lot of boats that are up to 50 years of age, and we have a lot of wooden boats, which are less safe than the steel boats. I would like to see, as the fishing fleet can actually catch more fish, the fleet being redeveloped. In that event, what happens to the older, end-of-life, boats will become an issue for us to look at. However, it was not an issue discussed at this meeting.

Mr Givan: I thank the Minister for his statement. Important meetings are taking place on the environment and climate change. In that respect, I know that the Minister is leading on the afforestation programme in Northern Ireland, and I commend him for it. He will know of a project in his constituency led by Lisburn scouts, seeking to acquire land for young people to appreciate. Did the Minister share any of the best practice that he is doing in Northern Ireland with the other jurisdictions?

11.45 am

Mr Poots: Afforestation was not part of the agenda, but I know that there are organisations that are dedicated to ensuring that land that is currently in a forest remains that way. That is certainly something that we should support; if tree planting is taking place and we have created woodland, it should not be taken away. There are those who grow trees to be harvested, which is fair enough because those trees will continue to capture carbon, but we want to encourage the retention of forests with more traditional trees and native species.

Mr McGuigan: Minister, you outlined how Ministers reaffirmed their commitment to UN sustainable development goal 5, one of the key aims of which is an end to destructive fishing practices. Was the issue of super-trawlers in Irish or British waters, and, specifically, in marine protected areas, raised at the meeting?

Mr Poots: It was not raised at the meeting, but the Member has raised a very important issue. We know that there are large trawlers with multiple nets, which harvest large quantities of fish. A lot of those emanate from France and Spain. Of course, they will not be in our waters if we have the right conclusion to the negotiations that are taking place this week.

Ms Sheerin: I thank the Minister for his statement and answers thus far. Minister, you talked in your statement about climate change, and reference was made to best practice for the private sector and the community sector in that regard. What learning did you take from the meeting on that?

Mr Poots: We considered climate change issues particularly around the seas and the impact that they have on the marine side. There is the issue of warmer waters and the consequences that come from that. There was also a strong focus on the pollution of the marine sector. A particular issue that was discussed at length was that of plastics and the beads that can get into our waterways. There is so much more that can be done to ensure that our waterways and marine life are protected from that. There is a course of work for us, as government, to drive forward in terms of plastics. I have already introduced an initiative to remove single-use plastics from the government system. I want to move forward on single-use plastic bags and reconsider what we are charging at the minute. It is only 5p; I think that that needs to be raised. There are courses of work that we can do to ensure that, in the first instance, considerably less plastic is used and, consequently, less plastic gets into our waters.

Mr McNulty: I thank the Minister for his statement. It is fantastic that the Council is meeting to address climate change and to

protect our marine environment. There are wonderful aspirations and ambitions. Minister, can you tell me about anything that has actually been achieved to date? It does not fill me with confidence that the next meeting is not scheduled until 2022. Does that tell us that you understand the urgency of the issue?

Mr Poots: My Department is undertaking a study on end-of-life fishing gear and recycling and waste disposal. That evidence will be provided to the group. DAERA continues to input into the pilot project that is being led by Scotland into a supply chain approach to reducing plastic pellet loss. Northern Ireland continues to have high levels of participation in Eco-Schools, which is something that we were working on. That is about encouraging our young people and educating them on the threat to the marine environment, in particular.

In Northern Ireland, we are developing marine protection areas, looking at ocean acidification and my officials have participated in blue carbon workshops and in sharing examples of cross-border cooperation and work to identify other effective conservation measures. Quite a series of actions are taking place as a result. We do not need to meet all the time to do that. Actions are decided, subgroups are set up and officials are set tasks. I think that you can see from that that many tasks are being fulfilled.

Mr O'Dowd: Minister, paragraph 7 of your statement refers to the fact that various jurisdictions are looking at the risks posed to critical infrastructure by climate change. Has your Department identified such infrastructure and what actions to take to protect it from climate change?

Mr Poots: On managing the environment, one only has to look at what happened in Donegal this week. Something certainly went wrong there, which has implications. Those who were seeking to create renewable energy caused that, so how we do things can have an important impact on our infrastructure.

On our carbon infrastructure, one of the things that were done in previous years was to install drainage in our uplands. We have now discovered that much of that drainage work has led to a drying out of peatlands, which has the consequence of reducing our carbon storage.

It is critical that we do the right things to ensure that we mitigate climate change, reduce greenhouse gases and store more carbon. Those are all courses of work on which my officials are engaged, and I will liaise with the Assembly and the Committee as and when we get qualitative information on that.

Ms Dolan: I thank Minister for his statement. I want to ask him about the paragraph in the statement that deals with native invasive species. In that, there is a reference to "an ambitious programme of collaboration". Will the Minister elaborate on that programme and its likely impact?

Mr Poots: We have a significant problem in a number of areas with invasive species, and we need to meet that challenge head-on. In Northern Ireland, there have been considerable problems over the years with invasive species such as Japanese knotweed. Muntjac deer have also been a problem, although they are becoming less so. Of course, one of the very common invasive species is the grey squirrel, which has led to there being considerably less red squirrels.

More recently, the Asian hornet has developed into a problem and there are issues with the various barnacles that can be picked up by the boats on Lough Erne that travel up and down the Shannon and so forth. Those invasive species do not recognise borders. Therefore, it is very useful to have conversations with colleagues in other areas about how they have identified invasive species and can help to deal with them.

We are looking at issues such as hull fouling, horticultural escapes, contaminants of ornamental plants, ballast water, stowaways on fishing equipment and zoo or botanic garden escapes. All those things pose a threat to us. In addition to assisting GB plans, we are working on a Northern Ireland recreational boating pathway action plan, which will be followed by a horticultural plan. All those final plans have gone through consultation processes and will eventually be published.

We also see a benefit in having a joint approach with the Republic of Ireland in dealing with invasive species, and the joint development of the pathway action plan with Ireland is a two-strand approach.

As well as working with GB on a UK-wide basis, it would be beneficial to manage invasive species collectively. At this point, there is no formal agreement. However, that is, of course, the work that we are doing.

Ms Bailey: Everyone here will be aware that many provisions in the UK Environment Bill do not extend to Northern Ireland. As my South

Belfast colleague Mr O'Toole has already mentioned, other regions that are represented on the Council have their own specific climate legislation, with different targets and deadlines. What challenges have been identified that relate to divergence in environmental law and its impact on future cooperation?

Mr Poots: For example, the UK legislation that is coming in sets a recycling target of 65%. I believe that we, in Northern Ireland, can achieve that and more. Whilst the law is set at 65%, and we have to agree to that, my preference is for a recycling target of 70%. I am giving that only as an example. We can all identify what is achievable. We have achieved much higher rates of renewable energy than any other part of the UK. Going forward, it is for the Department for the Economy to drive that.

Ultimately, I would like to see us get to the point of using and producing entirely renewable energy. However, I believe that 70% is achievable in the not-too-distant future. That is a course of work that we can engage in. We will set the targets for all those issues.

We are keen to progress our own climate change legislation. We will want to consult on that appropriately. I would like the consultation process to be shortened a bit in order to give the House and the Office of the Legislative Counsel time to do the work that they need to do. We know that there is public demand for it. Therefore, we will want to consult and see what public expectations are. At the same time, it is necessary for legislation.

Basic Payment Scheme Simplifications and the Direction of Travel for Future Agricultural Policy in Northern Ireland, including Support Payments

Mr Deputy Speaker (Mr Beggs): The Speaker has received notice from the Minister of Agriculture, Environment and Rural Affairs that he wishes to make a statement. We will just give him one moment to get back to his place. When you are ready, Minister.

Mr Poots (The Minister of Agriculture, Environment and Rural Affairs): Thank you, Mr Deputy Speaker, for the opportunity to talk to the House about my long-term vision for agricultural support in Northern Ireland. I also intend to announce a number of simplifications and improvements that I am making to the rules that govern the direct payment scheme for the 2021 scheme year.

Pillar 1 of the common agricultural policy (CAP) provided £293 million of direct support to Northern Ireland's farmers per annum. CAP payments have been of major importance in sustaining the industry in Northern Ireland and underpinning its competitive trading position. They have accounted for 79%, or £1·88 billion, of the cumulative total income of the Northern Ireland industry over the seven years from 2013 to 2019.

In 2018, my Department undertook an engagement exercise on a potential future agricultural policy framework for Northern Ireland. In that proposed framework, officials, in conjunction with key food, farming and environmental stakeholders, identified four desired outcomes and a long-term vision for the Northern Ireland agri-food industry.

Those outcomes are: an industry that pursues increased productivity in international terms, closing the productivity gap which has been opened up with our major suppliers; an industry that is environmentally sustainable in terms of its impact on, and guardianship of, air and water quality, soil health, carbon footprint and biodiversity; an industry that displays improved resilience to external shocks, such as market volatility and extreme weather events, which are ever more frequent and to which the industry has become very exposed; and an industry which operates within an integrated, efficient, sustainable, competitive and responsive supply chain, with clear market signals and an overriding focus on high-quality food and the end consumer. A number of projects have now been established in the Department to collate evidence, identify gaps and develop policies that will help to deliver those outcomes.

12.00 noon

In June 2020, I announced my intention to bring forward a co-designed environmental strategy, entitled the green growth strategy, on behalf of the Executive. It will align economic growth and development with the protection and enhancement of natural assets. The Northern Ireland future agricultural policy framework has been developed in line with the green growth principles and will help to deliver its objectives. I anticipate launching that new future agricultural policy framework in early 2021, and I will update the House further at that time. Today, however, I want to broadly outline my vision for future support payments.

Leaving the EU provides for an unprecedented level of regional discretion and flexibility with regard to future agricultural support in Northern

Ireland. This is the most significant change in policy to affect the agricultural sector in over 40 years. It means that our policies do not have to be constrained by the EU CAP pillar 1 and pillar 2 construct. We need to move to something new that better addresses the needs of Northern Ireland agriculture. It represents a unique opportunity to develop a new dynamic for key stakeholders across the food, agriculture and environmental spectrum to work with the Northern Ireland Government to chart a new way forward with common purpose. For that to be successful, it is vital that the long-term outcomes of productivity, resilience, environmental sustainability and supply chain functionality be kept to the fore, which will demand difficult choices, compromises and strong leadership at all levels.

Those four outcomes complement and reinforce each other, and they are broadly supported by stakeholders. A healthy and sustainable environment secures long-term agricultural productive capacity and underpins resilience. Productive agriculture minimises waste and maximises resource efficiency, which underpins environmental performance and reduces exposure to market risk. Furthermore, an integrated and efficient supply chain ensures that agricultural activity is properly focused on delivering market demands, thereby minimising wasted effort, wasted resource and inefficient supply chains and reflecting broader societal demands for sustainable production methods. The primary tools available to us — science, education, incentivisation and regulation — are applicable in helping to deliver all those outcomes. My focus is now on how we can best deliver the outcomes with the tools and resources that I have at my disposal.

Today also allows me to once again put on record that, going forward, I want to devise support schemes that provide opportunities for all our farmers — no farmer should be left behind. Schemes and support are needed to help farmers to develop their business, no matter where they farm, to become more efficient and to maximise the sustainable returns that they can achieve from the assets at their disposal. Those assets include the environmental assets on their farm. I believe that farms, especially those on hills and other disadvantaged areas, are well placed to play a major role in delivering more of the environmental outcomes that the people who live here want and that we owe to our future generations. I also believe that farmers should be properly rewarded for delivering those environmental outcomes and achieve a return on the environmental assets present on their farms. This offers a way forward where better economic performance and better environmental performance are the inseparable twin goals of any sustainable farm business.

The House will be aware that the UK Agriculture Act gained Royal Assent on 11 November. I very much welcome the Act, because it provides a platform on which we can start to move forward. Ideally, I would like to have had a locally developed agriculture Act taken through this House. However, that was not possible in the time available to us, but the Agriculture Act that we do have provides us with sufficient scope to introduce the changes that will set us on a new pathway.

The current working assumption is that the budget for future agricultural support payments for the remainder of the Parliament will be similar to the current direct agricultural support budget of £293 million per annum, plus a proportion of the pillar 2 budget. That ring-fenced funding will need to cover all the support measures that we wish to introduce. Current direct agricultural support is distributed by a decoupled area-based payment. I do not believe that that mechanism, as it stands, will deliver the outcomes and the agricultural industry that we wish to see. Nevertheless, I want to explore the role for a basic, area-based resilience payment that provides a safety net, but that must not blunt the incentive to become more productive and deliver better environmental outcomes. Careful analysis is necessary to identify an appropriate design of that mechanism that can reflect issues such as scale of operation — that is to say a cap on the maximum payment and, indeed, a minimum lower threshold — activity and so on and that is set in the context of a cross-compliance regime that is designed specifically for Northern Ireland to help to deliver policy outcomes.

That will take time, but it is my intent to move as quickly as I can on that in order to provide the budget necessary to deliver new schemes and approaches.

As part of that package, I wish to use a proportion of the agriculture budget to fund coupled payments, targeting, for example, suckler cow and breeding ewe producers. It is important to stress that that would not be a return to the coupled payments of the past. We need to design in features that will help achieve the goals of increased productivity and environmental sustainability. I have tasked my officials with completing a comprehensive review of the options for coupled support payments, and I hope to consult on it during 2021.

I will say something about coupled support for protein crops. I intend to introduce for 2021 a protein crop scheme for growing combinable beans, peas and sweet lupins. Those crops will create a domestically produced source of protein for animal feed and provide agronomic benefits within arable rotations. I intend to introduce it for 2021 on a pilot basis and then refine the approach for subsequent years to maximise the economic and environmental benefits.

A major part of the new agriculture framework will be the agrienvironment programme. As I have indicated, we need to create a regime that properly incentivises and rewards the protection of existing environmental assets and the creation of new ones. We will work with our farmers, land managers and environmental stakeholders to co-design a new approach to agrienvironment measures that is focused on delivering outcomes and a lasting legacy. We have the opportunity to create an approach whereby management of the environment becomes a profit centre within a farm business rather than a cost centre.

My officials are looking at a range of other issues that will contribute to a new agriculture policy agenda. Those include the role of capital support; generational renewal; upskilling and professional development; opportunities to develop the horticulture sector; and supply chain initiatives. I hope to say more about those in the early part of next year.

Although work is progressing to develop the long-term agriculture support strategy, I want to make some early changes that start to move us in the desired direction. I have therefore asked my Department to review our approach to the current schemes and to implement, where possible, improvements and simplifications that are in keeping with the longer-term direction of travel and that can be taken forward under the Agriculture Act 2020.

With that in mind, from 1 January 2021, I have decided to implement a number of changes. I have already announced that I will remove the greening requirements for the 2021 scheme year and incorporate the greening payment into the basic payment scheme (BPS) entitlement unit values. I will, however, retain the ban on ploughing or conversion of environmentally sensitive permanent grassland under BPS rules.

As currently designed, the objective of the greening requirements is to address a particular set of problems in cereal-producing regions where there is a predominance of very large fields that are devoid of landscape features and used for monocropping. The evidence is strong that the greening requirements of crop diversification and ecological focus area (EFA) retention have very limited relevance to Northern Ireland. If anything, they seem to have been counterproductive, by reducing the area of cropping and thus the diversity of land cover and habitat. My view is that, rather than persist with that failed initiative, it is much better to focus efforts and resources on developing bespoke environmental measures that will ensure the delivery of environmental outcomes tailored to Northern Ireland that are adequately funded.

Greening rules have added significant complications to the administration of direct agriculture support payments for applicants and those administering the scheme. Removing greening will also greatly reduce the inspection requirement associated with the direct payment regime. Incorporating the greening payment into the overall BPS entitlement values will mean that farmers will see no difference in the funding that they receive. The protection of environmentally sensitive permanent grassland will be enhanced by incorporating those rules into the basic payment scheme rules.

Whilst work on the development of bespoke environmental measures takes place, Northern Ireland's robust set of environmental laws will continue to provide protection against biodiversity loss. It is also important to remember that landscape features such as hedges and sheughs will continue to be protected under cross-compliance.

On the capping of payments, given that the changes for 2021 do not have a primary aim of altering the amount of funding that farmers receive in 2021, it is my intention to make a technical adjustment to deliver a neutral solution on capping. That is for 2021 only, however. I will want to look at capping more closely as part of the longer-term approach to support, and I have asked officials to bring forward options for consideration.

For 2021, for applications from young farmers and new entrants, I am limiting the number of entitlements that can be allocated or topped up from the regional reserve to 90 for each application. That brings the approach into line with the young farmers' payment. The aim is to prevent very large allocations from the reserve to individual farm businesses, which are difficult to justify but which cannot at present be prevented. That change will also reduce the

incentive to submit speculative claims or to exploit the reserve.

I will limit over-declaration penalties to 100% of the amount due based on the area determined. That will eliminate the need to apply offset penalties in subsequent years. At present, in some cases where an over-declaration is large, the over-declaration penalty exceeds the payment due prior to penalty. In such cases, the payment is zero, and the outstanding part of the over-declaration penalty is offset against future payments made to the business over the next three years. I believe that the reduction of the payment to zero is an adequate deterrent against speculative claims involving the declaration of a large proportion of ineligible land.

I have asked my officials to review the approach to the application of cross-compliance penalties as soon as possible. My aim is to ensure that penalties are proportionate and reflect the seriousness of the non-compliance identified. As I said, using the primary powers in the UK Agriculture Act, secondary legislation to give legal effect to the 2021 scheme is being drafted. I will bring this forward under the draft affirmative procedure.

I assure the House that, in developing the future agricultural framework and our approach to future agricultural support payments, I will consult with the full range of agricultural and environmental stakeholders and keep you all updated. My ultimate aim is to ensure that we take full advantage of the opportunity to develop a sustainable agriculture industry in which farmers are supported on an equitable basis. That will be underpinned by a set of bespoke measures that will ensure the delivery of productive, environmentally sustainable, resilient and supply chain-focused outcomes tailored for Northern Ireland.

Mr Harvey: Minister, I welcome your statement. You mention a pilot scheme to maximise the benefits of protein crops, beans and sweet lupins. How do you propose to encourage farmers to partake in this scheme, and has it been tried before?

Mr Poots: Such a scheme is currently available in the Republic of Ireland. As I understand it, close to €100 per acre of support is available. It has been used there.

There are three particular advantages to growing protein crops. First, it increases rotation. Protein crops are good for soil in that they break it up quite well. Secondly, protein crops — for example, beans — capture nitrogen from the air. We have an issue with nitrogen deposition into our peatlands, so something that removes nitrogen from the atmosphere is positive. Thirdly, protein crops grown here will displace — I recognise that the displacement will be small — some of the requirement for the importation of grains such as soya, which are grown largely in South America, where an element of that is grown by removing rainforests. On the environmental side, there are significant advantages to growing protein crops in Northern Ireland, which is why I want to take that forward.

Mr McGuigan: Minister, thank you for the statement. It is lengthy and contains a lot of detail. I look forward to going through it in my role on the Committee and to working with you. In total, the annual CAP basic payment is £293 million and represents 79% of the total income of our farmers. Currently, that is wholly funded by the EU. Does the Minister agree that a level playing field on the island of Ireland is critical to the smooth operation of our agri-food economy and that any future policy that diverges from CAP could disadvantage our primary producers and rural communities here in the North?

Mr Poots: Anything could happen. We also could be advantaged as a consequence of moving away from CAP. I indicated that I will remove the greening requirements, which are much more applicable to large grain-growing areas in France, the east of England and so forth and are not of benefit in Northern Ireland.

Moving away from the CAP creates an obvious benefit in that respect without creating any environmental detriment. So, there will be areas such as moving away from the CAP, which was a very broad-based scheme for all of the European Union, where we will be able to make support systems for farming that are bespoke to our needs. Therefore, I believe that we can drive greater productivity and better environmental outcomes at the same time by developing our bespoke scheme, and I look forward to working with the Committee in doing that.

12.15 pm

Mr McGlone: I thank the Minister for his statement. As we are moving forward, basic payments are, of course, crucial to underpinning farm life and providing support income to farmers. With Brexit looming, can the Minister advise us what further assurances have been sought or received from the Westminster Government about additional and continuing support for farmers?

Mr Poots: We, along with other devolved Administrations, continue to raise these issues with the UK Government, so we take the opportunity at inter-ministerial group meetings to raise the issues of continued support. We continue to receive reassurances on that front, but we will continue to keep pressing the case for agriculture and the environment in Northern Ireland.

It was probably a much easier case to make pre-COVID, as there was a fair bit more money in the system, but if the UK Government has to keep borrowing money at the rate that it is — I know that other European countries are in the same position — then that is going to put pressure on every other area, and that is something that we need to be alert to. The COVID crisis is creating unsustainability with regard to the public finances. I trust that the vaccine will allow us to move on from this, but as a consequence of COVID, we are going to be left with debts that are akin to debt that would be achieved by a war. Ultimately, that could put pressures on public finances, and that could impact on us.

Mrs Barton: Minister, you said that a major part of the new agricultural framework will, of course, be an agri-environment programme. Do you foresee that the Northern Ireland Environment Agency (NIEA) and the Shared Environmental Services (SES) will work with the agricultural community in a more supportive role to enable modern and progressive farming in parallel with the protection of environmental assets?

Mr Poots: I cannot speak for Shared Environmental Services because it is paid for by councils and is independent of the Department. NIEA is responsible to us, although some Members would prefer that we have an entirely independent environmental protection agency. I suggest that the Members who look for an independent environmental protection agency look at the role of SES before considering whether that is what they really want.

In some of the more marginal areas, where the land may not be as productive for the likes of big dairy and beef farms, a lot of people have ensured the renewal of their farms through building chicken houses. If you go into many parts of County Tyrone, for example, you will see that many chicken houses have been built there, and those properties have ensured that people who have an agricultural skill have been able to stay on a farm that would not otherwise have been productive enough to keep them. Sustainability is about having a sustainable environment, economy and food production.

Therefore, on all of this, dealing with a problem is not done through the blunt instrument of planning; it is actually about tackling the issue of ammonia, which needs to be addressed. The Department is working very hard to bring forward proposals on that issue that will make a significant impact on reducing the ammonia emissions and, consequently, will negate the damage that would be done to the environment by further production.

We want to encourage further production, but we want to do it in a way that is sustainable. The Department is working towards that, rather than just saying, "This is a problem, so we will stop doing that and that will end the problem". We need to address the issues that will resolve the problem, but that will still allow sustainable food production to continue.

Mr Blair: I thank the Minister for his detailed statement. Point 13 seems to indicate a preference for a bespoke Northern Ireland agriculture Act. Given the statement by the Minister, the reality of the importance of agriculture to our economy, the particular quality of our farm product and the problem of rising ammonia levels, could such an Act be developed to deal with those issues? Are there plans in place to deal with that and, if not, could such plans be put in place?

Mr Poots: One of the problems that we have is that this mandate runs out in 2022. For any legislation to get through now is going to be particularly challenging. You have the consultation process, there is then work to do with the Office of the Legislative Counsel (OLC) in developing the legislation and then the normal process of going through the Assembly, which can take up to a year.

Whilst I would like to do an agriculture Act — that is something that is desirable — I am not sure that we will have the capacity to do it in the time frame available, particularly given that the UK has just passed its Agriculture Act. Whilst it is not perfect for us, it certainly gives us considerable cover.

I have a number of pieces of legislation that I intend to bring forward, but I do not think that I can achieve an agriculture Act in the proposed lifetime of the current Assembly.

Mr Irwin: I thank the Minister for his statement and his vision for the future of agriculture. It is

clear that the Minister has a wide knowledge of grassroots agriculture.

Minister, you said that you would look at cross-compliance penalties. There has been an issue in the past, of which the Minister will, I am sure, be aware, whereby penalties applied to farmers were appealed. The farmers went to an independent panel which, in some cases, adjudicated and supported the farmers, but the Department refused to agree to the independent panel's decision. What is the Minister's view on that?

Mr Poots: I used to find it incredibly frustrating when, having represented a constituent who, having won a case at an independent panel, received a letter from an Agriculture Minister — generally, the Agriculture Ministers were named Michelle at the time — indicating that they were overturning the decision of the independent panel. I have made it clear to my officials that I will not be overturning the decisions of an independent panel. Why have an independent panel look at these things, give an assessment of how the Department came to its point of view on what the individual who made the claim had done, arrive at a conclusion on the information presented, only then for a pen to be put through that decision? It is entirely inappropriate and I will not be doing that. I have made it clear to officials that, when an independent panel makes a decision, it is the final decision.

Mr McAleer: I welcome the statement from the Minister. In paragraph 32, the Minister made reference to a neutral solution on capping. Can you elaborate on that? I aware that, during the last CAP reform, there was a cap put on the Basic Payment Scheme (BPS), because there was a situation before that where some farmers were getting the best part of a third of a million pounds in a single farm payment per year, which works out at nearly £1,000 a day. There was then a cap put on that. What specifically are you referring to? What are your ideas around the neutral solution on capping in the statement?

Mr Poots: For 2020-21, I do not intend to change the capping that is in place, but I make it clear that I intend to change capping going forward. As we discuss these issues, I do not believe that some of the payments are appropriate. I know that some of the farms are large-scale, but, as we go forward, I would prefer to see the money spread more evenly and to see a greater proportion of farmers who are not just as large in scale receiving it. I would also like to deal with some of the hobby farming that takes place, where there is no real reliance on farming but people maybe keep a small acreage in order to engage in the hobby of farming. I want to support the people who are reliant on farming for a living, and if someone receives large amounts of money that goes into the hundreds of thousands, they are somewhat less reliant than people who operate with perhaps £15,000 of profit in a year. It is hard to feed your family and to keep a home with that sort of profitability.

Mr Gildernew: Paragraphs 7 and 8 of the statement make reference to the European Union. Given that we are still in the EU regulatory zone and, thankfully, retain full access to the EU market, does the Minister appreciate the importance of continuing to align with EU policies in order not to disadvantage our local farmers compared with farmers in the South and in other parts of the EU?

Mr Poots: On the regulatory aspect of it, the answer is yes: we will align because that is part of the protocol agreement. That is somewhat unfortunate because some of the cross-compliance things do not act to our benefit. Nonetheless, that is where we are.

Moving forward, I remind Members that, whilst the protocol kept us in the single market, oddly enough, the European Union does not want Northern Ireland to be a participant in its free trade agreements. I would challenge the European Union on that. If it wants to keep us in the single market, why should it be with second-class citizenship in that single market? If we are producing goods to exactly the same standards as the rest of the European Union, why are we not entitled to be part of its free trade agreement? We will be part of the UK's free trade agreements, but why is the European Union not doing that? I understand that the reason why it is not doing that is because there is too much work involved. I suggest that that be reconsidered, because if we are going to be part of the single market, as the EU desired and negotiated with the UK Prime Minister and as was decided by the Westminster Parliament, we should get the advantages of it, not just the disadvantages.

Mr McNulty: I thank the Minister for his statement. Thank you for educating me, Minister. I thought that "sheugh" was an agricultural slang word, but now I know that it is a real word that has its origins in Irish. Some of my more learned Gaelic-speaking friends might be able to give me more information on it.

A typical farm in south Armagh is 80 acres of land ownership with 40 acres taken and 100

head of cattle that are mixed beef suckler herd, so what were the basic payments that they received and what will be the basic payments going forward as part of your proposals?

Mr Poots: The posh word for sheugh, of course, is "drain". I thought that it was more Ulster Scots than Irish, but perhaps Patsy could educate us on that. Nonetheless, it is a good owl word that is used in the country, and people understand sheugh better than drain. Drains are very often enclosed, and sheughs are always open. Anyway.

I know the farms in County Armagh very well. I visit that area from time to time. I talk to farmers from County Armagh.

I know the land type in that area, and, ultimately, it is more suitable to suckler, particularly in its southern part, than it is to dairy. The more northern part of Armagh is probably more suitable to dairy.

12.30 pm

We are looking at how we take away the broad instrument that just gives somebody a payment and does not reflect a lot on the work that they do and at how we make that instrument one that encourages people to engage in keeping appropriate numbers of livestock for their farms and ensures that they are supported to do that.

Support for the suckler cow is key. The Livestock and Meat Commission (LMC) has put forward proposals, along with the Northern Ireland Meat Exporters Association (NIMEA) and a number of other organisations, that look at support for suckler cows, beef finishing and so forth. It is important that we throw these things open to discussion and set out an element of it that will go for that type of support. That will be removed from the basic payment and be shifted over to the other pillar, which will allow us to particularly encourage younger people to engage in farming.

I know a lot of young people who would love to farm but they do not have the land. There may be land in the family, but they just cannot make enough money to get going at it. I would love to encourage more young people to go into farming because it is a great way of life. It is a great career, but young people need to be able to put bread on the table and provide for their family if they go into it.

Ms Sheerin: I thank the Minister for his statement. He reiterated the point in paragraph 11 that he wants no farmer to be left behind. It is an unfortunate reality that many decisions that the Minister has taken this year have left a lot of farmers feeling left behind, notably the decision to stop the transition towards a flat rate, which would have allowed farmers operating below the regional average an expected pay increase of about 14%, as well as his refusal to reinstate the areas of natural constraint (ANC) payment against the wishes of the House. What specific commitments can the Minister make today to assure farmers in less favoured and severely disadvantaged areas that they will no longer be left behind?

Mr Poots: If one looks at the payment system for the scheme five or six years ago compared with where it is now, one could not describe those areas as being left behind vis-à-vis others in agriculture. Quite a lot of lowland farms are not particularly profitable, and people need to recognise that. Farming in general is not that profitable. Therefore, we need to encourage farming and farm systems to maximise the value of their product and to market their product in a way that gains the highest income. It is about us providing support to farmers to make real environmental benefits. I am open to ways of doing that, and I am happy to discuss that fully with people in the uplands. They know better than anybody how to make their land productive. I am happy to engage in qualitative discussions with folks in the uplands as to how best we can take things forward, but I do not believe that a flat-rate system benefits agriculture or a lot of smaller farms, and it is not the way forward for the future of Northern Ireland.

Mr Muir: I thank the Minister for his statement. Paragraph 31 states that:

> *"Northern Ireland's robust set of environmental laws will continue to provide protection against biodiversity loss."*

Does the Minister agree that, to strengthen those laws and to ensure proper enforcement, we need an independent environmental protection agency to be brought forward in legislation and enacted before the end of this Assembly term?

Mr Poots: I hear about independent environment agencies, and about independence in general, and then I hear Members say that the courts have not fined someone enough. I hear Members challenge the courts over their fining system all the time in the Chamber. The courts are an independent agency. I hear Members discuss Shared Environmental Services and the quality of its

planning advice, and they are critical of it in the Chamber. SES is an independent body. I often ask, "What are we elected to do?". We are elected to be accountable to the people. What is wrong with having a system through which there is accountability to the Chamber for environmental regulation? An independent environmental protection agency would not provide that. I can come to the Chamber and be held to account for the actions of the NIEA. It has a lot of autonomy, but I can be held accountable for its actions in a way that I could not be for the actions of an independent environmental protection agency.

One thing that I will be held accountable for is what I want to do for uplands. One factor that has contributed to the loss of biodiversity is decisions that were made in the past to drain areas in the uplands, which made farmland more productive there. We now know, however, that the most harmful factor of carbon capture in our peatlands is a loss of water. The reality is that we need to wet areas around those peatlands once again. One of the things that we need to do with this new scheme is support those farmers. If we are going to wet land that they are not going to be able to use productively, we need to support them financially for the environmental benefit that will be created by wetting the peatlands once again. That is an important piece of work. I am happy to be held accountable for those things. I do not believe that that would be the case if there were an independent environmental protection agency. It would add another layer, but, ultimately, it is for the Assembly to decide.

Mr Lynch: I thank the Minister for his statement, which referred to an integrated and responsive supply chain as one of his desired outcomes for future policy. In the absence of an effective Groceries Code Adjudicator (GCA) and legislation guaranteeing minimum farmgate prices, can you seriously deliver that outcome?

Mr Poots: I agree with the Member that the Groceries Code Adjudicator is not particularly effective. This year, on the back of COVID, there has been a noticeable switch, with more people buying their own produce than eating out. That demonstrates to me that perhaps the grocery supply chain is not the worst problem that we have, albeit the big supermarkets have massive buying power. The public are quite discerning, however, and they like food that is produced locally when they are shopping in supermarkets. You do not have the same opportunity to do that if you go out to a restaurant or a cafe.

There has been a tremendous movement towards buying local. Local butchers' shops and vegetable shops and so on have been doing well throughout COVID, because people have wanted that reassurance. I therefore want to build on the fact that people know that food that is grown in their own country is generally food that is grown to a high standard. If I import chicken from some of the places in the world from which we are importing it, I do not have the same assurances that the standards are the same as they are here. People talk about chlorinated chicken. The problem is not with the chlorination of the chicken but with the fact that there is considerable salmonella in the chicken. That means that the chicken needs to be chlorinated in the first instance. The reason that there is considerable salmonella is that the stocking rates for the houses for those chickens are far higher than they are here. As a consequence, they produce chicken more cheaply, because the stocking rates are higher, but it is not of the same quality as what is produced locally. We need to be absolutely certain that the public know that what they are buying here is produced to the highest possible standards in eating quality, provenance, traceability, food miles and environmental impact. I believe that, in Northern Ireland, we can produce a product that ticks the A* list on every front. If we can just introduce a few more measures, we will be top rate for every aspect of our food production.

Ms Armstrong: Minister, as you will know, I am from the Ards peninsula, and one of the areas that is extremely important to me is the work of the Ards peninsula coastal erosion group, on which a number of your colleagues work. Earlier today, regarding climate change adaptation, you talked about:

> *"identify and share information on best practice regarding community and private-sector engagement on climate adaptation, governance models".*

Has there been any discussion on coastal management? We have a situation at Anne's Point, outside Greyabbey, where the reclaimed land has been breached. The lough has come in and basically poisoned it. You can see that the trees are dead now. Is there anything on that modelling and governance? For instance, has taking away the Bateman principle and bringing something new on board been discussed?

Mr Poots: While coastal erosion is not part of my statement, it is a very important issue. County Down has a much softer landscape

than County Antrim, which has considerable amounts of basalt and so forth. At Portstewart, I always remark on those rocks that have withstood that battering year after year after year. County Down does not have as sustainable a coastline in that respect.

We take coastal erosion very seriously. I am looking at LiDAR mapping all of Northern Ireland. That will involve our coastlines and will be a huge source of information. I want to work with the Department of Finance, which has its own plane, on that, and it will give us a huge amount of information. I want to do it in conjunction with soil analysis, testing every field in Northern Ireland, which will lead to our having a much greater understanding of the nutrient requirements in Northern Ireland as we move forward on an environmental front. I want us to do considerable work on slurry separation and on the pelletisation of phosphates, because we have too much phosphate. Instead of that going onto our land and ultimately into our waterways, it becomes a marketable product to other parts of the world that are phosphate-deficient. We need to look forward to all those things. We cannot stand still. We cannot do everything in the same way for decades and expect the same results, because the world is moving on. Things are changing, and ultimately we can do things that will be not only of considerable environmental benefit but of financial benefit. We need to delve into those areas and ensure that we can support farms and agricultural producers as they move to these schemes.

Ms Bailey: On the issue of the quality of our local food, we should be cognisant of the fact that people will buy the food that they can afford. Given the economic ramifications of the crisis that we are in at the minute, we need to be careful that the potential for cheaper imports to be within the budget of people here does not allow our good quality to be the major export for other markets. That brings me to your response to Ms Sheerin's earlier question. I hope that you can give us a wee bit more detail on the support schemes to provide opportunities for all farmers. Are you thinking, for example, of specific measures to address farm poverty and the decline in farmgate prices? I ask that because I heard a story from a farmer, who told me that, just two years ago, he invested a £500,000 loan into a new hen laying unit, and he —

12.45 pm

Mr Deputy Speaker (Mr Beggs): The Member has asked her question.

Ms Bailey: — had planned to take 10 years to pay that back and take a £15,000 salary for himself.

Mr Deputy Speaker (Mr Beggs): The Member has asked her question.

Ms Bailey: A neighbour's son worked in a local factory and earned more for the same —.

Mr Deputy Speaker (Mr Beggs): Order. Will the Member come to a conclusion with her question? It is meant to be a short introduction and a question.

Ms Bailey: OK. That was my question. Are particular efforts being made to really get stuck into addressing the disparity in farm poverty?

Mr Poots: Yes, the Member raises that specific case, and that is the sort of investment that is very often required to be sustainable in modern farming. You are looking at investments of hundreds of thousands of pounds just to create something that is viable and produces a way forward. Profitability is key, and how we support our agriculture sector in being profitable is much more important than support packages, because that is how people want to make their living. Where possible, they do not want to be dependent on government handouts. They want to make the money themselves. People who are working extremely hard every day deserve to have a good income on the basis of their hard work. We want to provide a means of ensuring that agriculture remains sustainable, and having an envelope of close to £300 million is a huge asset to us. How we spend and utilise that is incredibly important in ensuring that we get to the point where people are productive in bringing in their own finances.

Mr Allister: I generally welcome the Minister's statement. I am sure that it is a great disappointment to the many doomsayers, some in the House and some outside, who told us that, after Brexit, there would be no farming and no money because the cash cow of the EU would be no more. What a lot of nonsense that was.

I generally welcome many of the things in the statement, particularly the end to greening, but I notice the pledge that no farmer will be left behind, so I ask the Minister this: when it comes to the application of the environmental policies, can he ensure that that happens? For example, he has talked to the House about introducing a requirement for injection-only slurry spreading. There are many small farmers who will never be able to afford the equipment for that, so, in

adjusting those policies, will he, please, bear in mind that no farmer should be left behind?

Mr Poots: I accept what the Member says. Whilst we are moving towards that, and there are very clear environmental benefits from it, there are also agricultural benefits in that there is greater utilisation of the nutrients that are applied to the land and less loss to the atmosphere as a consequence. On particularly steep land, that can be more challenging, and those are issues that we will need to address going forward. Many small farmers will, of course, use contractors, and whilst the contractors have a significant charge per hour for the utilisation of such equipment, they do an awful lot of work in a very short time, so it very often pays better to bring in someone else to do it as opposed to having your own equipment. Nonetheless, the Member raises a valid point. We must ensure that we create schemes and systems that are not punitive but ensure that we can assist the environment at the same time as encouraging good farm practice so that it does not lead to a situation where engaging in that becomes unaffordable for people.

Mr Dickson: Thank you, Minister. I have been listening to the debate this morning, and I have some concerns and interests around the future of the agricultural policy, as you described it in the statement, particularly around the areas of resilience, increased productivity, environmental sustainability and improved resilience. How do you believe that that can be achieved without the support of the European Union, without the ability to sell goods into the European Union, if that becomes a difficulty and a Brexit deal cannot be done, and, indeed, without the support of the common agricultural policy?

Mr Poots: Whilst there are many disadvantages to the protocol, there is one advantage in that we have access to the single market. So, selling to the European Union going forward is not an issue; it is not a problem. Northern Ireland, of course, will have full access to sell to the UK market, which is the strongest market anywhere in Europe. It is the strongest market for beef, for example; it pays a higher price for beef than anywhere in the European Union. We will have access to the UK market, which takes over 50% of our product. The European Union takes around 25% of our product, and the rest of the world takes the other 25%. I am confident that we will be able to utilise and sell well into those markets.

I made reference to the European Union free trade agreements. It is somewhat incongruous that, whilst the European Union is keeping us in the single market and we then have to apply all the rules of the single market, it did not seek to benefit us with the free trade agreements that it is settling with other people. The European Union clearly wants to keep Northern Ireland locked in in many aspects but not in the advantageous aspects. It should reconsider that. I know that it involved work for the European Union; nonetheless, either it plays fair or it does not play at all.

Ms Bradshaw: Thank you for your statement, Minister. Can you please outline how the environmental plans contained in it integrate with payment plans and if any transition is required? Further to that, what conversations will you have with the Department of Finance? Obviously, there is a lot of learning from efforts to get the COVID payments and business support grants out.

Mr Poots: Two issues. On the environmental plans, this was a formative statement that wants to open up a debate as to how best we can do things and how we can better utilise this £300 billion package to support production and the environment. In some areas, farmers will benefit more from environmental aspects than the production end. Whilst farmers would prefer to be engaged in production, for most of them, the bottom line is what really matters. We will focus very heavily on ensuring that we get better environmental outcomes from the money that we invest in single farm payments.

Mr Deputy Speaker (Mr Beggs): The Business Committee has arranged to meet at 1.00 pm. I propose, therefore, by leave of the Assembly, to suspend the sitting until 2.00 pm. The first item of business when we return will be questions to the Minister of Justice.

The sitting was suspended at 12.53 pm.

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

2.00 pm

Oral Answers to Questions

Justice

Anti-stalking Legislation

1. **Mr Durkan** asked the Minister of Justice whether she is on target to introduce a protection from stalking bill to the Assembly in November or, at the latest, early December 2020. (AQO 1112/17-22)

6. **Mr Stalford** asked the Minister of Justice when she plans to introduce anti-stalking legislation. (AQO 1117/17-22)

Mrs Long (The Minister of Justice): Thank you, Mr Deputy Speaker. With your permission, I will answer questions 1 and 6 together. I am committed to ensuring that the law provides the most effective protection for victims of stalking and that it is progressed as a matter of urgency.

I have met with victims of stalking and heard of the horrendous experiences to which they have been subjected. I want to ensure that victims of this insidious crime will be able to get the justice and protection that they so desperately need and deserve. That is why I am pleased to report that the drafting of the protection from stalking Bill is nearing completion, and my intention is to introduce the Bill to the Assembly in December. This stand-alone Bill focuses on introducing a specific offence of stalking and includes a provision for the introduction of stalking protection orders, which will offer victims of stalking immediate protection from the perpetrator.

Mr Durkan: I thank the Minister for her answer. I am delighted to hear of the progress that she is making on the drafting of the Bill. Will the Minister outline to the House her vision of what the central components of such legislation should be?

Mrs Long: First, as I said in my original answer, the intention is that there will be protections for victims of stalking and that those will be included in the Bill. The intention is also that the definition of stalking will be clarified in law. At the moment, as you know, there can be issues with the ability to use harassment laws to prosecute stalking behaviour. This would, I think, set a clearer course by defining a more specific offence of stalking. It would also offer protections, meaning, for example, that it would lie with the PSNI to take forward a stalking protection order rather than the individual having to seek a non-molestation order, which, as most Members recognise, can be challenging.

Mr Stalford: I welcome the fact that the legislation is due to come forward in December. Every person should be free from stalking or harassment. The Minister will know that a crucial element of any such propositions that make their way to the statute book is having a sufficient budget available to allow speedy access to justice. Has the Department estimated what the financial requirement will be to ensure the implementation of this welcome legislation?

Mrs Long: I thank the Member for his question. The issue here is, I think, not one of creating new duties and obligations, which would lead to increased costs. The issue is improving access to law where current access is difficult: for example, by using the harassment provisions that are already in statute. We do not anticipate that there will necessarily be huge costs. One of the issues in delivering this is that, as things stand, when people seek protection from harassment, it can often lead to very complicated and protracted court cases. Simplifying the offence should make it easier for people to get the protections that they need.

There will, of course, be some transfer of responsibility, because the financial obligations of seeking a non-molestation order lie with the person who applies. Whilst applicants may be able to get some assistance through legal aid, depending on their means, this would then fall to the PSNI. That is one of the issues that we will look at when considering how we will budget. We do not anticipate a significant increase in cost.

Ms Dillon: The Minister has highlighted some of the issues that are of greatest concern to us. She spoke about the harassment and intimidation legislation that is available at the moment. We know that the sentences for those offences can be quite lenient. Can the Minister give some assurance that the sentences related to the stalking Bill will reflect the seriousness of the crime?

Mrs Long: It is absolutely crucial that they do. The Member, as a member of the Justice Committee, will have the opportunity to scrutinise the sentences when the Bill comes

forward. Indicative of where we are heading is the fact that we intend our stalking offence to be quite similar in structure to the model that applies in Scotland. That model was introduced in 2010.

Therefore, we will have an opportunity to inform policy here through the experience of Scotland.

Ms Bradshaw: Minister, given that Northern Ireland will be the only jurisdiction in the UK with its own stand-alone stalking Bill, how will our offence compare with those in the other parts of the UK?

Mrs Long: It is important for us to seek to build the most robust preventions for stalking that we can in legislation, and we do that by comparing what other jurisdictions already have in statute. From our perspective, this is one way of making sure that our provisions will be more robust, but I am also introducing it as significant but stand-alone legislation. There was the option for us to incorporate it, for example, in the Domestic Abuse and Family Proceedings Bill that is going through the House today. However, two issues with that caused me some concern.

The first is that it conflates domestic abuse and stalking. Not everyone who is stalked is a victim of domestic abuse. In fact, often stalkers have got nothing to do with the domestic setting and have no prior relationship with the individual who is stalked. That is a very important in terms of clarity for the public. It also would have risked stalking not being given the adequate attention that it needs to be given in order to be properly scrutinised by the Committee. Creating a stand-alone offence also allows us time to ensure appropriate training for the justice agencies that will have to implement and deliver it once the offence has been created.

Fireworks

2. **Mr Allen** asked the Minister of Justice to outline the number of illegal fireworks that have been seized in each of the last four years. (AQO 1113/17-22)

Mrs Long: The seizure of illegal fireworks is an operational matter for the PSNI and the Chief Constable. The number of incidents in which the PSNI have seized fireworks over the last four years is as follows: 148 in 2016-7; 120 in 2017-18; 129 in 2018-19; and 149 in 2019-2020. The number of fireworks seized in each incident is not counted.

The law is clear on the purchase, possession and use of fireworks. A licence is required to buy, sell or use fireworks. It is an offence to buy or sell fireworks without one. I encourage anyone who has any information about the sale of illegal fireworks to report it to the PSNI or the charity Crimestoppers.

Dr Aiken: I thank the Minister for her answer. Minister, I appreciate that you have pointed out that it is an operational matter for the PSNI. However, I, and I am sure many other Members, continue to be contacted by constituents who are raising concerns about the illegal sale of fireworks. It is important that, where people do have information, they pass that on to the PSNI.

We have also seen in the media recent examples of the dangers of fireworks. What engagement have you had with Executive colleagues about educating and highlighting to our young people the dangers of fireworks?

Mrs Long: I thank the Member for his question. To date, I have had no proactive interaction personally with Executive colleagues on this matter. However, I am aware that Belfast City Council, at the request of one of my colleagues, is now taking forward public education about fireworks and on better educating people about the law. That was passed by Belfast City Council's policy and resources committee on 24 January. The council also has a role in developing community strategies through the PCSPs and others to address those issues.

Ms Rogan: My question has been answered.

Mr McGrath: Given that councils and the police carry out a role, I urge the Minister to deliver some sort of policy or overarching strategy to manage this issue. In my constituency, in the Flying Horse and Model Farm estates, from as much as eight to 10 weeks before Halloween, fireworks are being thrown at people and cars. People are being tortured. We need to do what we can to stop the number of fireworks well in advance of Halloween. If it needs an inter-agency approach will the Minister consider that?

Mrs Long: Yes, of course. I am happy to consider any approach and to work with Executive colleagues to address the issue. I was simply making Members aware that the PCSPs and the councils are, in some cases, already doing quite substantive work on community information.

It is an issue that I recognise as serious. I know that, from my Department's point of view, the law is robust in this regard. However, part of the

issue, as Mr Allen said, is that we need to get information to the PSNI about where fireworks are being bought and sold illegally, because that would make a huge difference.

However, there are things that central government could do. For example, lower-noise fireworks can be produced. We know the distress that fireworks can cause to young children, to pets and to people with sensory issues. It is incredibly important that all avenues are pursued when looking at the issue of fireworks, including keeping people safe and free from harm and abuse.

Members will be aware that we are reviewing our position on antisocial behaviour, and illegal fireworks are obviously one element of antisocial behaviour that needs to be considered.

HMP Maghaberry: Care and Supervision Unit

3. **Mr Chambers** asked the Minister of Justice how many prisoners have been placed in the care and supervision unit at HMP Maghaberry for more than 10 days in each of the last three years. (AQO 1114/17-22)

Mrs Long: In 2017, 126 prisoners were held for more than 10 days in the Maghaberry care and supervision unit (CSU); in 2018, 145 prisoners; and, in 2019, 158 prisoners. Some of those prisoners may have been held in the unit on more than one occasion. The figures need to be taken in the context of the number of people committed to Maghaberry prison in those years. In 2017, 3,083 people were committed; in 2018, the number was 3,224; and 3,344 in 2019.

The Northern Ireland Prison Service takes its responsibility for the safety and well-being of all the people in its care very seriously. Care and supervision units play an important role in our prisons as places where individuals can be kept apart from the general population in the interests of good order and discipline or for their own protection or the protection of others. They also provide an environment for tailored care and interaction planning, partner agency engagement, signposting and referrals to assist in addressing underlying issues leading to harmful behaviour.

An individual may be placed in the CSU as a result of breaching prison rules, including engaging in harmful behaviours, violence, disruptive, aggressive, or antisocial behaviour, as well as drug seeking, taking or trafficking. Every case is considered individually, and there is a stringent and transparent process in place to manage and review all cases. The Independent Monitoring Board is also advised when a person is placed in the CSU. Prisoners are held in the CSU only for such time as is considered absolutely necessary, and the initial period of restriction will not exceed 72 hours. Any request to extend that time will be recommended only after a multidisciplinary case review, chaired by a governor, and will include the individual concerned. The request is considered by an authorising officer from outside the prison, who will interview the prisoner as part of the process, should there be a recommendation for extension. All cases are reviewed weekly through the CSU manager's weekly assessment, which allows for any application to be ended if the circumstances change.

Mr Chambers: Thank you, Minister. I welcome the fact that the Criminal Justice Inspection (CJI) will now conduct a review of care and supervision units. It is a shame, however, that it took an article in 'The Detail' to begin such a review. Can the Minister tell us why the number of prisoners held in care and supervision units has increased from 585 in 2015 to 755 in 2019?

Mrs Long: Yes, I can. As the Member will know, the prison at Maghaberry had a very poor record. It was once referred to as the most dangerous prison in Europe. As a result of very hard work by the Prison Service to keep its officers, and the general prison population, safe, the use of CSUs was introduced. This was not, by the way, as some, including 'The Detail', have said, solitary confinement. It is not solitary confinement. People in CSUs still have access to other individuals, they still get exercise outdoors, they still have access to the gym, they still have access to the health trust, and they still have prison visits. This is not, by any stretch of the imagination, solitary confinement.

I correct the Member: the Criminal Justice Inspection has inspected Maghaberry prison, including the CSU, on a number of occasions and has given it a clean bill of health, as it has in every other prison.

We have not invited in the Criminal Justice Inspection in order to placate those who say that the prison is not well run.

We asked it to come in because we are confident that its report will show that the article that suggested that that is akin to people being held in solitary confinement is inaccurate. That is also reflected in the comments of the current Prisoner Ombudsman, who has visited the

CSU, as have I. I assure Members that I would not tolerate people being held for long periods in solitary confinement.

2.15 pm

I have witnessed the work of the CSU and the dedication of the officers who work in it in trying to turn around prisoners who not only have very complex needs but are incredibly dangerous to themselves and other members of the prison population. If we are to rehabilitate people, it is important that the context enables us to do so as best as we possibly can. A disruptive prisoner in the main prison fails to allow the normal prison regime to continue and to rehabilitate other prisoners. It also means that we cannot tailor on a one-to-one basis the rehabilitation support that is provided to individuals in the way that we can in the CSU.

Ms Dolan: I welcome the announcement of the CJINI review of CSUs across the North. Will the Minister indicate a time frame for the completion of that review?

Mrs Long: I will have to write to the Member with more information on that; I do not have the time frame in front of me. However, it is intended to be a short, sharp review because CJINI has visited all the CSUs, quite recently, when doing the normal prison reviews.

Mr Catney: What programmes are in place to support those with poor mental health who are referred to the care and supervision unit?

Mrs Long: There are a number of options for dealing with people in the care and supervision unit. There are distraction packs, there is support and signposting to mental health, and there is one-to-one work between the prison officers and the individuals in the CSU. People need to be realistic: we are dealing with a very complex prison population, some of whom have multiple needs that have not been addressed before they arrive in prison. Not all of those individuals are easy to work with. They are often violent offenders or have complex issues. We have to protect our prison staff and other members of the prison population from the risks at which they would be placed. We also have a duty of care to the individuals who have complex needs to ensure that they are not a harm to themselves. I have witnessed, in my discussions with the Prison Service, some of the drugs that people try to bring into the prison system secreted in their body. If those drugs were to make it into the main prison system, there would be carnage for not just prison officers but other prisoners. People have to be held in a dry cell so that those drugs can be retrieved. That, unfortunately, can take a protracted period due to the intimidation and threat that many of those drug mules are under to bring those drugs securely into the prison. Therefore, it is often for their own protection that they are held for longer than we would ideally like; that ensures that those drugs do not make their way into the main prison population. Those are not minor issues; significant hauls of drugs are caught in the CSU.

There are also those with mental health issues. As the Member, quite rightly, said, they need additional care and therapeutic support. I have been hugely impressed by the work of the South Eastern Health and Social Care Trust in how it engages proactively on mental health in prisons generally and how it works with those with very complex needs in the CSU environment.

Miss Woods: Minister, you will be aware that I have been asking lots of questions about CSUs for some time now. I agree that it is a complex issue. Surely the situation with drugs supports the need for body scanners to be implemented in our prisons to weed out the ones who are carrying and those who are not. The Independent Monitoring Board (IMB) was mentioned. It plays a crucial role in inspecting CSUs, monitoring their use and speaking to prisoners, but its volunteers' work is often hampered by their not having remote access to communications facilities; they have to travel to Maghaberry to pick up an email. Minister, when will your Department provide volunteers with adequate, secure, remote IT systems that will assist their work, especially in the context of COVID-19 and your recently announced review of CSUs?

Mrs Long: I am happy to look into the issue and come back to the Member with a time frame. I have to say, however, that it is not just the Independent Monitoring Board that monitors CSUs. As I have already said, CJINI has looked at them. They were also recently described as an example of international best practice by the International Committee of the Red Cross (ICRC). CSUs are therefore thoroughly supervised and scrutinised. I am more than happy, however, to increase that scrutiny, because that is in everyone's interests and prevents a misunderstanding about what happens in the prison system.

Review of Civil and Family Justice

4. **Miss McIlveen** asked the Minister of Justice for an update on the implementation of

recommendations from the review of civil and family justice. (AQO 1115/17-22)

5. **Mr Buckley** asked the Minister of Justice for an update on the implementation of the recommendations outlined in the Gillen review report. (AQO 1116/17-22)

Mrs Long: With your permission, Mr Deputy Speaker, I will answer questions 4 and 5 together, please.

The review of civil and family justice is being considered as part of an evolving civil and family justice modernisation programme, which is one of a number of reform initiatives that are being progressed by my Department. Consideration of review recommendations is in itself a significant undertaking. Collectively, the reports contain around 400 wide-ranging recommendations, which vary from minor technical and procedural issues to substantive reforms.

Not all of the recommendations are for my Department. Around two thirds are matters for the judiciary, the legal profession and other Departments. Of the areas that fall to Justice, I want to ensure that my Department prioritises those that are likely to generate the greatest benefits for our citizens. We have made good progress, including the additional protections for vulnerable court users that are being introduced through the Domestic Abuse and Family Proceedings Bill, and a joint action plan that is being developed with the Department of Health to improve outcomes for families involved in private family law proceedings. That represents a good start. Clearly, however, more needs to be done. I am working with my officials to prioritise future actions within existing resources.

Miss McIlveen: I appreciate the Minister's response. The review reports were published in 2017. Has the Minister costed the recommendations that fall within her remit? A number of the recommendations contain a raft of proposals, which include greater digitalisation and use of modern technology. Given that, with the onset of COVID, the use of technology for virtual court hearings has increased, what steps will the Minister's Department take to enhance the use of technology during the pandemic and beyond?

Mrs Long: As I said, we will have to deal with the Gillen review as we deal with most issues, which is on the basis that we must live within existing budgets. Unfortunately, that is the stark reality that faces the Justice Department and many other Departments. That is likely only to become more of a challenge after the COVID crisis, because I suspect that the Treasury will now look at how it recovers some of the expenditure that it has been forced to use over the past number of months. It is a stark reality, and it does, of course, hamper what we are able to do.

On the particular issue of the use of technology, however, I have to say that that has been a good outcome from COVID, and there have been very few of those. Necessity has been the mother of invention. Instead of there often being resistance from people in the justice system to the use of remote technology, there has been a willingness to engage on that issue in order to ensure that the courts are competent and able to continue to deliver justice over the period. It is certainly my view and that of the Criminal Justice Board, and also, I believe, the view of those who are involved in civil proceedings, that we capture the benefits that we have gained from the development of technology as a result of COVID and ensure that those benefits are embedded in the system going forward.

Mr Buckley: I am sure that the Member for Strangford will agree with my question, as great minds think alike. I know that the Minister will agree that urgent action is required, given the seriousness of the issue, the length of time since the Gillen review and the fact that some of its important recommendations will require specific legislation. Can she give us an absolute guarantee that she will bring the miscellaneous provisions Bill to the House before the end of the mandate?

Mrs Long: Over the past week, I have said many times, although for different reasons, that it is impossible to give guarantees, because none of us can see into the future. Standing here, however, with the longest view that I have, I can certainly give the Member my guarantee that I will do my best to get that miscellaneous provisions Bill to the Committee. My Department is on track to do that. I would hope to have the Bill with the Assembly and Committee early next year, probably, in March. I cannot give cast-iron guarantees, however, because I do not know what will happen.

I want to mention the issue of cost, because it was raised by the Member's colleague. There is also a saving to the justice system if we are able to use remote technology, because, although it requires upfront investment, it saves us money in other places. There is the opportunity for us, within our means, to recoup some of the money that we spend, for example, on transporting people around the countryside

for hearings that are then adjourned. We have seen new and more agile ways of working, such as an adjournment now being done on an administrative basis prior to a person's attendance at court. All those things have been long overdue, and, if COVID has delivered them, we need to embed them as part of the system.

I agree with the Member that there is an urgency. However, not all the issues require legislation. I want to reassure him of that. There are many issues where it is about procedures and practice. What we will try to do, through cooperation and collaboration with the other justice agencies, is to ensure that we have the best possible practice in place in order to minimise delay as we take forward those recommendations.

Mr Deputy Speaker (Mr McGlone): I call Seán Lynch for a question.

Mr Lynch: The Minister has answered my question.

Probation: Politically Motivated Offenders

7. **Mr Beattie** asked the Minister of Justice to outline the work done by the Northern Ireland Probation Board in dealing with politically motivated offenders within the community. (AQO 1118/17-22)

Mrs Long: The term "politically motivated offender" is not used to describe any specific cadre of offender released on licence in our community. On 8 September 2020, under my direction, the Department introduced multi-agency review arrangements to support the classification and management of the risks posed by individuals considered to be terrorist-related offenders. Those arrangements provide a platform for the Probation Board for Northern Ireland (PBNI), the Police Service of Northern Ireland, the Prison Service and officials in the Department to work together for that cadre of offender in order to give effect to the purpose of licence supervision: namely, to protect the public from harm; to reduce reoffending; and to support the rehabilitation of the offender.

Once classified as a terrorist-related offender, individuals will be required to apply through the interim arrangements to secure approval to change address in Northern Ireland and/or the rest of the United Kingdom; to travel to other jurisdictions in and/or outside the United Kingdom; and to resettle permanently outside Northern Ireland.

The Probation Board for Northern Ireland is an integral partner in those arrangements. Probation contributes towards decisions surrounding the classification of individuals as terrorist-related offenders and considers and advises on the potential impact on resettlement and social welfare support relating to decisions surrounding change of address, travel or permanent resettlement.

The interim arrangements provide a basis for relevant information to be shared across justice organisations to enable balanced decisions to be reached that contribute towards protecting the public from harm while supporting the resettlement of the offender into society.

Mr Beattie: I thank the Minister for keeping me right on the terminology. I noticed that I had that wrong. I was calling them "politically motivated offenders", but they are "terrorist-related offenders".

Given that the Probation Board, which provides a fantastic service, finds itself in difficulties when it comes under threat from terrorist organisations, meaning that it has to withdraw its services from certain parts of Northern Ireland, what are we doing to future-proof that so that it does not happen and to ensure that the Probation Board can do its job in areas where threats may exist?

Mrs Long: The Member makes a very important point. Anyone who works in our justice system can face threats and intimidation from terrorist offenders. The reason that I use "terrorist offenders" as opposed to "politically motivated offenders" is that I simply do not accept that those people have political motivation. I think that they are motivated by self-interest and abuse of their community, so I do not think that we should give any traction to the view that they have political ambitions or that political ambitions are in any way a cover for their offending.

Prior to the arrangements that we introduced in September through the multi-agency review approach, the Probation Board was already engaging with terrorist-related offenders to provide resettlement and welfare support. The Member is, of course correct: due to threats and intimidation, that became very difficult. The Probation Board is good at its job, because, unlike in other parts of the UK, its staff are all qualified social workers, so their focus is on rehabilitation and social support, and, because they are from and live in the communities where they manage offenders, they are passionate about doing the job well. Their job does, however, perhaps make them more vulnerable

to some who would rather their activities were not supervised when they leave prison.

In any event, for terrorist-related offenders, licensed conditions that support public protection have been monitored by the Police Service of Northern Ireland. In addition to that, we are increasing the use of electronic monitoring to enhance measures to protect the public from the risk of harm posed by terrorist-related offenders. I hope that the robustness of the new arrangements will allow us to do that in a much more effective and equitable way.

2.30 pm

Mr Deputy Speaker (Mr McGlone): That ends the period for listed questions. We now move on to 15minutes of topical questions.

Definition of "Harm"

T1. **Ms Sugden** asked the Minister of Justice to give her assessment of the need for a definition of "harm". (AQT 681/17-22)

Mrs Long: Mr Deputy Speaker, I must apologise. I did not hear the Member's question.

Ms Sugden: My apologies. Will the Minister give her assessment of the definition of "harm" in law?

Mrs Long: Without further information as to exactly what the Member is asking, it would be very difficult to answer her question because I am unclear as to the premise of it.

Mr Deputy Speaker (Mr McGlone): Perhaps the Member would use her supplementary to clarify.

Ms Sugden: I will. I am thinking, Minister, of one of the amendments tabled by Mr Jim Allister in respect of harm versus action, and harm tends to be something that is felt by the victim but there is not necessarily any definition within law. Might it be useful for this law, and, indeed, others, to work towards creating a definition for "harm", or maybe an index?

Mrs Long: The purpose of the Domestic Abuse and Family Proceedings Bill is to criminalise the actions, not the impact, of the person's abusive behaviour. If we try to criminalise impact, that becomes very difficult. For example, you would then be saying that it was not an offence to drive your car without wearing a seatbelt or while intoxicated provided that no damage was caused. That would be a dangerous course of action.

Of course, harm is a consideration when it comes to sentencing, but it is the intent to commit an offence and the recklessness with respect to the harm that is likely to be felt by others that we are trying to capture in the Bill, criminalising not the impact but the behaviour.

Northern Ireland Policing Board: Mr Gerry Kelly MLA

T2. **Mr Chambers** asked the Minister of Justice, who will be aware that the Northern Ireland Policing Board has exhausted its investigation of Gerry Kelly's outrageous tweet about the Maze escape without reaching a conclusion and that it now falls to the Minister to decide whether to remove him from the board, whether she agrees that public confidence in the board is the most important consideration in her determination. (AQT 682/17-22)

Mrs Long: I am indeed aware that that has been exhausted by the Policing Board, and that they have taken a look at whether or not — as, under their procedures, they should — informal resolution could be reached. No complainant was willing to seek an informal resolution. That is what exhausted the processes of the board.

I said at the time that I found Mr Kelly's comments offensive and thoroughly inappropriate. I asked that he reaffirm his commitment to non-violence and exclusively peaceful and democratic means, consistent with his responsibilities as a member of the Policing Board and a Member of this legislative Assembly.

When the incident occurred, I took the view that any investigation into whether Mr Kelly was in breach of the Policing Board code of conduct was for the board to consider in the first instance. That investigation by the board has now concluded without resolution and has been referred to me for consideration under the powers available to me in the Police (Northern Ireland) Act 2000 to remove a member from the board.

I am considering, based on legal advice, what action I should take. I am not in a position to comment further at this time.

Mr Chambers: The Minister has alluded to the fact that, under the Police (Northern Ireland) Act 2000, if someone is "unfit to discharge his functions" as a member of the board, she has the power to remove them. Given his tweet, and

the earlier well-publicised use of bolt cutters to remove a legally placed wheel clamp from his vehicle, in what way does the Minister think that Mr Kelly might be fit to continue as a board member?

Mrs Long: I refer the Member to my previous answer.

Prisons: Centenary of Northern Ireland

T3. **Mr Butler** asked the Minister of Justice, after thanking her for her recent work with prison staff, whether she has had discussions with the director general of the Northern Ireland Prison Service with regard to marking the centenary of Northern Ireland. (AQT 683/17-22)

Mrs Long: No.

Mr Butler: I thank the Minister for her answer. Would the Minister just give a commitment to open a line of discussion with the director general, perhaps marking the occasion with a medal, for those who want a medal, and seek to ensure that the Prison Service is in line with other emergency services for the Platinum Jubilee medal?

Mrs Long: I am happy to talk to the Member outside the Chamber and get more information on what it is he requires. However, I remind him that the first duty of the director general is to ensure that prison officers and those within his care are kept safe. At the moment, there are considerable pressures in the prison system given COVID and a number of other developments, so I think that we have to prioritise our actions over the next while. However, I am happy to discuss with the Member and see whether there is an appropriate way forward.

Legacy Funding

T4. **Mr McHugh** asked the Minister of Justice, given the Finance Minister's confirmation that there is £5 million ring-fenced for legacy, whether she can confirm what it will be used for. (AQT 684/17-22)

Mrs Long: My understanding is that there is some confusion around this issue. There is an amount for legacy that has been ring-fenced for the inquests that were agreed. There may also be additional legacy funding through the work that is done by the Police Ombudsman and by the police in their work on legacy litigation. At this stage, we are working with the Police Ombudsman on an outline business case that she has presented to us, and we will work through the normal processes in that regard.

The issue of legacy, however, is much more complex. Because the Secretary of State has unilaterally changed the proposals from the Stormont House Agreement around legacy and provided no certainty or clarity as to what will happen next, the money, for example, that was set aside as part of the NDNA commitments, which in total would have reached, I think, £250 million, is not accessible to my Department to deal with legacy issues as it is ring-fenced specifically for setting up the structures of the Stormont House Agreement. I have written to the Secretary of State about that, and I have flagged up with the Department of Finance and will continue to do so the particular pressures and uncertainties that face my Department's budget in respect of legacy matters.

Mr McHugh: Quite possibly, you may have answered my supplementary question in your response. I intended to ask you when a business case would be submitted for this money by the Department of Justice. I would not say that it seems clear; I am a wee bit confused as to who might be submitting the business case.

Mrs Long: To clarify, the business case would come from the agencies that are dealing with those particular pressures, and it is the job of my Department to first interrogate the robustness of the business case and then to pass it to the Department of Finance once we are satisfied that it meets the test. Even when the business case is approved by the Department of Finance, that is not a guarantee that we will be successful when we bid for money from the Department of Finance for those issues. It is a challenge, and we have to be honest about that. I also have to say to Members that the challenges that face the Department and the potential costs of dealing with legacy in a piecemeal way will far exceed £5 million.

Prisons: Security

T5. **Mr Easton** asked the Minister of Justice, with 164 weapons having been found in our prisons over the past five years, what actions she is taking to make sure that our prisons are secure and our prison officers well protected. (AQT 685/17-22)

Mrs Long: Based on the conversation that we had earlier around care and supervision units and other things, it is very clear that we are

taking every measure possible to ensure that our prisons are safe. Often, those weapons are found as a result of the hard work of the Prison Service to identify those who either bring weapons into the prison secreted on their person or, indeed, those who fashion weapons within the prison system from materials that are available to them. We do work with complex and often very violent offenders in some of those cases, so we do have to be acute to the risk that they pose to themselves, to other prisoners and to the Prison Service.

I have to say that I am hugely impressed. One of the greatest pleasures of this job is to spend time in our prisons. That may sound like an odd thing to say, but I have the luxury of knowing that I will leave at the end of my visits and that my visits are quite short. I have been hugely, hugely impressed by the work of Prison Service. The dedication and the passion that they have for rehabilitation is second to none, and I really wish that more Members had the ability and the space — it is unfortunate with COVID — to see up close what goes on within our prisons because it is truly remarkable.

Mr Easton: I thank the Minister for her answer. Another worrying statistic is that 453 items of drugs have been found in our prisons over the past five years. Is there cooperation between the PSNI, the Prison Service and your Department to try to close down those avenues of drugs coming into our prisons?

Mrs Long: Yes, it is a real concern, and, obviously, when those drugs make their way into the prison system, they cause huge disruption to it. They also cause huge danger because, often, those illicit drugs could lead to deaths in the prison system, and they could trigger underlying mental health conditions and a whole host of other things. They are also a trigger for violence in the prison system, because the street value of some of those drugs is multiplied by a factor of 20 when they enter the prison. You then have that contraband passing through the prison and there is a huge amount of violence. One of the great difficulties in detecting drugs is that people are willing to go to extraordinary and exceptionally dangerous lengths in order to get drugs in and out of the prison, and that makes it incredibility difficult. We have to manage that against the right, for example, for people to receive care packages from home, along with other things that might be necessary. We also need to bear in mind that the pressure on people who are put in a situation where they are trafficking drugs into the prison, or attempting to do so, can be extraordinary, and, if they fail in their attempts, they may be at risk. We have to balance not only removing the drugs from the system but protecting those who may have been under duress in bringing them in.

Multi-agency Support Hubs

T6. **Mr Storey** asked the Minister of Justice, after thanking her for her comments about the Prison Service, with which he concurred, and the confirmation that she is looking at the issue of ensuring that the disgraceful comments made by Mr Kelly are dealt with in a way that is in keeping with the legislation, to outline the current situation with supporting multi-agency support hubs, as concern has been expressed by the Committee for Justice in the House and in correspondence to the Policing Board that funding may be removed. (AQT 686/17-22)

Mrs Long: When the issue of support hubs was initially introduced, we provided additional funding on a three-year basis in order that councils could use that money, along with PCSPs and others, to realign their service provision during that period. The anticipation was that it would lead to a more efficient model of cooperation and, therefore, that there would not be ongoing costs. However, the Department recognises that the ending of that funding during the COVID pandemic, along with all the other challenges that the councils may face, is difficult. Therefore, when we received representatives from some councils that felt that they may not be able to continue with the development of the support hubs in the absence of that funding, we agreed to extend the funding to the end of the year. We hope that that will buy us the time to be able to review how we take this forward, and that is because I remain absolutely committed to support hubs and am very impressed by the work that they do.

Mr Storey: I thank the Minister for that confirmation; it is welcome. Will the Minister, in the spirit in which she has responded to the concerns that have been raised, engage with the Policing Board, PCSPs, the councils and the other elements of the statutory agencies, until we ensure that we find a funding model that is appropriate? Obviously, the work that has been achieved to date has brought success and is something that we want to build on for the future.

Mrs Long: Yes, I give the Member that assurance. As I said, we recognise that the support hub issue is hugely important. It has shown success, so we do not want to see it fall into abeyance simply because of a short-term funding issue. However, we need to be realistic.

As he sits on the Policing Board and, particularly, in looking over the resources, the Member will know that there are real strictures around some of the funding that we have available.

We have already met members of the Society of Local Authority Chief Executives (SOLACE) and others in the council sector, and we will continue to work with the police and others. We want to find a model that is financially sustainable and efficient in delivering the enhanced level of care and support in the community. I think that they are an absolute exemplar of collaborative working, and they bring together key partners to facilitate early intervention. Ultimately, early intervention will reap huge rewards in the finances of the Department, as well as in people's lives and outcomes.

Mr Deputy Speaker (Mr McGlone): OK, Members, time is up. Members should take their ease, and then we will move to questions to the Minister of Agriculture, Environment and Rural Affairs.

2.45 pm

Agriculture, Environment and Rural Affairs

Beef Farming: Agricultural Flat Rate Scheme

1. **Ms Dolan** asked the Minister of Agriculture, Environment and Rural Affairs how he will mitigate any disruption to the beef sector as a result of changes to the agricultural flat rate scheme (AFRS). (AQO 1126/17-22)

Mr Poots (The Minister of Agriculture, Environment and Rural Affairs): This refers to valued added tax, which is a reserved matter and therefore the responsibility of HM Treasury and HMRC. The changes that will be made to the agricultural flat rate scheme from 1 January 2021 are that farm businesses can join the scheme if their turnover from farming-related activities is less than £150,000 and that they are required to leave the scheme if that turnover subsequently exceeds £230,000. That brings the scheme into line with the general flat rate scheme.

The agricultural flat rate scheme is intended to provide easement from the administrative burden of VAT registration by allowing farmers to receive a payment equal to 4% of their sales value in lieu of VAT paid on inputs. The vast majority of small beef and sheep farmers will continue to be eligible for the scheme. Where farms exceed the turnover limit, they can still be VAT registered and reclaim input VAT. The flat rate scheme is intended to be fiscally neutral and not to be more generous than being VAT registered.

Ms Dolan: I thank the Minister for his answer. Does he acknowledge that changes to the flat rate scheme will cause disruption to the beef sector and could significantly disadvantage our primary producers?

Mr Poots: It should be less of an issue for primary producers. It is something that would have a more significant impact on beef finishers that have been in the scheme. Many of them will move out of the threshold very quickly, because, although their profitability and margins are quite low, their turnover is quite high. I suspect that that is why the Government are doing it: to ensure that the scheme, which is supposed to be a scheme to facilitate making the reclaiming of VAT easier, is cost-neutral. For some of the bigger operators, it is perhaps not cost-neutral. The scheme may have some impact, in that the finished price of beef may be reduced, because of the number of individuals involved who are required to store cattle. Generally, however, sheep and beef farmers will be able to avail themselves of the scheme, if they so desire, because they will fall within the £150,000 turnover threshold.

Mr Butler: Can the Minister tell us what underpinning schemes and information he has put in place to enlighten the farming community about these changes and the support available for those wanting to join the scheme?

Mr Poots: That is being led by HMRC, and it is for it to inform those who are currently in the scheme that they will no longer be able to avail themselves of it. I believe that that has been the case. It is pretty well known within the sector that the scheme is changing at the end of the year. Many of those who have participated in it up until this point will no longer be able to, because of their turnover.

Brexit: Veterinary Officers and Portal Inspectors

2. **Mrs D Kelly** asked the Minister of Agriculture, Environment and Rural Affairs how many additional veterinary officers and portal inspectors does his Department plan to employ before the end of the transition period. (AQO 1127/17-22)

Mr Poots: DAERA is planning to employ an additional nine veterinary officers and 14 portal inspectors in its portal branch at the points of entry into Northern Ireland, which are primarily at Larne and Belfast, from the end of the transition period on 31 December 2020. Those additional posts are being filled through external recruitment competitions and the internal transfer of staff.

Mrs D Kelly: Given the Minister's response, he seems to be fairly confident that the posts will be filled. I do not know whether contingency plans are in place should they not be. Has the Minister had any discussions with his colleague in the Department for the Economy about higher education providing places for veterinary students here in Northern Ireland?

Mr Poots: There are two issues there. With Northern Ireland receiving official brucellosis-free status, there is capacity in the Department, which is very beneficial, to fill the positions. The second issue is the veterinary school. I would be hugely supportive of a veterinary school. My chief veterinarian is supportive of there being a veterinary school. I believe that the Minister for the Economy is supportive of there being a veterinary school. I encourage the universities to continue to carry out their work on investigating the opportunities for a veterinary school.

One issue is that many young people are travelling not just to Ireland, Scotland and England but to Europe in order to study to be a veterinarian, and, sadly, many of them get a job elsewhere and do not return to Northern Ireland. We then lose that skill; therefore, a locally based veterinary school would help us to keep that skill base in Northern Ireland, where it is very much needed.

Mr McAleer: The Minister referred to the possibility of reassigning some staff from his Department. Does he have any assessment of the impact that that could have on other programmes? He will be more aware than we all are of the challenges that the Department faces in the various strategies and programmes that he is bringing forward.

Mr Poots: As I indicated, because of the brucellosis-free status that we have achieved, staff have been freed up, and organisation can take place in the veterinary division in order to ensure that we will reduce the number of people who need to be recruited as a consequence.

Mrs Barton: Has the Minister had any communications with University College Dublin (UCD) about increasing its intake of students over the next year or two while you, hopefully, get your veterinary school up and running in Northern Ireland and keep those people here?

Mr Poots: I have not, and, traditionally, there has been a slight problem with the recognition of our qualifications at A level, which has maybe made it a little more difficult for top-class students to get opportunities in some of the top universities in Ireland. Consequently, that has led to quite a number of them heading to Scotland and England, where our qualifications are recognised in the same way.

Mr Blair: In relation to inspections at ports, has any progress been made on the provision of a common veterinary area and the medium- to long-term prospects for that?

Mr Poots: The development of the facilities under the programme that is being paid for by the UK Government will not be completed until the middle of next year. They have given some money for the development of temporary facilities, which will be available from the middle of December. Consequently, facilities will be available for the veterinarians who are in place at the various ports.

Forestry: Carbon

3. **Ms Flynn** asked the Minister of Agriculture, Environment and Rural Affairs to outline his plans to restore the status of the forestry sector to a net carbon sink, rather than a carbon source. (AQO 1128/17-22)

Mr Poots: Forestry in Northern Ireland is a net carbon sink. That was recently confirmed in a detailed report published by the UK's National Atmospheric Emissions Inventory (NAEI) on 30 October 2020. The report also projects that that will remain so under a range of scenarios considered in the report.

My Department has received advice from the UK Committee on Climate Change on reducing greenhouse gas emissions in Northern Ireland. It recommends increasing the rate of woodland creation to 900 hectares per year as a simple low-cost option to help capture carbon.

I announced the Forests for our Future afforestation programme in March, aimed at increasing woodland by planting 18 million trees to create 9,000 hectares of new woodland over the next decade. As well as helping to meet the UK Government's net-zero carbon target by

2050, planting new woodland will help us to grow a strong economy, a thriving environment and healthy, active communities.

My Department's Forest Service is continuing to work with the forest research agency of the Forestry Commission in GB. That research will help to contribute to the understanding of the complex carbon balances associated with woodlands as they are established and grow to maturity.

Forests for our Future will become a foundation programme of the Executive's green growth strategy, which is being developed by my Department. Green growth aims to transform our society towards net-zero carbon by 2050, protect and enhance our environment and sustainably grow the economy.

Ms Flynn: I am sure that the Minister will be aware of a recent report by Ireland's forestry accounting plan, which shows that the forestry sector in the North is similar to that in the South, in that both have now transitioned from a carbon sink to a carbon source, meaning that the entire island's forestry sector is now a source of carbon emissions. The Minister outlined some initiatives that he has taken. Has he looked at any island-wide initiatives?

Mr Poots: Some politicians might suggest that this report is fake news. A recent claim that forestry is a net emitter of greenhouse gases was made in a press release issued by Friends of the Irish Environment in response to a report prepared by the Republic of Ireland's Department of Agriculture, Food and the Marine (DAFM) on greenhouse gas emissions and removals from forestry. DAFM has countered that interpretation, commenting that forests remain a substantial and growing store for carbon dioxide and to look at only one subset of the forest estate can be misleading.

The Friends of the Irish Environment press release bases its conclusions on a subset of a report published by DAFM. It focuses on woodlands over 30 years old, which includes tree harvesting from 2021 to 2030, which is estimated to result in a small net source of carbon dioxide. The small carbon dioxide emission is far outweighed by carbon dioxide captured by forests prior to 30 years of age, as is also identified in the DAFM report.

Taking the full forest cycle from planting to harvest and replanting into account, forestry as a whole is estimated to represent a significant store of carbon dioxide. It would be hugely unfortunate if people misconstrued various aspects of a report and conflated things to turn it into something else. It is well known that forestry and trees are a net capturer of carbon.

Ms S Bradley: How does the Department capture that data? In the past five years, how many trees have been planted? Have the Department's targets been achieved? Will the data be captured annually?

Mr Poots: The acreage of trees that have been planted each year has been identified. The forest expansion scheme was launched in June, and we have applications for the planting of some 547 hectares of forest this year. That is approximately double the area in last year's applications. So, we are having some success with Forests for our Future. People are planting trees and taking up the mantle and identifying that they want to be involved.

Considerable acreage has been suggested to us, particularly by NI Water and other public bodies that are looking to participate in making our environment more sustainable by planting trees.

3.00 pm

Mr Allister: I am sure that the Minister is aware of the claims that forestry provides ammonia sequestration. The Centre for Hydrology and Ecology has made that case very strongly. Will that feature in his ammonia strategy? Is forestry, even in and about the bogs, which are the concern and the inhibitor to some growth in the poultry industry, a possibility?

Mr Poots: I thank the Member for the question. There is a positive and a negative to that. The positive is that forestry can provide a break for ammonia, so strategically located bands of trees could do some good. The problem with trees is that they are hungry for water. Using water close to the peatlands leads to them being drier, and, consequently, they lose carbon on that front. Forestry at the appropriate locations may, therefore, be an inhibitor to the spread of ammonia and something that can be considered. That is the short answer.

Agriculture: EU Trade Deals

4. **Mr Gildernew** asked the Minister of Agriculture, Environment and Rural Affairs to outline the impacts on the local agriculture sector of being excluded from EU trade deals as a result of Brexit. (AQO 1129/17-22)

Mr Poots: The UK Government have been negotiating with countries that have a free trade

agreement with the EU, with the aim of putting in place a continuity agreement that would apply equivalent provisions to the UK. Those negotiations have made good progress, and it is expected that a large majority of those countries will have a continuity agreement in place on 1 January 2021. Trade with other countries will be able to take place on WTO terms, as is the case at present. Those measures will limit the impact on local agriculture and Northern Ireland goods being excluded from EU trade deals. I understand that there is the potential for difficulties for cross-border trade. A number of solutions are being looked at, but those will need to await developments in the UK-EU trade negotiations.

Mr Gildernew: Go raibh maith agat, agus ba mhaith liom buíochas a ghabháil leis an Aire. What discussion is the Minister having with the Irish Government to mitigate the disastrous impact of Brexit? As he outlined, we are going into World Trade Organization terms in some situations. What discussion is he having to mitigate the impact of Brexit by ensuring that the North can benefit from current and future EU trade deals? I know that Mr Coveney has also raised that issue.

Mr Poots: I would welcome the fact that we would have the opportunity to sell our product in as many places as possible, with free trade available to us. I know that a considerable number of free trade deals will be negotiated by the UK Government, very quickly, and we may have even more access through those free trade deals going forward. However, since we are part of the single market and following the rules of the single market, we should be part of the European free trade agreements as well. It is very disappointing that the European Union appears to be excluding us on the basis that it would involve too much work and that, to include us, it would have to open up negotiations with all of the countries with which it has free trade arrangements. It was the European Union's demand that we be included in the single market, as a consequence of the protocol. Therefore it should carry out its obligations to the full and include Northern Ireland in the free trade arrangements that it has with other countries.

Mr O'Toole: This is a slightly novel moment: I welcome some of what the Minister has just said. I agree that it would be much to the advantage of Northern Ireland producers, particularly in agriculture, to have access to EU free trade deals in order to allow them to take advantage of the opportunities, such as they are, from the protocol. What steps and engagement will he take, further to that, via Dublin or London, or directly via Brussels, to continue to persuade and make the case for our participation in and access to those EU trade deals? I agree with him that it would be great for our producers to have access to those deals.

Mr Poots: Our officials are involved behind the scenes at the negotiations, and, regularly, make the case for Northern Ireland. The First Minister and deputy First Minister wrote to the European Union, directly, expressing the views of the Northern Ireland Executive on a range of issues.

There is a potential solution, but Europe does not seem to be prepared to accept it as yet. It is diagonal cumulation, which would mean that goods with content from the European Union, the UK and third countries which have a free trade agreement with both the European Union and the UK would meet the rules of origin requirements under EU free trade agreements. To this point, the EU has opposed diagonal cumulation.

It is particularly important for the dairy sector that we get a solution, because obviously a lot of our milk ends up being processed in Ireland a lot of it goes to Great Britain and a lot of it is sold to third countries. The Middle East and Far East, for example, receive a lot of this product. Because the product is a mixed product, that becomes more challenging. It is important that the dairy sector in particular gets a solution to this, and I encourage the European Union to take up the solution that we have offered.

Mr Chambers: The Minister has addressed my supplementary question, but I will ask it. What impact does he anticipate that this will have on milk exported to the Republic of Ireland for processing in cheesemaking, with the resulting product returning to Northern Ireland and then going across the Irish Sea to England?

Mr Poots: It is tricky. The movement to the Republic of Ireland is the easy bit. If there is no trade deal, the coming back is slightly more difficult. There can be a solution to that, and it is that the quantities of milk that go and the quantities of cheese, butter or whatever that come back could be measured to have pretty much an equal amount, and the UK Government could receive that without any additional tariffs being applied, should tariffs come into play between the European Union and Great Britain as a result of negotiations not delivering a free trade agreement.

Fly-tipping and Littering

5. **Mr K Buchanan** asked the Minister of Agriculture, Environment and Rural Affairs to outline any recent discussions his Department has had with local councils regarding fly-tipping and the ongoing issue of littering. (AQO 1130/17-22)

Mr Poots: My Department has been working closely with councils throughout COVID-19 to address increased concerns about fly-tipping. Officials have also been in regular contact and have been engaging with council colleagues, through the local and central government waste working group, on the development of a revised Northern Ireland Environment Agency (NIEA)/district council fly-tipping protocol.

While the majority of fly-tipping incidents are dealt with by councils, the NIEA has been assisting with the removal of hazardous wastes, such as asbestos and fuel laundering waste, and will also investigate larger waste deposits. Once agreed, the fly-tipping protocol will formalise this arrangement and provide clarity on the operational roles and responsibilities of the NIEA and the local councils in relation to tackling fly-tipping.

Under the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011 and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations (Northern Ireland) 2012, dealing with littering is the responsibility of the district councils. However, I am looking at the effectiveness of these current powers and the level of fines. Keep Northern Ireland Beautiful has been appointed to gather data from all councils on their use of fixed penalty notices for both litter and dog fouling offences. This will inform a review of the fixed penalty notice regime which is due to be completed early in 2021. Officials have also separately been engaging with a number of councils on this issue.

Finally, I can advise that discussions have also been ongoing with the councils in relation to commencing further elements of the waste and contaminated land legislation to provide additional enforcement and clean-up powers to both my Department and councils to help tackle the scourge of illegal waste disposal.

Mr K Buchanan: I thank the Minister for his answer. With regard to powers, or to his influence over councils, some councils have a power or a regime with regard to fining people for littering. I am going to name my own council: Mid Ulster District Council had, in a period of one year about two years ago, eight fines, which I think is unacceptable and does not send out the correct signal. What influence can the Minister put on councils across Northern Ireland to take littering and waste disposal more seriously at a local level?

Mr Poots: With the form of government that we have, local government has the responsibility for this, and it is for local government to respond to its board, as such, which is its councillors, who have the responsibility to ensure that public policy is upheld. I suggest that the best way of actually ensuring that the council is enacting its powers appropriately is for the councillors themselves to ensure that officers are ensuring that the regime is in place to have appropriate waste controls, including the nuisance litter that people drop.

Mr McGuigan: Minister, I love nothing more than cycling, running or walking around the rural roads of the North and through towns and villages, and it is a pleasant experience that is often spoiled by witnessing instances of fly-tipping and general littering. I understand the answer that was given to the previous question, but there must be a cross-departmental policy or strategy that can change the culture of people who find littering and fly-tipping acceptable, because it should not be acceptable, and the levels of litter that we have are a disgrace. Furthermore, can the Minister give us an appraisal of how littering and fly-tipping may have changed during the pandemic?

Mr Poots: Yes, I totally agree with the Member: it is very irritating when you are in the countryside and find fast-food-outlet material, cans, bottles, cigarette packets or sweet papers lying at the side of the road. There is a whole panoply of stuff that people throw out of their cars while driving along the roads. I do not understand it, because it is so easy to put it into a small bag and put it into the appropriate bin when you get home. People seem to think that it cannot stay in their car for any longer than five seconds after it comes out of a wrapper.

We are working on developing the removal of single-use plastics on nine different items, and we intend to bring that proposal to the Assembly quite soon. With a lot of the packaging that is involved — for example, with fast-food outlets — we will get rid of the material that does not biodegrade. Work will be done on that. Essentially, this is an educational process whereby people need to recognise that it is wrong to throw out litter and wrong to fly-tip. Everybody knows it, but there is a hard core of

people who seem to continue to engage in it, and, as a consequence, they spoil our countryside.

Mrs D Kelly: Minister, is there any way of monitoring and evaluating the amount of fly-tipping? Reports come to me from my council colleagues about the number of tyres that are dumped along roadsides. We all know that there is a premium to be paid when you buy a new tyre so that the other one is safely disposed of. What is the cost, and are reports fed into your Department that will help to inform policy and legislation by local authorities?

Mr Poots: The dumping of tyres is a big issue, and, in my area, quite a bit of that goes on. It is clearly wrong, and, very often, it is left to the landowner, which is entirely inappropriate. Someone dumps on their land and the consequence is that someone who has no role in this is left to deal with the problems arising from it.

There has been an uplift in fly-tipping this year. It is hard to assess it fully yet. It has not been massive, but it has gone up, and we associate a degree of that with the closure of the household waste recycling centres. I welcome the fact that almost all of them are operational again, and it is incumbent upon councils to ensure that they are kept operational going forward.

Mr Deputy Speaker (Mr McGlone): I have time to call William Irwin for a brief question and to get a brief answer from the Minister.

Brexit: Seed and Ware Potatoes

6. **Mr Irwin** asked the Minister of Agriculture, Environment and Rural Affairs what discussions he has had, in particular with the UK Government, on the enabling of importation of seed and ware potatoes from Great Britain following the end of the transition period. (AQO 1131/17-22)

Mr Poots: I wrote to Minister Eustice on 30 October highlighting the significance of this issue to the Northern Ireland agriculture and food services sector and urged him to expedite agreement with the EU on third-country listing for GB to enable seed and ware potatoes to be marketed in Northern Ireland. I have also asked for a derogation to the prohibition that will apply to seed and ware potatoes from GB due to its classification as a third country. I have highlighted the need for a commitment to secure a proportionate easement to the EU legislative phytosanitary certification requirements and associated costs.

My officials have written to DEFRA requesting that specific sanitary and phytosanitary (SPS) issues affecting plants and plant products moving from GB to NI, including seed and ware potatoes, are addressed urgently with the EU to enable continuity of essential trade from GB to Northern Ireland in plant and plant products after implementation period (IP) completion day.

I have also written to Minister McConalogue in the Department of Agriculture, Food and the Marine in Dublin asking for his support in seeking EU agreement to the UK application for GB third-country listing, which would allow the continuation of the important and integrated trade in potatoes among GB, NI and ROI.

3.15 pm

Mr Deputy Speaker (Mr McGlone): That ends the period for listed questions. We move on to 15 minutes of topical questions.

Trader Support Service

T1. **Mr Nesbitt** asked the Minister of Agriculture, Environment and Rural Affairs, given the Ulster Farmers' Union (UFU) webinar yesterday evening on the subject, for his assessment of the Trader Support Service and the rationale for it. (AQT 691/17-22)

Mr Poots: I thank the Member for the question. The Trader Support Service is a device of Her Majesty's Government and HMRC. It is a new and unprecedented service. It is a free-to-use, end-to-end service that will guide traders through any changes to the way in which goods move between Great Britain and Northern Ireland and into Northern Ireland from outside the UK. Essentially, the Trader Support Service will act as a customs agent and complete declarations on behalf of traders. We encourage any business that moves goods between GB and NI to register for the service and get advice on the new processes being introduced as a result of the protocol.

Mr Nesbitt: I thank the Minister for that. Given that farmers here have to sign up to the service to bring goods from, say, Scotland into Northern Ireland, does he accept that that proves that, although we may all have joined the EEC as one, we are not all leaving the EU as one?

Mr Poots: I entirely agree. We are not leaving the EU as one, which is an irritation to the likes of me. That, however, is an arrangement that has been arrived at between the European Union and Her Majesty's Government. Westminster has sovereignty on these issues. Consequently, we have to live with the outcomes, be they good or be they ill. We can protest and seek to moderate and make changes, and I have been very busy in seeking to moderate and make changes for the benefit of Northern Ireland to mitigate the more damaging aspects of the protocol as it is applied.

Farmers' Marts: Health-check Vans

T2. **Mr Gildernew** asked the Minister of Agriculture, Environment and Rural Affairs, after acknowledging the Minister's indication that health-check vans are back at marts, which is very welcome, given that many farmers welcomed the announcement on the vans because of difficulties accessing GP services, to outline his plans to develop or even enhance the service. (AQT 692/17-22)

Mr Poots: That service has been run between the Department and the Public Health Agency (PHA). There are significant benefits to having the vans there at the current time. Appropriate arrangements are being made to ensure the safety of both staff and users. One of the things that the vans are there to help with is people's mental health. They do physical checks, but they also have conversations around mental health.

We all know that mental health is a significant issue in rural areas. Over the period of COVID, there has been a substantial deterioration in mental health across the country generally, and particularly for people who are more isolated. As a consequence of that isolation, those people have less and less opportunity to interact and engage with other human beings face to face. It has particularly impacted on our older population, and many of our farmers and users of the service are from among the older population.

We therefore really need to ensure that the services that we provide go way beyond just looking at COVID. We still need to look for cancers, for example. It is very concerning that Cancer Focus has indicated that around 1,000 fewer cancers have been detected this year than had been at the same time last year. I am therefore absolutely delighted that the services that are provided at the marts and in other rural locations are up and running again.

Mr Gildernew: Are there plans to bring that service to locations other than marts or to some of the harder-to-reach rural areas, Minister?

Mr Poots: I am happy to discuss how we could expand that service with the PHA and the Department of Health. One of the big issues in health that we are all aware of is that early detection saves lives: early detection of cancers, circulatory illnesses, blood pressure problems and so on, and the prevention of heart attacks. The more we do this, the more conditions we will detect early and, consequently, the more we will avoid something that would be much more expensive for the healthcare system and, more importantly, far more damaging to the individual. I am happy to work with the Department of Health and the Public Health Agency on identifying how we can expand the service. I am happy to prioritise money for that because it has to be an absolute priority. I am happy to commit to that.

Glenelly Landslides

T3. **Mr McAleer** asked the Minister of Agriculture, Environment and Rural Affairs, who will be aware that he has been lobbying him in recent years on the issue of the needs of farmers who have been impacted gravely by the landslides in the Glenelly area, whether he has given further consideration to supporting those farmers. (AQT 693/17-22)

Mr Poots: I have asked officials to look at that. There are two sets of farmers in Glenelly: those with upland farms; and those who are further downstream. The Department has indicated that it has already provided a lot of support. Through the Loughs Agency and the environmental farming scheme, it has provided fencing. We need to look at that area to ensure that, if we were to provide support, we would not be double granting. Other areas that we will look at include the desilting of land, the reseeding of land and the other damage done to properties. I have tasked officials to look at that, and they will bring back a report to me, hopefully in the not-too-distant future.

Mr McAleer: I very much welcome the fact that the Minister is still considering this and that he has been consulting his officials.

On a not totally unrelated topic, the Minister is due to bring out a draft ammonia strategy soon. Areas such as Glenelly and other hill areas are not particularly well suited to some of the low-emitting slurry-spreading equipment. If the Minister could factor that in to the equation

when the new strategy is coming out, I would be grateful.

Mr Poots: Earlier, when I was reporting on how we will implement the new single farm payment system, that point was raised by another Member, and we certainly need to keep it in mind. While we want it to happen and ensure that it is utilised as much as possible, we recognise that, on certain land, the weightier the machinery, the more difficult, and sometimes more dangerous, it is. We need to take that into account, so I thank the Member for that point.

Fisheries Local Action Group

T4. **Miss McIlveen** asked the Minister of Agriculture, Environment and Rural Affairs what scope he and his officials will have to review the spending limits of the Fisheries Local Action Group, once the grant scheme has been opened. (AQT 694/17-22)

Mr Poots: Once outside the European Union, we will have considerable scope. We are in discussions on state aid to maximise the money that we can have for agriculture and fisheries. State aid for fisheries is still being extensively debated. I hope that we will get an outcome that ensures that we can provide good support to fisheries and enable those local groups to provide support to the industry.

Miss McIlveen: I thank the Minister for his answer. I understand that the South East Area Fisheries Local Action Group (SEAFLAG) has handed back £483,418 of a £2 million pot. A Portavogie scheme worth a quarter of a million pounds is ready to go. Some £200,000 is needed from the fund. However, they have been told that there is a cap of £120,000. The limited grant means that the project will fall. I appreciate the Minister's response, but I would further appreciate his looking at that policy in its current form.

Mr Poots: We recognise that, at present, there is an underspend of around £1·5 million under the community-led local development (CLLD) measure. Even if all 24 applications under assessment are supported, a maximum of £1·1 million European Maritime and Fisheries Fund (EMFF) funding would be required for those 24 projects. That is where the £400,000 comes from. It is unlikely that all applications will be successful, so the underspend is anticipated to be between £400,000 and £600,000. However, it is proposed to open the CLLD scheme for applications on 2 January 2021 and for it to remain open until 31 March 2021 to attract further applications that can utilise that underspend, with the full budget being committed by 30 June 2021. These target dates are within the permitted timescales for the EMFF programme.

SEAFLAG staff are confident that there are further potential applications that will be submitted, should the scheme reopen, and which will utilise much of the current underspend. Should a surplus remain on 30 April 2021, the options are for a further opening of the scheme to 31 May 2021 or the movement of funding from the CLLD measure to other measures within the Northern Ireland EMFF programme that have achieved or are nearing full commitment and there are project applications in place to utilise the funds.

Approval for moving CLLD funding to other measures, which is permitted by the UK managing authority and the Commission through an EMFF operational programme amendment, will be sought through ministerial submission on the proposed variations with the Northern Ireland EMFF programme that are required to ensure that all EMFF funding available to Northern Ireland is fully utilised and not returned to the Commission. It is anticipated that the submission will be made in April 2021.

Planning Applications

T5. **Mr Irwin** asked the Minister of Agriculture, Environment and Rural Affairs, who will be aware that farm planning applications are being held up by slow responses from the Northern Ireland Environment Agency (NIEA), whether there is anything that he can do to speed the process up. (AQT 695/17-22)

Mr Poots: Like a lot of organisations, NIEA has quite a lot of staffing pressures, and COVID has not helped things. Nonetheless, we still have targets that have been set for good for good reason and which we should be seeking to fulfil.

We also have the complication of what we are going to do about ammonia. I have indicated that, at the moment, we should use the 1% threshold, as opposed to the 0·1% threshold that the Shared Environmental Services (SES) referred to, while we produced the ammonia strategy, which is almost ready to go out. It is entirely reasonable for us to do that, given that the ammonia strategy is a plan to significantly reduce the amount of ammonia in the atmosphere. Consequently, it would be a better instrument to deal with the issue than planning.

Mr Irwin: I thank the Minister for his response. The Minister will be aware of the seriousness of the situation. Many farms are trying to re-do existing old buildings and re-roof them, but they are being held up by NIEA. I am sure that the Minister is fully aware of the importance of this matter being addressed.

Mr Poots: Absolutely. One of the issues that is holding back the farm business investment scheme from being rolled-out further is the ability of people to actually get planning approvals to carry out the investments that they wish to make. The remarkable thing is that, in some instances, the refurbishment or replacement of existing buildings would lead to lower ammonia emissions, yet the planning refusal recommendations still exist. We really do need to have a practical, common-sense approach to this, and as I indicated very clearly, planning is not the means of doing it. Having an ammonia strategy that is effective in reducing the amount of ammonia getting into our atmosphere is the way forward.

Mr Deputy Speaker (Mr McGlone): I have time for a brief question, from Paula Bradley, and a brief answer.

Honeybees

T6. **Ms P Bradley** asked the Minister of Agriculture, Environment and Rural Affairs what steps he is taking to ensure that the honeybee is protected in Northern Ireland and what practical measures he may explore in doing so. (AQT 696/17-22)

3.30 pm

Mr Poots: The honeybee is an incredibly important aspect of our environment and biodiversity. I have spoken to officials about developing a strategy on honeybees and worms, as both species make a massively important contribution. Some people perceive them as just tiny insects, but they have a vital role in the successful production of our food. It is certainly something that we are cognisant of. America has lost about a third of its honeybee population through the production of almonds, because people think that they are helping the environment by drinking almond milk. However, the consequences of doing that are devastating.

We are very supportive of the honeybee population, and we will be looking at measures to increase the numbers of honeybees in Northern Ireland.

Mr Deputy Speaker (Mr McGlone): I ask Members to take their ease while other Members and Ministers to enter the Chamber.

Executive Committee Business

Domestic Abuse and Family Proceedings Bill: Consideration Stage

Mr Deputy Speaker (Mr McGlone): I call the Minister of Justice, Mrs Naomi Long, to move the Bill.

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

Mr Deputy Speaker (Mr McGlone): By way of explanation of the grouping of the amendments, 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. Members should note that the Marshalled List is dated 17 November, and both it and the grouping list supersede those issued for the postponed debate of 10 November.

Members will have received printed and electronic copies of the documents, but additional printed copies are available in the rotunda, if needed for the debate.

There are four groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendments Nos 1 to 8, 10, 16, 17, and opposition to clause 3 stand part, which deal with the information on the offence. In that group, amendment No 7 is mutually exclusive to amendment Nos 5 and 6.

The second debate will be on amendment No 9 and Nos 11 to 14, which deal with additional protection for children, as well as support for victims of domestic abuse.

The third debate will be on amendment No 15 and Nos 18 to 26, which deal with the implementation and operation of the offence. In that group, amendment Nos 15 and 21 are mutually exclusive. There are three amendments to amendments. Amendment No 22 is an amendment to amendment No 21, and amendment Nos 25 and 26 are amendments to amendment No 24. Have you got all that? *[Laughter.]* The fourth debate will be on amendment Nos 27 to 34, which deal with measures for civil court proceedings.

I remind Members who intend to speak that, during the debates on the four groups of amendments, they should address all the amendments in each 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.

We now come to the first group of amendments — information on the offence — for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 8, Nos 10, 16 and 17, and the opposition to clause 3 standing part. I call Mr Jim Allister to move amendment No 1 and to address the other amendments in the group.

Clause 1 (The domestic abuse offence)

Mr Allister: I beg to move amendment No 1: In page 1, line 12, leave out paragraph (a) and insert "(a) that B suffers physical and psychological harm, and".

The following amendments stood on the Marshalled List:

No 2: In clause 8, page 5, line 24, leave out "constituting the offence" and insert "by virtue of which the offence is constituted".— *[Mrs Long (The Minister of Justice).]*

No 3: In clause 9, page 6, line 6 after "if" insert "(any or all)".— *[Mrs Long (The Minister of Justice).]*

No 4: In clause 9, page 6, line 8, after "directed" insert ", or threatened to direct,".— *[Miss Woods.]*

No 5: In clause 9, page 6, line 11, at end insert

", or

(c) both of these apply—

(i) a reasonable person would consider the course of behaviour, or an incident of behaviour which A directed at B as part of the course of behaviour, to be likely to adversely affect the child (including likely to cause the child to suffer fear, alarm or distress), and

(ii) the child usually resides with A or B (or with A and B).".— *[Mrs Long (The Minister of Justice).]*

No 6: In clause 9, page 6, line 11, at end insert

"(2A) Subsection (2) does not require there to be evidence of some detrimental impact on the child that is attributable to A's behaviour (or of the child's awareness of, or understanding of the nature of, A's behaviour), but nothing in this section prevents such evidence from being led in proceedings for the domestic abuse offence.".— *[Mrs Long (The Minister of Justice).]*

No 7: In clause 9, page 6, line 11, after "behaviour." insert

"Or

(c) a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect the child.

(2A) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child –

(a) has ever had any awareness or understanding of A's behaviour, or

(b) has ever been adversely affected by A's behaviour.

(2B) Nothing in this subsection prevents evidence from being led about—

(a) a child's observations of, or feelings as to, A's behaviour, or

(b) a child's situation so far as arising because of A's behaviour.".— *[Miss Woods.]*

No 8: In clause 10, page 6, line 38, leave out "course of behaviour would constitute the domestic abuse offence" and insert "domestic abuse offence would be constituted by virtue of the course of behaviour".— *[Mrs Long (The Minister of Justice).]*

No 10: In clause 13, page 7, line 40, at end insert "(3) This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment).".— *[Mrs Long (The Minister of Justice).]*

No 16: In clause 25, page 13, line 28, leave out "may" and insert "must".— *[Mrs Long (The Minister of Justice).]*

No 17: In clause 25, page 13, line 30, leave out "other matters" and insert "such other matters as it considers appropriate".— *[Mrs Long (The Minister of Justice).]*

Mr Deputy Speaker (Mr McGlone): I call the Chairperson of the Committee for Justice, Mr Paul —. Sorry. Excuse me, Mr Allister. I moved too quickly there. I beg your pardon. I call Mr Allister.

Mr Allister: I am obliged. When the recently retired Attorney General, Mr John Larkin, gave evidence to the Committee, he said:

> *"Good law is clear law and straightforward law."*

I would like the House to remember that when debating these issues.

When we come to clause 1, we are, of course, in the business of creating a criminal offence. A criminal offence is normally expected to have certain clear component parts. In any law school, probably the first lecture or tutorial for a criminal law student is on the subject of what comprises a criminal offence. The law student will be told that there are two key components to any criminal offence: what, in law, is called the mens rea — the guilty mind — and the actus reus — the act that does the harm. Those two phrases are not just obscure Latin phrases that are plucked from long ago. They are from long ago; they originate from just over 400 years ago, when the famous jurist Sir Edward Coke, who went on to become chief justice of England, expounded the phrase that a criminal offence involved both the actus reus and the mens rea.

When we come to look at clause 1 and the creation of this criminal offence, I invite the House to look at and examine the mens rea and actus reus of the offence. The mens rea is quite straightforward. It is in clause 1(2)(b), which states:

> *"that A —*
>
> *(i) intends the course of behaviour to cause B to suffer physical or psychological harm"*

etc. That is the guilty mind. That is the intent. That is the mens rea. When we come to the actus reus of that offence, we are into much greater obscurity and difficulty. We are into that obscurity and difficulty even though the offence is titled "The domestic abuse offence", which, naturally, causes you to think that we are

looking for actual domestic abuse. Clause 1(1) states:

> *"A person ('A') commits an offence if—*
> *(a) A engages in a course of behaviour that is abusive of another person ('B')" —*

that is not difficult —

> *"(b) A and B are personally connected to each other at the time" —*

that is not difficult —

> *"and*
> *(c) both of the further conditions are met."*

Here comes one of them:

> *"that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm".*

Note that it does not state that the further conditions are that B suffers physical or psychological harm. It is that "a reasonable person would consider" B:

> *"to be likely to ... suffer physical or psychological harm".*

You cannot read that without reading clause 3(1), which states:

> *"The domestic abuse offence can be committed whether or not A's behaviour actually causes B to suffer harm of the sort referred to in section 1(2)."*

It is quite remarkable that you can create a criminal offence without there actually being any harm. You call it domestic abuse, but you do not have to prove any harm. Let us take any other offence. Let us take the offence of theft. "Theft" is defined as the dishonest — that is part of the mens rea — appropriation of:

> *"property belonging to another with the intention of permanently depriving".*

The mens rea is:

> *"dishonestly ... with the intention of permanently depriving".*

The actus reus is the taking of property that belongs to another. It has the two components. It does not state that you can commit theft without taking, but, apparently, you can commit abuse without causing harm. Take the offence of murder.

Mrs Long (The Minister of Justice): Will the Member give way?

Mr Allister: Yes. Certainly.

Mrs Long: I am loath to interject, because I realise that you are building your case, and I do not want to interrupt that. For the mens rea, however, the act has to done with intent or have a reckless nature to it. I think that we both agree that that is the case. The actus reus in this case is that a course of action or behaviour has been established. The harm is the potential outcome of that course of behaviour, but the action will have taken place regardless of whether the harm is caused. If, for example, someone chooses to drive while under the influence of alcohol and does not cause any harm, that person has still committed an offence that is reckless because of the harm that it might have caused. It is therefore not as clear-cut as the Member is suggesting.

Mr Allister: I respectfully disagree. I believe that it is exactly as clear-cut as I am suggesting, because the course of behaviour has to have a product. Theft has to have a product. Take homicide. What is homicide? It is the unlawful killing with the intent to kill or to cause grievous bodily harm. That is the mens rea — the intent to kill or cause GBH — but the actus reus is the product: the killing. The actus reus is the product. Where is the product here? We are expressly told in clause 3 that there does not have to be any product. I find that astounding, that you can create an offence where the person, yes, must have the intent and the guilty mind and must want to do it, but, if they fail to cause harm, no matter how much they wanted to try to cause harm, they are still guilty as though they had caused that harm. How can that be right?

3.45 pm

Ms Dillon: Will the Member give way?

Mr Allister: I will in one moment. How can that be right? The premise upon which they would be guilty is because some mythical reasonable person says that they would consider their behaviour to be likely to cause harm. Sorry: it is not about what your neighbour, someone else or some reasonable man thinks. The fundamental question is this: was there harm? If there was no harm, while it might be utterly reprehensible behaviour, the intent of which might be odious — it clearly is — there was no

harm. Yet, the law here is trying to say, "Never mind that. Without harm, you can be guilty as though you had created harm".

Ms Bradshaw: Will the Member take an intervention?

Mr Allister: I was to give one down there. If there is time, I will.

Ms Dillon: I thank the Member for giving way. I want some clarification. To be honest, I really would have appreciated it if the Member had come and made some of those arguments to us, as Committee members, as Rachel Woods did with her amendments and the Minister and her officials did with departmental amendments, because it is helpful to be able to ask questions and have those conversations before we get to this point. With regard to the Minister's analogy about drink-driving, where is the harm when the drink-driver has not actually done any harm? They have still driven when they have been over the legal alcohol limit.

Mr Allister: I made those points in the Second Stage debate, so the Committee had the opportunity to hear them. Had I been invited to do so, I would gladly have expounded on them further.

With regard to drink-driving, quite clearly, the offence — the actus reus — is the act of driving. The act of driving is in itself inherently dangerous because of the drink involved and, therefore, the risk involved. That is intertwined in the act of driving. However, when we say that we will create an offence of domestic abuse, as surely as night follows day, we would look to see what abuse or harm was caused. When one looks, one sees that there is a blank page. In fact, there is not just a blank page: one is told that there does not need to be anything on the page. There does not need to be any harm.

Let me just develop the point, if I may, before I take a further intervention. I have a situation. Let us say that a man — it does not have to be a man — intends to inflict the most horrible abuse on his wife, partner or whomever, but his wife or partner suffers no harm. Some might ask whether he should then walk away. No: the law has covered that. The law provides the offence of attempt. Under the Criminal Attempts and Conspiracy (Northern Ireland) Order 1983, it states:

> *"If, with intent to commit an offence to which this Article applies, a person does an act which is more than merely preparatory to the commission of the offence, he is guilty of attempting to commit the offence."*

It further states:

> *"This Article applies to any offence which, if it were completed, would be triable in Northern Ireland".*

It also states that, for such an offence, a person guilty of attempt shall be liable on conviction to the same penalty that he would have had if he had committed the actual offence.

There you have the answer already provided in the law. If someone attempts to abuse their wife and has the intent to abuse their wife, either they can be charged, in the first place, with attempting, or they can be found guilty, having been charged with the actual abuse of merely the attempt. On either, they can get the same penalty. We are talking about an offence that can reap 14 years in jail. You can reap 14 years in jail for the same attempted offence, so why are we in the business of corrupting the law by taking out of this offence the very core of what is the offence and saying, "No harm required. Still an offence. He might have failed in his mission. Still guilty"? That is like saying that a thief who went to steal but was not able to steal anything is still guilty of theft. Yes, he is guilty of attempted theft, and that is what the law already provides, but he is not guilty of theft.

By the same token, the miscreant husband who seeks to abuse his wife and who has that necessary intent but fails to cause physical or psychological harm can still be guilty of the attempt, but he cannot be guilty of the actuality that he never obtained. That is the distinction, and that is why I say that to pretend that he is the same position as though he had actually created the harm is a corruption of the very components of what is a criminal offence.

Ms Bradshaw: Thank you, Mr Allister, for giving way. At lunchtime today, I took a phone call from a lady who was in a mother-and-baby home years ago. She has hit 60 now. When she escaped from the mother-and-baby home, she was just delighted to get out of the place, and it was not until years later that she recognised the emotional abuse that she had suffered. She did not feel the harm at that point, but now that she is 60, she is in a dreadful state. Now, it is a slightly different context, but are you saying that the harm, because she did not recognise it at that point but did so years later, did not take place?

Mr Allister: No, I am absolutely not saying that. My amendment says that I want to make the offence in clause 1(2)(a):

> *"that B suffers physical and psychological harm".*

If that lady suffered psychological harm, there is the essential component of the offence. There is no limitation on those matters. She suffered psychological harm. That meets with what I am saying in the amendment. It can be physical or psychological, but the Bill says that it need be nothing — nothing.

Mrs Long: I thank the Member for giving way. He is being very generous with his time.

The purpose here is not to criminalise the attempt of abuse through a course of action of behaviour. The course of action of behaviour will have happened. This is not someone who attempted a course of action and was not able to complete it. It is somebody who undertook a course of action — a real course of action, like the person who drinks alcohol and gets behind the wheel of their car. They made that decision, reckless and indifferent to the harm that it might cause or in full knowledge of the harm that it might cause. The fact that they did not cause harm is not the fundamental issue. The fact is that they commissioned and completed a course of action. That is the test for whether the abuse offence has happened. The issue of harm is secondary and is one that would be considered at the point of sentencing, with a judge deciding how serious or otherwise the offence might be.

The Member has recognised that by bringing together the drinking of alcohol and the driving of a car, you create a risk. It is exactly the same when a person commits a course of action and finishes that course of action to cause harm. As my colleague has said, it may be many years before the person subject to that course of action realises the harm that it has done. However, it may be possible in advance of that for a reasonable person to recognise that that course of action could cause harm.

Mr Allister: With respect, where I think the Minister is falling into error is this: if she says that the key issue here is the course of behaviour, why do we have clause 1 (2) at all? If that is the offence, a course of behaviour, why do we say:

> *"The further conditions are—*
>
> *(a) that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm,"*

In saying that, the Minister has embraced the need for harm, and she is filling the vacuum of the lack of harm by putting it on the shoulders of a reasonable person, and getting out of the finding of harm by saying, "but a reasonable person would think it's harm". You cannot have it both ways.

You cannot say that this offence is about a course of action, end of, and then say, "but we need to tick a box about causing harm, so we'll tick it by having some reasonable person say it would be likely to cause harm". It causes harm or it does not, and that is the fundamental choice for the House. Are we going to create an offence that causes harm or not?

Certainly, causing harm is the essence of any offence of violence, abuse or anything else. You cannot say, "We duck and dodge that by simply saying, 'Ah well, never mind, there was no harm, but any reasonable person would think there would've been harm'". Would have been is not good enough. Should have been is not good enough. It has to be the causing of harm, and if it is not the causing of harm, it could still be the attempt to cause harm.

Ms Sugden: Will the Member give way?

Mr Allister: Yes, I will give way to Ms Sugden.

Ms Sugden: I thank the Member for his contribution. I am somewhat sympathetic to the points he makes, and I will come to that in my own contribution.

In this case, would we have to define what "harm" is given that coercive control as a criminal offence is a relatively new concept? Who decides what is "harm" if we were to put forward what his amendment suggests?

Because we are creating a criminal offence, it will have a practical outworking. When this goes through the criminal justice process, how do you see it, as it is drafted, Mr Allister, given your experience, being successful in seeking a conviction in court?

Mr Allister: There are two points. The first is a bit shorter, so I will take that first.

My amendment suggests that B must suffer physical and psychological harm, so that is a jury question. Did the victim suffer harm? That can be physical, it could be a broken arm, it

could be the torturous mind that Ms Bradshaw referred to — it can be either. It is a question of fact: did they or did they not suffer harm? If they suffer harm, and they have the guilty mind, the offence is complete.

The second question is: if we leave this offence as drafted, what prospect is there of any jury ever convicting anyone? My goodness, you are going to say to a jury of 12 people, "We want you to convict Mr X because he intended harm, abuse towards Mrs X, but he failed in causing harm to Mrs X, but never mind that, you convict him anyway".

I would not like to be the prosecutor who would have to put that case to a jury. I would love to be the defence counsel who had to answer that case. It is so preposterous a suggestion to say that you should invite a jury to convict on the basis of, "Here's a victim with no harm, but because he wanted harm," —.

4.00 pm

Miss Woods: Will the Member give way?

Mr Allister: In a moment.

Because he wanted harm and he intended harm and you might think that there would have been harm, we do not have to prove that there was harm, and that is for an offence for which you can get 14 years. Really, I do not think that that is a prospect that this Assembly should entertain, particularly when it knows that the attempt defence is always there. It is always an alternative under the Criminal Law Act 1967. It can be an offence in its own right under the Criminal Attempts and Conspiracy Order 1983. It is there either way, so why on earth would we create an offence of this sort?

You might recall that, in the Second Stage debate, we were told that this was modelled on the Scottish system. So, I wrote to the Scottish Justice Minister and asked, effectively, what success Scotland had had in getting convictions where no harm was caused. I have his reply. He had to tell me that they do not have any statistics like that. I am not surprised. Members of this House, do you really think that any jury is going to be impressed, to the point of being satisfied beyond all reasonable doubt, that an offence has been committed where there is no manifest harm, no claim of harm? It is not that somebody is saying that they feel psychologically damaged or that they had a broken wrist and there is a question of fact on whether that is right or wrong. It is not even that that is the case. It is that you do not need any harm, as long as a reasonable person would think that there should have been harm. It beggars belief, I think, that we would be contemplating that.

Miss Woods: I thank the Member for giving way again. I appreciate that the Member has outlined his position very clearly. Can he account for the conditioning of victims of coercive control and psychological abuse not to recognise behaviour that has occurred? I have a practical question for Mr Allister, given his inherent experience. Is there a requirement for B in this case, where A is the perpetrator and B is the victim, to recognise or claim the harm caused for prosecution?

Mr Allister: Not as drafted, I do not think there is. I think that you could probably bring a prosecution on this without B ever being a complainant or B ever giving evidence, I suspect. You are depending on the mythical reasonable man. Let us call the "reasonable man". We need not bother calling the "victim". They do not matter here. It is the reasonable man. That is how preposterous this is.

Mr Givan (The Chairperson of the Committee for Justice): I appreciate the Member's giving way. I do intend to cover all of these in speaking about how the Committee considered it. The Member made the point earlier in proceedings that the Committee engaged extensively on the points that were raised and reached a considered view on it, and I will elaborate on that. The Member for East Londonderry asked for the definition of harm. Clause 1(3) refers to psychological harm, including, not exclusively, "fear, alarm and distress". So, there is commentary in the Bill on what that harm is. The offence is also around the aspect of the course of behaviour, and, again, clause 4(4) states:

> *"A course of behaviour involves behaviour on at least two occasions."*

So, it is not the one-off event that Committee members are concerned about. This is a course of behaviour. The Committee also looked the abused person who had been institutionalised to the point where they considered this to be normal behaviour.

We also looked at what the protections are, given what the Member has said. Obviously, he will know about the PPS tests, the public interest tests and the evidential tests that are required before a case would end up being taken. We also looked at clause 12, which talks about the reasonableness defence. Of course,

some people did not want that included, but we looked at this Bill in the round, and that is where we reached a position in respect of all of this. I intend to cover that in much more detail whenever I get to my contributions, however.

(Mr Speaker in the Chair)

Mr Allister: I simply make this point: why would we want to go around the houses with all those pedantic examples when the answer lies in the existing law, namely the alternative prosecution for or the alternative conviction of "attempt"? Why would you want to create this mythical situation when you could, very simply, charge attempted abuse, and, because you have not got a victim who claims abuse, you can acquire the conviction?

Mrs Long: Will the Member give way?

Mr Allister: Yes.

Mrs Long: The Member continues to make the mistake of conflating "attempt" with "no harm". This is not about someone who attempted and failed to abuse another person. This is about someone who undertook a course of action that a reasonable person would believe was abusive. It is not unusual in law for a reasonable person test to be applied. As the Chairman of the Committee has rightly said, that includes at the point at which the PPS makes a decision on whether to prosecute. The key issue here that is not about "attempt", however, because we are not saying that the person in this case did not complete the course of action: the person did. The question is whether that course of action, which we believe should be criminalised, has caused harm, and that is a different question.

Mr Allister: That brings me back to the central point. The Minister is inviting the Assembly to create a criminal offence, where the critical component of the actus reus of causing harm is absent. Clause 3(1) could not be clearer:

> *"The domestic abuse offence can be committed whether or not"*

the course of behaviour actually causes harm. It is up there in lights: you do not have to cause harm to be convicted of causing harm. That is the essence of it. What is domestic abuse if not harm? You cannot say that domestic abuse is something out in the ether. It is real, except when you get to the Crown Court, where it does not have to be real to have caused harm. It can be mythical, provided a reasonable man says, "Ah, but it should have caused harm". Really? I really think that the House needs to examine that. That is why I was not surprised to read that the Bar Council cautioned about the objective test. It said that you should consider:

> *"whether the offence should require evidence of harm to B".*

It told you:

> *"reliance on an objective test is problematic".*

All of those points were raised with the Committee, yet we arrive today where we started, which is with an attempt to push through the novelty of an offence without the essential component of the actus reus. "A guilty mind is enough" is really what we are saying here. I respectfully suggest to you that a guilty mind can never be enough to convict anyone beyond all reasonable doubt of a serious offence or of any offence. This is an offence for which the awaiting sentence can be 14 years. I therefore say to the House that we need to pause. There is nothing to lose by putting amendment No 1 into the clause, which requires:

> *"that B suffers physical and psychological harm",*

and by taking out clause 3, which is the one that really distorts the whole issue of the essence of criminality: the mens rea and the actus reus. Those are my points, and I put them before the House.

Mr Givan: With your indulgence, Mr Speaker, before I address the amendments, I wish to make some general remarks about the Bill in my capacity as the Chairman of the Committee for Justice.

The Committee supports the Bill, including the creation of a new domestic abuse offence that covers physical abuse as well as psychological abuse, which, as Committee members heard directly from victims, is just as harmful, if not more so. The Committee supports the aggravator clauses and the associated changes to improve criminal procedures evidence and sentencing in domestic abuse-related cases. The Committee supports a number of the Minister's amendments, and it has tabled six amendments in order to improve the legislation.

During the Second Stage debate on the principles of the Bill, I outlined that, in the 12 months from 1 January 2019 to 31 December 2019, Police Service statistics indicated that the

highest number of domestic abuse crimes in any 12-month period had been recorded since 2004-05. The number of crimes had increased by nearly 15% on the previous 12 months.

During the COVID-19 lockdown, from March onwards, calls to the police for domestic violence and abuse incidents increased by around 15% compared with calls for the same period in the previous year. Cases involving domestic abuse generally account for nearly 20% of the Public Prosecution Service caseload each year. In the past financial year, the PPS issued just over 8,000 decisions in cases involving domestic abuse. Those figures are staggering and clearly illustrate the need for this legislation, which is long overdue. Domestic abuse can affect anyone, regardless of gender, age, class or sexual orientation, and should never be excused or tolerated.

On the restoration of the Assembly in January, one of the first things that I did, along with the Deputy Chair of the Committee, Linda Dillon, was to encourage the Minister to bring this legislation through the Assembly, rather than continuing to use the Domestic Abuse Bill that was going through Westminster as the legislative vehicle. I am very pleased that the Minister agreed to do so, which has enabled the Bill to be scrutinised in depth. It has provided the opportunity for the statutory and voluntary organisations, and, most importantly, those who have suffered domestic abuse to have a voice in shaping the legislation and ensuring that it meets the specific needs of Northern Ireland.

While this approach was widely welcomed, there was some concern that it would take longer for the legislation to be passed. The Committee, however, prioritised the Bill, and I am very pleased that it is on track to complete its passage through the Assembly ahead of the Westminster Bill.

As well as the Bill's clauses and a wide range of related amendments, the Committee considered the need for effective implementation of the legislation and a range of issues relating to domestic abuse, highlighted in the evidence that we received, which were not covered through the legislation. A consistent theme running through the evidence related to the importance of ensuring that the legislation, once passed, is implemented properly and effectively. I will return to that when we debate the group 3 amendments.

A wide range of issues relating to the domestic abuse offence and the provision of support and assistance to victims, which are not currently covered in the Bill, were brought to the Committee's attention. The need for progress in those areas, in conjunction with the legislation, was repeatedly emphasised. Some issues require legislative provision, while others are operational in nature. Some issues fall within the responsibilities of Ministers other than the Minister of Justice, which highlights the fact that a number of Departments, including the Department of Health, the Department for Communities and the Department of Education, have a role to play in supporting victims of domestic abuse, and a cross-departmental response rather than simply a Justice response is required.

The distinct criminal justice purposes of the Bill limited the opportunity to take forward many of the aspects that require legislative provision. However, the Committee intends to continue to make domestic violence and abuse one of its key priorities and will continue to consider the issues in that context. The Committee has tabled amendments to progress two of the issues, to which I will return later.

Given the interest in the Bill and the Committee's wish to ensure that the legislation is as robust as possible, the Committee spent a considerable time in undertaking detailed scrutiny and sought a wide range of views to assist its deliberations. Written evidence was sought from interested organisations, and the Committee particularly welcomed the views of victims of domestic violence and abuse.

4.15 pm

We used four different social media platforms, which were the Assembly blog, Facebook, Twitter and Instagram, to raise the awareness of the public and to engage with them by disseminating information on the Bill using a range of methods including text, graphics and videos.

The Committee received 66 written submissions from organisations, including the Committee for Health and the Committee for Communities, which both provided very helpful comments on aspects of the Bill and other issues that are relevant to their respective Departments, and from the Minister of Health. Eleven oral evidence sessions were held with a range of organisations, and the issues that were raised in the evidence that was received were explored with the Department of Justice and the Police Service in writing and through oral briefings. The Committee also discussed the legislation with representatives of the Public Prosecution Service, given that it, together with the PSNI, will be responsible for applying the new legislation. Several research papers were

also commissioned to assist the Committee's consideration of specific issues, and we sought further clarification and information from the Department for the Economy and the Department for Communities on specific issues that fall within their responsibility.

The Committee received written views from 45 individuals, many of whom outlined their personal experiences of domestic abuse. The Committee held nine private informal meetings with a number of individuals in order to discuss their personal experiences of domestic abuse and their views on the legislation.

In order to assist scrutiny of the technical aspects of the Bill, the Committee also sought advice from the Examiner of Statutory Rules on the range of powers in the Bill to make subordinate legislation and to receive legal advice on issues relating to clause 10 and legislative competence.

The Committee considered the Bill and potential amendments at no fewer than 17 meetings before agreeing its report on the Committee Stage of the Bill at our meeting of 15 October.

I thank the members of the Committee for their contributions to the detailed, robust and careful scrutiny of the Bill and the issues that were raised in the evidence during the Committee Stage. This was the first Bill that a number of members had to consider, and they showed forensic attention to detail. Committee members showed a collegiate approach. We debated robustly the issues, and then we reached consensus. It is through the strength of the Committee and that unity of purpose that amendments will be passed today, when they are voted on later, because of that work across the different members and across the different political parties.

All that scrutiny work was achieved despite the restrictions that COVID-19 has placed on the Assembly and members and our ability to gather evidence. I might be biased, as Chairman of the Committee, but I believe that the Justice Committee is an exemplar to other Committees in the Assembly. It is the engine room for the changes that take place in legislation, and I thank all the members for the way in which they approached this legislation. There is no doubt that the Committee considered all aspects of the Bill, the range of proposed amendments and the other issues that were brought to our attention in a full and thorough manner.

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. Most importantly, I place on record the Committee's thanks and appreciation to those individuals who responded in writing and, indeed, who met privately with Committee members and shared their personal experiences of domestic abuse. We know how difficult it was to relive those experiences, but their contributions greatly assisted the Committee in understanding the insidious nature of coercive and controlling behaviour and the impact of domestic violence and abuse not only on the victim but on their children and wider family.

The Committee also appreciates the support and assistance provided by Assembly staff, including the researchers; the legal adviser; the Examiner of Statutory Rules; the communications and broadcasting staff; indeed, the staff from Hansard; and, in particular, the Bill Clerk. They all played an important role in supporting the Committee to undertake its legislative scrutiny role in general and the Committee Stage of this Bill in particular.

I also commend our Committee staff, led by Christine Darrah. She is a gem in the Assembly whom we are proud to have supporting our Committee.

Christine has been there since the start of the devolution of justice. I have had the opportunity to work with her on this, my second occasion, as Chairman of the Committee. I place on record my appreciation of her work and dedication and that of her team in supporting Committee members.

I move to the amendment to clause 1 tabled by Mr Allister and his opposition to clause 3. There is overwhelming support for the new offence that is provided for by clauses 1 to 4 amongst the organisations and individuals who submitted evidence to the Committee, with many of the view that it better reflects the realities of how domestic abuse is experienced and will better protect victims of domestic abuse. The Women's Aid Federation believes that an offence that includes coercive control will lead to a criminal justice system that more accurately reflects the realities of domestic violence and abuse. Relate NI particularly welcomed the "reasonable person" test as a means of adjudicating whether an offence is committed. Victim Support NI supports the framing of clause 3 and the view that the offence can be deemed to have been committed regardless of whether the behaviour

has been proven to have had a particular effect and agrees with the view of the Men's Advisory Project that proof of the act of carrying out the abusive behaviour should be sufficient without having to prove beyond reasonable doubt that the abuse had a particular impact. The Probation Board also welcomes the recognition that an offence can be committed regardless of whether harm was actually caused and that the provisions will apply where the behaviour of the alleged perpetrator was intentional or reckless to its effect. The Public Prosecution Service stated in its evidence to the Committee that the new offence means that it will now have the ability to prosecute perpetrators for the more subtle forms of controlling behaviours that previously have fallen short of a criminal offence yet are common in cases of domestic abuse received by them. It supports clauses 1 and 2 and notes that clause 3 will ensure that perpetrators cannot take advantage of resilience or acceptance of an abusive situation.

A number of organisations raised some issues regarding the framing of the new offence with the Committee. In relation to clause 1, the Evangelical Alliance noted that the offence can be committed regardless of whether harm is actually caused to an individual and was concerned that, if there was a lack of safeguards, the legislation could be used maliciously or vindictively by either partner in a difficult or toxic relationship and sought assurances that it would not be inadvertently applied to unintended situations or personal disagreements that do not amount to domestic abuse. The Bar of Northern Ireland commented on the proposed reasonable person test and the fact that psychological harm includes fear, alarm and distress with no requirement to demonstrate the actual impact on the victim and stated that this is a low bar and potentially gives considerable discretion to the PPS when making decisions around which complaints should be prosecuted. It also highlighted that, when coupled with the broad list of family members in clause 5, this would potentially allow a considerable range of behaviours in intimate and family relationships to fall under the ambit of the legislation. The Bar, however, recognised that a fine balance must be struck between ensuring the safe prosecution of alleged perpetrators of domestic abuse and, at the same time, ensuring that victims of domestic abuse do not endure further trauma as part of a criminal trial by having to prove to the court that the behaviour has caused them psychological harm. It appreciated that the rationale behind the legislation was a genuine attempt to improve the operation of the system and recognises the very difficult experiences of victims.

The Bar also commented specifically on clause 3 and indicated that it seemed possible that the absence of a requirement to show harm could arise in cases where a person is not the instigator of the complaint, where they are not harmed and where the person does not consider the conduct abusive, and, in those instances, employing an objective test may cause difficulty. The Bar questioned whether consideration should be given to whether the offence should, in fact, require evidence of harm, which Mr Allister's amendment addresses today. Mr Allister also drew to the attention of the Committee correspondence between him and the Scottish Justice Secretary, which he referred to in his opening remarks, and highlighted that any suggestion that there had been successful prosecutions in Scotland where no actual harm was caused is not borne out by actual data.

In considering clauses 1 to 4, the Committee took account of the evidence of the Department, which, I am sure, the Minister will cover in detail later in the debate. In particular, the offence operates on the basis of checks and balances, and it will have to be considered that abusive behaviour has taken place for the offence to apply. The behaviour must occur on two or more occasions; be considered abusive, with a range of effects that have been set out; be considered by a reasonable person to be such; and be likely to cause the person to suffer physical or psychological harm. The offender must have intended to cause harm or been reckless as to that. The test for prosecution, including the public interest test, will also have to be met, and further safeguards regarding the defence on the grounds of reasonableness, provided for by clause 12, which the Committee considered in detail and supports, as it provides the necessary balance, given the scope of the new offence and the wide personal connection, will apply.

The Committee also sought further information and clarification in relation to clause 3, particularly the no-requirement-to-cause-harm aspect of the provision, from the Department. Officials outlined that the provisions focus on the actions of the perpetrator, the intention to cause harm or be reckless as to that. The purpose of clause 3 is to ensure that a case can be taken forward where an individual may have suffered considerable abuse over a period but, due to the extent and nature of the abuse, the behaviour has become normalised or the person has become resilient to the abuse. As a result of that, the person may not necessarily

be of the view that harm has been caused to them, but a reasonable person looking at the information in those specific circumstances would be of the view that harm could be caused to the individual, and it would be deemed to be abusive behaviour, in accordance with the requirements of clause 1. They also advised the Committee that Scotland, whose legislation is framed in a similar manner, has not encountered any practical difficulties with the operation of its offence and that, if clause 3 is not part of the Bill, there will be no opportunity to take these types of cases forward. The police also advised that the clause could be used to good effect but it would be helpful to have clear examples to ensure, from an operational perspective, that the organisations involved in progressing cases all have a similar understanding of how the provision should be applied.

The Justice Committee acknowledges the difficulty of legislating in the realm of human relationships. It noted that the two key criminal justice bodies that would be responsible for applying the new law — the Police Service and the Public Prosecution Service — noted in their evidence that they will benefit from the legislation when prosecuting perpetrators for the more subtle forms of controlling behaviour and in having the ability to better protect victims of domestic abuse. They did not raise any concerns regarding the framing of the offence or clause 3.

It is clear that the current law does not adequately recognise that domestic abuse is not limited to physical violence. The Committee received compelling evidence of the harmful effects of psychological abuse and the manipulative, subtle and, at times, covert nature of the behaviour. It can leave victims feeling humiliated, degraded and belittled. As one individual said:

"It stripped me of my ability to be me".

The Committee is of the view that the new offence addresses gaps in the current law, captures domestic abuse in its myriad forms, will enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to victims by the criminal justice system. That includes cases in which an individual may have suffered considerable abuse over a period but, due to the extent and nature of the abuse, the behaviour has become normalised or the person has become resilient to it and does not recognise the harm that is being caused to them. The Committee, therefore, supports clauses 1, 2, 3 and 4.

I turn to clause 9 and the amendments tabled by the Minister, Rachel Woods and Paul Frew. The Committee welcomed the aggravator provided by clause 9 but noted that, in the evidence received on the clause, a number of organisations raised concerns regarding whether the wording properly reflected the fact that a child can be aware of and impacted by domestic abuse in the home even if they do not see or hear the moment in which it occurs. They also questioned why the wording differed from that in the Scottish legislation by not including a "reasonable person" test and the reference that there does not need to be evidence that a child has ever had any awareness of the behaviour or understanding of the nature of the behaviour for the offence to be aggravated.

4.30 pm

The Committee spent a considerable amount of time discussing the wording of the clause, particularly subsection (2), with departmental officials and requested further information regarding whether the aggravator would apply in a situation where a child did not directly witness the abuse, and on the Department's rationale for adopting a different approach from Scotland to the wording of this clause and not including the "reasonable person" test. The Committee was concerned that the wording of clause 9 was not specific or clear enough and that it needed to be strengthened to reflect the fact that, for the offence to be aggravated, there does not need to be evidence that a child had ever had any awareness or understanding of A's behaviour or been adversely affected to ensure effective enforcement and prosecution. The Committee proposed amending clause 9 by either adopting the Scottish wording, unless there was any specific reason not to use that wording, or wording that provided the same sort of clarity.

The Department responded, advising that the child aggravator applied if, at any time during the commission of the offence, a relevant child sees, hears or is present during an incident of abuse, if they are used to abuse another person, or if abusive behaviour is directed at them. The Department emphasised that the clause does not provide that the child has to have an awareness of, be adversely affected by or understand the behaviour, and that therefore it considered that an amendment akin to the Scottish legislation was not necessary. The Department also stated that it considered that the child aggravation offence in this Bill is wider than the Scottish offence, in that there is no requirement for a reasonable person to consider that the behaviour would adversely

impact on the child or for the child to have to live with either the victim or the offender.

The Committee was not convinced and was still minded to amend the clause. It sought the views of the Department on the text of a draft amendment that, in its view, clarified that there was no requirement for the child to have an awareness of, understand the nature of or ever be adversely affected by A's behaviour, and also asked the Department whether it would consider providing greater clarity in relation to these aspects of this clause in the explanatory and financial memorandum that accompanies the Bill.

The Department responded, saying that the Scottish legislation provides that their offence is aggravated if a child sees, hears or is present, plus a reasonable person would consider the behaviour to be likely to adversely affect the child. Proving the aggravation is then subject to a condition that, for the offence to be aggravated, there does not need to be evidence that the child has been aware of, understood or been adversely affected by the abuse. Our offence is aggravated on the basis of an objective fact — simply that the child sees, hears or is present — unlike the Scottish provision, which requires this and a consideration of adverse effects. According to the Department, the Committee's amendment would have introduced an unrelated adverse effect provision which was unnecessary and would add nothing to the clause, but could risk giving rise to confusion by casting doubt on its effectiveness, and, on that basis, the Department would not support the amendment.

Following further discussion, the Department advised that, given the ongoing concerns of some members that the wording of clause 9 did not make it clear that a child need not be aware of, have understood or have been adversely affected by abusive behaviour in the context of the provision that the child had seen, heard or been present when the abusive behaviour occurred, it would consider what further clarification could be provided in the explanatory and financial memorandum in relation to clause 9(2). The Department subsequently confirmed to the Committee that it was proposing to amend the EFM so that, in relation to subsection (2), it would read:

> *"there is no requirement for the child to be aware of or understand the nature of the behaviour, or for the behaviour to give rise to some detrimental impact on the child. Any involvement of the child could also be unwittingly or unwillingly".*

The Department also advised that its understanding of the Scottish provisions and the advice that officials had given to the Committee in writing and during the oral evidence session on 24 September was, in fact, incorrect. It apologised for the error and clarified the position, but indicated that this did not change its view in relation to the position regarding the clause 9 "sees, hears or is present" provision. It again confirmed to the Committee that there is no requirement that the child be aware of, understand or be adversely affected by the abuse. With the caveat that the Department would amend the explanatory and financial memorandum to ensure that there was greater clarity regarding subsection (2), the Committee agreed, with the exception of Rachel Woods, that it would support clause 9 as drafted. Ms Woods indicated that she was still not satisfied with the wording of clause 9 and intended to move amendments, which are in front of the House today.

I have set out at some length the Committee's in-depth consideration of clause 9. The Committee questioned the wording of this clause with the Department on multiple occasions and received advice and assurances from officials that the wording was sound and adequately covered the issues that members raised. We were also told that the text of the proposed Committee amendment would add nothing and could bring confusion but that, to address members' ongoing concerns, officials would provide further clarity in the explanatory and financial memorandum to make it clear that the child does not have to be aware of or understand the abuse or to have been adversely affected by it.

The Minister then advised the Committee that she intended to table amendments to clause 9. The Department outlined that the amendments were to ensure the robustness of the provision, make the provision explicitly clear for the avoidance of doubt and add an additional limb to the clause, meaning that the aggravator would also apply if a reasonable person would consider the course of behaviour, or an incident of behaviour that the accused directed at victims as part of the course of behaviour, to be likely to adversely affect the child and that the child usually resides with the accused, the victim or both.

I will leave it to the Minister to fully outline her position, given that she has indicated that, following discussion with the Committee last Thursday, she does not intend to move amendment Nos 5 and 6. Likewise, Rachel Woods and Paul Frew will no doubt outline the aim of the proposed amendments to the clause.

I will briefly outline our party political position. We had reached an agreed position at the Committee, as I outlined when speaking in my role of Chairman. The Minister's subsequent actions, in my view, undermined the information and the basis on which that Committee position had been reached. Therefore, we were left to consider that in light of the intervention by the Minister through her amendments, because it created doubt in my mind in respect of the information that the Committee had been provided with on multiple occasions. On that basis, the DUP will support the amendments in the name of Paul Frew and Rachel Woods. We would have been voting against the Minister's amendments, but I note that she will not move those.

Mrs Long: I thank the Member for giving way. In an attempt to clarify the situation: what is in the EFM is not part of the Bill. It says at the beginning of the explanatory and financial memorandum that it will not form part of the Bill, and, therefore, I did not believe, when we reconsidered this having listened carefully to the Committee's issues, which is part of this iterative process to develop legislation, that it would provide the robustness that the Committee was seeking. On that basis, we decided to table amendments to give that robustness.

I listened again to the Committee last Thursday and it was very clear that those amendments did not find favour with the Committee, and, therefore, I do intend to move those amendments today. I am happy to accept amendment Nos 4 and 7. To clarify the position: it was an attempt to address the issues raised by the Committee. I have to say gently to the Chairman that it is appropriate that a Minister should try to accommodate the wishes of the Committee to improve the Bill in as far as it does not harm the intent of it.

Mr Givan: I appreciate the Minister's intervention. I will not dwell on this area, because my colleague Paul Frew will speak at length on this issue, but I gently say to the Minister that, whilst it is an iterative process, there was a lengthy Committee Stage, extensive engagement with the Department and we sought information on multiple occasions. That Committee Stage concluded and, subsequent to that, the Minister provided amendments. I will say this again because it is relevant to the Minister's other amendments: the process for that direct engagement is at the Committee Stage, when it is open for the Minister and the Department to reassure members. This is now the Consideration Stage, and the Committee is bringing forward its amendments. I will leave it —.

Mrs Long: Will the Member give way on that specific point?

Mr Givan: I am happy to give way to the Minister.

Mrs Long: I appreciate the Member's patience on this matter, but the truth is that, when Members submit amendments, it is often not clear at the Committee Stage whether Members intend to submit further amendments. It is entirely appropriate that a Minister, with the backing of the Office of the Legislative Counsel and the additional resources that it has, would look to those amendments and see if they are able to provide an amendment that is perhaps more robustly drafted in the terms of the Bill. That is not unusual. The use of probing amendments to test the Minister on issues is not an unusual process. This process does not end with Consideration Stage; there is Further Consideration Stage and Third Reading. I accept that it moves at pace, which is why I offered the Chairman an extra week for the Committee to consider my proposed amendments. He said that that was not necessary. I would not want anyone to leave the Chamber today thinking that the Committee was bounced on these issues in any way.

Mr Givan: Again, I thank the Minister for the intervention. I say gently to the Minister that the Department was aware of the Committee amendments weeks before we concluded our formal consideration of this; weeks before. The Department regularly receives the minutes of those meetings, and it was there. The Department chose not to reveal its hand until a number of weeks later. Now, that is a more procedural point. The Minister has outlined why she took that position. I beg to differ as to whether or not that is the right approach to how the Committee conducts its business. It is a generic point that is also applicable to a number of the amendments that the Minister brought forward and has subsequently decided not to move. You are right: we will have Further Consideration Stage, when some of these aspects will be tidied up. I welcome the Minister's approach to some of the further amendments that will be brought subsequently.

I move on to some of the other minor and technical amendments left in group 1. The Department advised the Committee of the Minister’s intention to bring forward amendment Nos 2, 8 and 10 and provided the text of them during the Committee Stage. Noting that they

are minor drafting changes to tidy up the wording of clauses 8 and 10 to reflect the position that "course of behaviour" under the main offence is not the sole element of the domestic abuse offence and, in relation to Clause 13, to make sure, for the avoidance of doubt, that there is no risk of implying that the provisions in the Criminal Law Act 1967 are ousted by what is contained in this clause, the Committee is content to support these amendments.

Finally, in my capacity as Chairman of the Committee, I want to address amendment Nos 16 and 17 of this group, which the Minister has brought forward at the request of the Committee. Clause 25 provides that the Department may issue, and may revise, guidance in relation to the domestic abuse offence or any other matters as to criminal law and procedure relating to domestic abuse. The Committee questioned why the wording of the clause provided that the Department "may issue" rather than "must issue" guidance and also sought information from officials on when the guidance would be available, whether it would be periodically reviewed and whether the requirement for reviews should be included in the legislation. The guidance on the new domestic abuse offence will set out examples of types of abusive behaviour and provide clarification on a range of areas, which will assist the Police Service and the Public Prosecution Service from an operational perspective and ensure a common understanding of how the new offence should be applied. The Committee considers the provision of the guidance to be a vital component in the training of the criminal justice agencies and to ensure the consistent and robust implementation of the legislation. While the Committee acknowledges that it may be common legislative drafting terminology to use the term "may issue" and the Department is in the process of developing guidance in conjunction with key stakeholders, the Committee is of the view that there should be no room for doubt regarding the provision of guidance and, therefore, that clause 25 should be amended to change "may issue" to "must issue".

The Committee welcomes the Minister's agreement to bring forward amendments to provide that the Department must issue guidance on Part 1 of the Bill and such other matters as it considers appropriate. The Committee, therefore, supports amendment Nos 16 and 17 and amendment No 19 in group 3, which provides for the guidance to be kept under review and to be revised if necessary.

Ms Dillon: I do not propose to repeat everything that the Chair of the Committee said. I concur with many of his comments, particularly in thanking those who came before the Committee, both the organisations and groups and the individuals. I particularly thank the individuals who bore witness to their experiences, which was not easy for them to do. To be perfectly honest, it was not easy to listen to either; it was very difficult because those are people's very personal and very difficult experiences. We were tasked with the job of scrutinising legislation that will, hopefully, address those issues for people in the future. It was a big responsibility for the Committee. As somebody dealing with legislation for the first time, and for it to be such important legislation, I certainly felt the weight of that responsibility. From the bottom of my heart, I thank all on the Committee, the Minister, the officials and the Committee staff, all of whom were a great help. They certainly helped guide me through this legislation. I go back to the witnesses, because it is from them that we get the information that helps us decide which clauses and amendments we will support.

4.45 pm

I will speak to the first group of amendments. We oppose amendment No 1, which is Mr Allister's amendment, on the basis of the Committee's position on the issue. I also oppose Mr Allister's opposition to clause 3. These clauses go to the very heart of what the Bill is about: addressing the gaps and ensuring that, where we did not have legislation before to protect the most vulnerable in our society, we will have legislation. I will not go over the numbers of people who suffer and report domestic abuse, particularly in this time of COVID. Those statistics have been borne out, and I am sure that they will be borne out again later in the debate. It is not about statistics. This is about not only every single victim of abuse but their children, their family and everybody around them. For every single person who suffers domestic violence, many others will be affected. The Bill is about trying to embrace that, particularly the effect on children. I will talk more about that when speaking to later amendments.

We will support amendment Nos 2 and 3, which are minor amendments to terminology. We will support Rachel Woods's amendment No 4, which would make a minor change to wording. We queried whether it would add anything to clause 9, but it certainly does not detract from it, and putting "or threatened to direct" explicitly in the Bill will do no harm. For that reason, we will support the amendment.

I thank the Minister for saying that she will not move her amendment Nos 5 and 6 following conversations with the Committee on Thursday. I am sure that other Committee members will talk more about clause 9. Rachel Woods tabled amendments to it, and Paul Frew added his name to them, so I am sure that they will speak extensively about it. Clause 9 was of real concern to us, and we wanted to ensure that we got it right. It is about the impact on children, not only at the time of the incident but for the future. There is an impact on children who live in a home where there is domestic abuse, even if they do not witness it and even if they do not realise that they have been affected. Whether they see the acts of domestic abuse, those acts will have an impact on them. They will suffer harm and adverse effects that will last into the future.

The Chair of the Committee is right to say that the issue is cross-departmental. This is a Department of Justice Bill, so I will not go into any detail on that. We do need a cross-departmental approach to be taken, however. We need every single Minister and Member of the Assembly to take it on as the serious issue that it is. In the way in which we have addressed the legislation, we have shown that we take it seriously. The Committee has said that, even when, hopefully, the legislation has passed, it will still view this issue as a priority in the future. For that reason, we will support Rachel Woods's amendment No 7 to clause 9.

The Committee had a particular focus on the child aggravator and the adverse impact on the child as a result of domestic abuse. I will speak more to that later. In particular, I will speak about Operation Encompass, which I raised during my first days on the Committee and have raised at the Policing Board over the past couple of years. It is vital that we address that gap. Again, I will not speak to that at this point, because it is more relevant to later groups of amendments.

We will support the remaining amendments, which are amendment Nos 8, 10, 16 and 17. That ends my contribution on this group of amendments.

Ms S Bradley: At the outset, I thank the Chair of the Committee for putting together such a comprehensive explanation of the Committee's work to date. It was a very fair synopsis of the work that has gone on to this point.

At this stage, I will not engage in thanking everyone — maybe I will leave that for later — but I will single out those people who stepped forward, told a personal story and gave a personal account to the Committee. There was nothing more sobering in making the Bill a reality than listening to the voices of those victims. I commend them. It was courageous, and I put on record the fact that it helped my thinking on where we took the Bill.

As the SDLP representative on the Justice Committee, I will open on the group 1 amendments. Amendment No 1, which we will oppose, proposes to leave out the reasonable person test. I heard Mr Allister's words, and I have sympathy for much of what he said. However, it is not as black and white as some of the legislation to which he referred. We are trying to pin down a complex issue in legislation. Unfortunately, that challenges minds and thinking on what has happened previously in a legislative process, which may not fit. It is a challenge and it is difficult. I appreciate Mr Allister's contribution, and I certainly have an open ear about the solution, if there is a middle ground.

Given the strategic and escalating nature of coercive control, it is important that there is a reasonableness test in legislation. The demeaning gaslighting and persistent behaviours that evolve over time often result in a victim feeling ashamed, with low self-esteem and low self-worth. The stripping of that individual's confidence and self-worth can lead to their believing that the behaviours of the perpetrator are in some way justifiable. At the depth of such oppression, it can be deeply challenging for a victim to see, with any real clarity, the extent of the wrong to which they are being subjected.

The SDLP supports clause 3. It recognises that it has been determined that a reasonable person has considered the coercive behaviour by the perpetrator to be likely to cause person B to suffer physical or psychological harm. Furthermore, clause 2 speaks of the reasonable person's assessment that one or more of the relevant effects of that behaviour is likely to be triggered.

The SDLP shares the Committee view that current legislation does not adequately recognise the fact that domestic abuse is not limited to physical violence and believes that the new offence addresses gaps in legislation, captures domestic abuse in all its myriad forms, will enable more effective action to be taken against perpetrators and will enhance the protection and access to justice provided to those victims by the criminal justice system. To achieve that, it is critical that clause 3 be retained.

A number of conditions must be met for the offence to be committed. Importantly, a defence on the grounds of reasonableness offers safeguards throughout the Bill.

Clause 3 speaks directly to the darkest, less well understood effects of domestic abuse, particularly in its psychological form. The manipulative, coercive behaviours of the perpetrator can deliberately set out to normalise the sinister intention behind their acts.

Throughout the deliberations, reference has been made to the much-publicised Hart case, with brothers Ryan and Luke giving voice to their much-loved mother, Claire, and sister, Charlotte, who were, after much abuse, finally murdered by their abusive father and dad. Luke Hart said in an interview:

> *"He created the conditions to be seen as our saviour when he was in fact the abuser."*

Clause 3 reaches that point. It exposes the behaviours of perpetrators and removes any tangled web of emotion and shines a light directly on perpetrators' behaviours and allows them to be judged in the cold light of day. It is clause 3 that should keep abusers awake at night.

The SDLP recognises the points raised by Mr Allister. However, I put it to him that the issues are not as black and white as we might like them to be.

On amendment Nos 2 and 3, the SDLP will support the Minister, as the amendments appear largely technical. I acknowledge the explanation given by the Minister and the Department to date.

We will also support amendment No 4. I appreciate that the explanatory and financial memorandum is guidance, but in relation to clause 9 it states that:

> *"This could include the accused threatening violence towards a child to control or frighten the partner/connected person or being abusive towards the child."*

The amendment proposes to place that in the Bill, and the SDLP has heard no reason why that should not happen or any limiting implications that it may have.

Clause 9 has been the subject of huge debate during the Committee Stage and on the Floor, and rightly so. I appreciate the Chair of the Committee putting on record the very long sequence of events that has moved thinking through our time on this. I appreciate that, even at this point, the Committee report may not now reflect the views across the Committee, and for good reason. It is important to place on record the letter dated 5 November from the Department to the Clerk of the Justice Committee for members' attention. The content of the letter, however late, has served as a key document in understanding the Department's objectives behind amendments relating to the threshold for parental responsibility and aggravation where a child is involved. It is also important to place on record that the newly evolved departmental position in the letter departs significantly from an earlier steadfast position held by the Department, an official position that requires mention because it strongly influenced thinking at Committee Stage and in our final report.

This is a legislative process, and, as debate matures and we develop our thinking on certain concepts and ideas, we should at least record the pathway that brought us to those final points of agreement. The shared objective that we have in the House of developing good law demands that we consider and scrutinise the process of building legislation as it evolves. To that end, the SDLP recognises the value of the proposal to introduce a reasonableness test in clause 9. Amendment Nos 5 and 7 made that proposal. However, the second part of amendment No 5, which, I understand, may not be moved, departed from that and introduced a new notion of residency.

I will move on from that because if the Minister is not moving amendment No 5, I expect that we will be able to pick up on it at Committee and explore the reason and rationale behind it. I am also eager to know what, if any, impact that would have on clause 5.

At this stage, we are minded to support amendment No 7, on the basis that it serves as a base for developing thinking and conversation on the withheld amendment Nos 5 and 6 in case there is added value that we should not overlook.

Finally, I want to put on record our support for amendment Nos 8 and 10 and acknowledge the Department for listening to the Committee and bringing forward amendment Nos 16 and 17, which the SDLP also support.

Mr Beattie: I have to start by thanking the Minister for bringing the Consideration Stage forward. An awful lot of blood, sweat and tears has gone into the Bill so far, and there is more to come. The Minister and her staff have worked extremely hard. I also have to say thank

you to the Chair and the Deputy Chair of the Justice Committee and my fellow Committee members for their scrutiny of the Bill so far.

It has been exceptional. I have been an MLA for over four and a half years and this is the first legislation for which I have gone through the scrutiny process. It was a real eye-opener for me in many ways. You can probably see that: I have paper all over the place, and half the time I do not know how we are doing it. I am picking it up as we go along.

5.00 pm

I want to address some of the amendments. I would say one thing before I do, and it is important for people to understand it. Of course, there will be some disagreements between the Minister and the Chair or the Committee and the DOJ, but those frictions are healthy and are what makes legislation work. We have to understand that. We should allow those frictions and deal with them as and when they come up.

I cannot support amendment No 1 for the simple reason that I read it and look at it in primary colours. Some people might say that that is a simplistic way to do it, but that is the way that I do business. I look at that amendment in simplistic colours and find:

> *"a reasonable person would consider the course of behaviour to be likely to cause B ... harm"*

That is absolutely reasonable. You could look at various reasons why that is reasonable because what we are trying to do is to look at every possible scenario that that might affect. That includes those with mental health issues who do not know that they are being abused and do not see that that course of behaviour is affecting them. However, others will see it, and they must be able to intervene. That is reasonable. Therefore, although I understand the points that have been made, I cannot support that amendment.

I have some sympathy with Mr Allister's objection to clause 3, and there may be something to look at in its wording. In all this, we are trying to be proactive on domestic abuse, but there may be something to look at at Further Consideration Stage. We should not just disregard that as someone else's opinion and say that we will not use it. I think that Mr Allister raised some valid points about clause 3, and I will certainly raise those in Committee so that we can tie it down and get it right. I do not want us to get it wrong at the last hurdle after all the good work that we have done. We will look at it and make sure that we understand it.

Of course, the Ulster Unionist Party will support amendment Nos 2, 3 and 4. I do not want to dwell on them; we have an awful lot of work to go through. The Ulster Unionist Party will also support amendment No 7. The reason that it will support it is an issue that appears throughout the Bill and one that I raised at Committee Stage: parental alienation and how children are used to abuse other people. Although it does not appear in the Bill — I asked for it to be included, and we had long discussions about it being included — departmental lawyers made it clear that the various clauses in the Bill, including clause 9, will make sure that parental alienation will result in a charge of domestic abuse.

Parental alienation happens to so many people in our society. It is not just about denying one parent access to a child; it is about denying a parent access to key milestones in a child's life or their school reports. It is about using a child as a weapon. In its unamended form, clause 9 deals with that in part, but the amendment that has been tabled by Rachel Woods and Paul Frew nails it down for me and makes me happier. Parental alienation is scattered throughout the Bill and is not just in clause 9, but amendment No 7 ties it down for me, and that is why I and my party will support it.

Ms Dillon: I thank the Member for taking an intervention. Does he agree that the issue with clause 9, which was outlined by Sinéad Bradley, is highlighted by the Hart case? We probably all use the Hart case as an example because they are among the very few who survived to tell the tale. Very often, in a murder-suicide, the entire family is killed. The end of coercive control situations can often be the death of those who have been coercively controlled.

Mr Beattie: You are absolutely right. Thank you for that. We cannot shout loudly enough about that or stop saying it. That is the worst possible case.

Clause 9 states:

> *"A made use of the child in directing behaviour at B".*

That can come in any form. We must be mindful of that. That is why I said that, although I was happy with clause 9, the amendment ties it down an awful lot more. That is why I support

amendment No 7. Of course, we also support amendment Nos 8, 9 and 10.

It is a complicated Bill. There is a lot in it. You can read it one way and really twist your mind in a certain direction, only for it to be flipped back when somebody brings in another scenario. We are trying to cast the net as widely as we can to catch all the available scenarios. Some of the amendments tabled by the Justice Minister and certainly those of the Justice Committee do exactly that. It is about trying to capture all of those things. That is why I have been so impressed by the work of the Justice Committee over the past number of months. I will certainly support all of the amendments that have been tabled by the Committee.

Ms Bradshaw: I oppose amendment No 1 and the opposition to clause 3 and support all other amendments in the group. I very much appreciate the opportunity to respond on behalf of the Alliance Party to the Consideration Stage of such a much-needed and long-awaited Bill.

Before I comment on the amendments, I place on record my thanks to the Justice Minister, her department officials, members of the Justice Committee and the many stakeholder groups, charities and individuals for the tremendous amount of work that has gone in to getting the Bill to this point. The campaign by organisations such as Women's Aid, the Men's Advisory Project and Nexus, to name but a few, for a robust legislative framework through which the courts, the PSNI, the Public Prosecution Service and social workers can operate has been long, and I hope that the Assembly will deliver a law that addresses gaps in provision and, ultimately, provides appropriate protections and remedies for victims of domestic abuse.

Before I address the amendments — this is the first time that I have spoken about the Bill during its passage — I will place on record my thoughts about parental alienation and address some of the concerns that some people have about aspects of the Bill that, they think, could be used to further abuse victims. Others feel that the provisions do not go far enough in stipulating an offence. I am stating my personal opinion of that misunderstood term.

It is about when a man or woman has the strength or opportunity — it is not always about strength — to leave an abusive relationship. They leave behind the coercive control, they regain financial autonomy, they are able to reconnect with family and friends, maybe they can get back to work, and they are able to build their life away from the perpetrator. In many instances, the only link that they retain with their ex-partner is their child or children. Their abuser can no longer control them, and their abusive behaviour is no longer a factor in their life. However, when there is still contact between both parents, the abuser has the ability to perpetrate the abuse through the one thing that, they know, will have most emotional impact: their child. In that way, the abuse can continue.

Furthermore, by weaponising the child or children and using them to punish the victim for leaving, they are also abusing them. The innocent child or children are caught in the middle and left confused and conflicted. That is why they must be factored into the Bill. Indeed, it is why some of the amendments strengthen that aspect of the Bill. We are all aware of adverse childhood experiences (ACE), and the impact that childhood trauma can have. It can lead to negative lifelong emotional and poor physical outcomes. I think that Linda Dillon touched on that as well; that it is not just about Justice, but is a cross-departmental issue. ACE include domestic violence or being the victim of physical or mental abuse. Therefore, even from a public health prism, we must ensure that the legislation provides safeguards, as much as possible, to stop children's experiences of parents' abusive behaviour, no matter to whom it is directed, having a lifelong impact on them.

Amendment No 3 to clause 9, on aggravation where a relevant child is present, is a minor but significant change, as it will ensure that aggravation can be applied if any or all aspects of the subsections of the clause are present. For similar reasons, my party is also happy, at this stage, to accept the enhancements to clause 9 and amendment Nos 4 and 7. In some ways, the Bill is substantially different from the Domestic Abuse (Protection) (Scotland) Act. However, the basis for determining how a reasonable person might consider the behaviour is fundamental and important to both. I think that we can all agree that it needs to be explicit in the legislation.

Amendment No 1 and the notice of opposition to clause 3 would fundamentally alter the offence and, therefore, the point of the Bill. The judgement, as in Scotland and elsewhere, must be that a reasonable person would consider harm to have been caused. That is the whole point of the legislation, as it refers not just to physical but, vitally, to psychological harm. Not to grasp that is not to grasp the fundamental point of domestic abuse and, importantly, coercive control.

Let the House be clear: when people normalise controlling behaviour just because it is ongoing

does not mean that no controlling behaviour has taken or is taking place. Also to be clear: where a court is presented with a case where there is no intent, no harm and none of the effects of abusive behaviour, it is simply not going to arrive at the position where someone could be prosecuted and jailed for 14 years, as Mr Allister mentioned. Those who suggest that are trying to remove the idea that controlling and coercive behaviour should be a crime. They are also trying to remove the idea that a child can be harmed without being immediately aware of the harmful impact. Sadly, again, it is a basic principle of child protection, for example, that the impact may come and be acutely felt years later in life.

The requirement in the legislation is that a reasonable person would consider harm to have been caused, and that it has been carried out intentionally or recklessly. We must also remember, as some have chosen to forget, that the draft legislation also contains a provision for defence on the grounds of reasonableness if the behaviour is reasonable in certain circumstances; for example, somebody's safety.

In conclusion, amendment Nos 16 and 17 are useful to add clarity; the former as requested by the Committee. I am content that they add to the Department's ability to ensure that the legislation is used to the fairest and best effect.

Mr Frew: I rise to welcome this stage of the Bill. It has been a long road. Before I get into the Bill and amendments in depth, people need to be acknowledged. As the Chairperson has already said, they are the Committee staff. MLAs can populate a Committee. We can do as much hard work as we can in the hours that we are given. However, when we leave the Committee, it is the staff who continue that work until we, again, hit that room and function as a Committee. I want to give my deepest thanks to the Committee Clerk and team, who I have known for considerable time now, and who, I must say, are at the top of their game. There is absolutely no doubt about that. The detailed report that they have helped MLAs to produce is second to none. They have helped and facilitated us, as MLAs, to scrutinise the Bill as best we can. That is vitally important. Without that support, we cannot do our job properly and provide legislation that is fit for purpose. We do not stand a chance.

5.15 pm

Thanks also have to go to — this has already been alluded to today — the many victims and many people who have been impacted by domestic abuse, domestic violence and coercive control. Those are horrendous activities. For the first time in our history, domestic abuse will be an offence, and that is really, really important. The Assembly should shine a light of hope to not only the victims who suffer but their families, who watch it, sometimes in slow motion, and feel as though they cannot do anything to help or assist or to change the course of events that take place. That is horrendously hard for anyone to watch, even if it is indirect. Even neighbours who watch it on a daily basis cannot affect change, but maybe they will be able to do so now.

Acknowledgement must also go to the former Justice Minister, Claire Sugden. When Claire first took office, she made this her number-one priority. When I first took office as the Justice Committee Chairperson, I, too, made it my number-one priority, along with the issue of stalking. Very quickly, the former Minister and I came to an arrangement that she would push forward with a domestic violence Bill and the Committee would work on a stalking report that we could hand to the Minister when she had developed her domestic abuse Bill. She would then pick up our report and run with it to produce stalking legislation too. I commend and thank the former Minister Claire Sugden for her priorities, her activities and her work in that regard. That was right, and it was needed, so I thank her for that.

I cannot let go of the fact that I stand here today with a sense of regret, because the Bill should have been passed three years ago. This Bill should already be in statute. We should already be seeing reports about how effective the law is and what the crime statistics are, and such reports would maybe suggest that we need to introduce a second Bill to ensure that the legislation is fit for purpose. We have been deprived of that up to now, and so have the victims. That is unforgivable. Three years? Unforgivable.

I also stand here today with a sense of regret about the suffering that people had to go through while this place did not meet over those three years. Just think about that. This is only aspect of law. It is only one Bill. It is only one subject. You think about those people sitting in their home really suffering while this place was not meeting. It is unforgivable — it really is — but we are here now. What do we have to do now? We have to make sure that this law is the best law that it can be.

I must admit that I have struggled with the Bill, because of the way in which it is written and compiled. I have sympathy for the Department,

but there was so much that I wanted to do and so many amendments that I wanted to add. Most Members know me by now: I would not shy away from that. I try to test things, to form things and to persuade people into my way of thinking. I wanted to try to attach a stalking offence to the Bill, but that was ruled out very quickly. When you read clause 1, you see very clearly that it states:

> *"A and B are personally connected to each other at the time".*

I know why that is in there. That is the reason why I could not attach even one clause on the stalking piece. I wanted just one clause to give those victims some succour and hope in the future, but, of course, we have stalking legislation coming forward as promised. It is nearly at the door of the Assembly, and I cannot wait until I see that legislation also.

I wanted to do something on strangulation, and I reserve the right to do something on strangulation at the next stage. It is important to talk about it to engage people's minds. Strangulation is one of the most horrendous crimes in domestic violence. It is not coercive control — I will talk about that later.

Mrs Long: I thank the Member for giving way. I share his concerns, particularly about non-fatal strangulation. There is a mounting body of evidence that it is a precursor to domestic homicide. Judge Barney McElhone has said clearly that he is very concerned about strangulation. Often, it can be difficult after the event to detect whether someone had been subjected to strangulation because it does not necessarily leave marks or signs of abuse.

For that reason, as you will be aware as a member of the Committee, the Department is taking forward work around strangulation to build policy development and to find the best way to put that into a legislative mechanism. It is important that that policy development work, and consideration of and consultation on that work, is able to proceed to build the body of evidence. However, I absolutely acknowledge and share the concerns.

Mr Frew: I thank the Minister for that intervention and for putting that on the record, because that is very helpful. I await to see how that plays out.

Another issue is the rough sex defence, and I looked at doing something around that. However, the departmental officials were concerned, so we were concerned, that to add in such a defence on specific matters could hurt the Bill because of the way that the Bill is formed. So, I take that point, but I reserve the right on that, too, and will keep people on their toes.

Mrs Long: I thank the Member for giving way. Great minds think alike, and we will just stop it there, but I am also concerned about the idea around rough sex defence. That issue has been raised with me by a number of Members. There is now consultation on that issue, and we are hopeful that it can be dealt with in the miscellaneous provisions Bill. It would be at amendment stage, because it has come onto the radar later than some of the other measures that we hope to incorporate in the original Bill. However, it would be my intention to develop the drafting as quickly as possible, so that it could be considered by the Committee during the normal Consideration Stage and that we could incorporate that, if required, into legislation.

Mr Speaker: I ask Members to stay within the scope of the debate. These issues are important, obviously, and the Member is creatively putting them on the record, but please return to the amendments in front of us.

Mr Frew: I apologise, Mr Speaker, and I accept your ruling on that. I thank the Minister for placing that on the record also, because that, again, is useful and commendable. So, I thank you, Minister, and I thank you, Mr Speaker. I accept your ruling and will try to resist further distortion of the debate on the Bill.

We are talking about the formation of the offence. My experience of this issue goes back to when I was first on the Justice Committee. When I met groups of barristers and judges, even solicitors and everyone else involved with the legal world, it was clear that everyone was grappling with how we could deal with coercive control. That has played out today with Mr Allister's interventions and his moving the debate. I understand that — I get his arguments 100% — but what we are trying to do is something completely different. Although we need to ensure, and satisfy ourselves, that this is the best legislation possible and that there can be no unintended negative consequences, I think that clauses 1, 2, 3 and 4 speak of coercive control in a way that has never been legislated for before.

Mr Allister talked about other offences and other legislation that can and could have been used, but I simply say to him at this point that that legislation has not been used. There are so

many victims and, before he tells me off, alleged victims who suffer this on a daily, weekly and yearly basis who have never, ever received justice. The perpetrators and the alleged perpetrators have never, ever been brought to justice. That is why we have been moved in this House by the Minister and the previous Minister to move on a Domestic Abuse and Family Proceedings Bill. It is because it is required. When you get to the point at which you know that it is required, you have to piece it together. When you piece it together, I struggle to find how you could leave out clauses 1, 2, 3 and 4.

This is a mystery to me yet, and perhaps the Minister will refer to it in her remarks. We have a Bill that is titled the Domestic Abuse and Family Proceedings Bill, but what we really want to do is create an offence of coercive control, yet not once in the Bill is that mentioned. Not once in the Bill is parental alienation mentioned, yet we are told that it is covered. I read the clauses, and I can see where what I believe to be coercive control has been captured. I can see that. The Bill does not necessarily have to mention it to encapsulate it and capture it, so I guess that that has satisfied me in that regard. I have a fear, however, that removing any of the first four clauses would diminish that strength and remove the coercive, controlling nature of domestic abuse that we are trying to capture.

That brings me on to my point about harm. It is human nature to tend to move away from harm wherever we can. If it is a hot ring in a kitchen, we try to remove ourselves from that. It does not mean that we leave the kitchen but that we stand clear of the hot ring. It has an effect and an impact, and you will function differently around that hot hob. You will beware, change tack and change direction. That is a bit like harm in this sense, where you will modify your position and your daily habits and be conditioned because of that harm. It is not just the harm that can be inflicted but the threat of the harm. There are times that people can threaten you with the most horrendous thought that you can ever have in your head, and you will comply. You do not need to be told twice. You will comply.

To me, coercive control is the little digs, the little things and the manipulative behaviour that makes you change your course because you are reasonable, because you want to make peace, because you do not want to create a fuss and because you do not want your child to experience anything robust or even horrendous. That is at the start, but then it becomes much more than that. There is the full spectrum here. Imagine being threatened by the perpetrator not that you will be raped but that a child will be raped. Your own child, your niece, your best friend's child or your next-door neighbour's child. You are threatened with that.

That has not caused you harm, but you will comply because you know that the perpetrator is deadly serious. That is coercive control at one end of the spectrum, but it happens, and we need to capture it in the legislation. There is absolutely no doubt about that.

5.30 pm

When you are a victim of coercive control, you do not know whether you are up or down. You do not know what day it is or what is normal practice. You become conditioned and immune to the very abuse that you are suffering and living with daily. You live with it. That is why we need these clauses and the reasonable person clause to capture this. Your life is in despair and is not your own, because by that point you are trying to protect yourself as best you can, and, more than that, you are probably trying to protect someone whom you love. You have out-of-body experiences when you feel that you do not even own your body. That adds another layer. Every one of us in the Chamber will go home for a rest. We might be here late — I suspect that we will — but we will go home for a rest. You cannot rest if you live in a household where you are a victim of domestic abuse and coercive control. You do what you have to do to move away from harm. That is why this must be captured in the way that the legislation is drafted and is why I support clauses 1 to 4. I hope that I have illustrated why we cannot support amendment No 1 and the removal of clause 3.

That brings me on to amendment No 3. I see it as a tidying-up exercise, and I get that. I do not know why it is needed because I thought that clause 9 was strong enough in the way that it is drafted. However, it does not do any harm, so I absolutely support it. There is no issue there.

I now come to the clause 9 amendments. The Chairperson outlined quite well the procedure that we went through and the horrendous task of the forensic detail that we went into on clause 9. At this stage, I commend the work of the Committee. The Chamber can be quite a bear pit. I am still getting used to the robust language and am still honing my skills. However, it is in Committee that the work is done. If we are to be proud of something about our job, it is the work of the Committees. We not only scrutinise Ministers and hold them to

account — let us face it, we have no opposition so Committees are the opposition — but we work together as a team. If Committees do not work as a team, something is badly wrong and they are not functioning properly. When a Committee works as a team, it works as a dream. It works well to help to scrutinise and produce legislation. I thank every single member of the Committee for their work on the Bill. Rachel Woods asked questions and persevered with a determined vigour to keep going and to push and press officials until we got to this point today, so credit where credit is due. I support her 100% and applaud her. She and I pushed and pushed. There were times when we did not think that the officials got it. We tried to formulate an amendment and were helped by the Bill Office. The Committee produced an amendment, and the Department said, "No, you are adding confusion to the Bill. It is not required". We saw straight away that it was required. There was real hole in clause 9 where it states:

"For the purposes of subsection (1), the domestic abuse offence is aggravated by reason of involving a relevant child if —

(a) at any time in the commission of the offence —
(i) A directed behaviour at the child, or
(ii) A made use of the child in directing behaviour at B".

It then states at 9(2)(b):

"the child saw or heard, or was present during, an incident of behaviour which A directed at B as part of the course of behaviour."

I will go into that in a minute, but when you read the EFM, it helps you to get an understanding of the clauses. That is why it is essential at this stage.

When you read clause 9 — and I do believe that there is a hole there — and then read clause 9 in the EFM, you will understand that it helps shed some light on it but confirms that there is a hole where it says:

"A directed behaviour at the child"

and the EFM states that 9(2)(a)(i):

"provides that the aggravation applies where it is shown that, at any time in commissioning the offence, the accused directed behaviour at a child. This could include the accused threatening violence towards a child to control or frighten the partner/connected person or being abusive towards the child."

That is fair enough. That is important. However, at 9(2)(ii) it states:

"A made use of the child in directing behaviour at B",

and the EFM states:

"provides that the aggravation applies where it is shown that, in committing the offence, the accused made use of the child in directing behaviour at their partner/connected person. This could apply where the accused encourages or directs a child to spy on or report on the day-to-day activities of a partner/connected person. The involvement of the child could be unwittingly or unwillingly."

I always struggle with that word.

That confirmed to me and to Rachel that there was a hole in this clause. Again, we thrashed this out at the Committee, week in, week out, and we talked about the EFM and the officials said, "If we add "unwittingly and unwillingly" to the whole clause, would that help?" I replied, "Yes, that would help". I would have been satisfied with that — although I do not know, because if Rachel had put down her amendment, I probably would have signed it anyway — but I was content at that point.

Then we were told by officials that the Committee's amendment would add confusion to the Bill. Then, the Minister tabled her own amendments to clause 9, and that did nothing but add confusion to the Bill. I believe that it would have damaged clause 9, and I thank the Minister for not moving that amendment today, but we still have to address it and talk about it because I would not want anybody getting any further ideas before the Further Consideration Stage.

The Minister, in amendment 5, added the words, "suffer fear, alarm and distress". You can clearly see that, throughout the Bill, it is not being descriptive. Yet, we are adding it here to the child aggravator. The second part of that amendment states:

"the child usually resides with A or B"

No, no. At no time did I or Rachel Woods, or anybody else in the Committee state that that was a requirement. In fact, it is not a

requirement, we do not need it and we do not want it. We never did. Why? Because that excludes so many people who could be in danger. You have the perpetrator threatening the alleged victim. You then have their coercive controlling nature and you might have a family member coming around to check on you to make sure that you are OK. Maybe they know or suspect that something is going on, but they are going to be there to check on you and to try to protect you. Then, the perpetrator sets his sights on that person. Not you, the victim, but on your loved one, who has come to check on you and who has enough knowledge and experience to know that something is going wrong. That person has a child, and the perpetrator will threaten your niece or nephew, and you will comply.

Maybe it is a best friend who checks up on you. They have a daughter or a son, and the perpetrator threatens violence against them. You will comply. Your next-door neighbour knocks on the door and asks, "Are you OK, love?", or, "Are you OK, sir? We heard a bit of banging last night, and we're not sure what's going on. Are you OK?" The victim replies, "Yes, I'm fine. Nothing to worry about", and closes the door. The perpetrator looks at the victim and says, "Do not tell her anything", or, "Do not tell him anything. If you run to your neighbour, you will see what happens to their son or daughter". You will comply. You will not say a word to your neighbour.

That is what we are trying to legislate for. That is why, when we saw the Minister's amendment, we were horrified, we really were. We were horrified because of all the dialogue, all the work that we had done, all the examples that we tried to give and all the times that we held the Committee up, yet we had this. We could not believe it. I am glad that the Minister has prayed not to move it, and I thank her for that.

What is the hole? Why do we need the reasonable person clause? Again, I commend Rachel for her perseverance and determination and for tabling the amendment. It is quite simply that the child should not need to be aware. In all the scenarios that I painted for the House, the child will never be aware that they have been threatened and that their life is really in danger. That child will never know, and that is why we need to fill the gap and why we need the clause. Rachel will speak on this at length — it is her amendment. I simply put my name to it because I support Rachel Woods, and I argued with her in the Committee right through each meeting, day in, day out.

The amendment adds the dimension that I described. I do not know that I need to go on any further, because Rachel will talk to it. Why is clause 9 in its entirety so important? I received an email from Barnardo's and the NSPCC. They, Women's Aid and all the groups that help people and victims in this matter will be listening in. Encapsulating why clause 9 is so important, they said:

> *"We know from our service delivery experience that children are adversely impacted by domestic abuse, even if they do not see or hear it, or are not present at the time of the offence. For example, they may see their parent's injuries, feel their distress, or be impacted by the environment of fear; they may experience high levels of anxiety and instability, social isolation, or experience poorer caregiving because of a lack of parental resources or capacity. Living in a home where domestic abuse takes place can have a profound impact on a child's short and long term physical, mental and emotional wellbeing, as well as their behaviour. The long term impacts on children include a detrimental impact on their mental health, development, risk of harmful sexual behaviour, future cycles of abuse, and the potential of youth offending."*

That cannot be overstated.

5.45 pm

Through no fault of the child, they could be propelled into a world that is alien to them, but, nonetheless, they will live through it and grow up in it, perhaps to offend. It might be other crime, it might be frustration, or it might be a cry for help. It might be all those things. The victim's world can be normalised; they can become immune to violence and abuse and can be conditioned by coercive control, but so can the child, to the point where the child may think that such behaviour is normal. So, when that child grows up and starts to form relationships, they could become a perpetrator of domestic abuse.

Ms Dillon: Will the Member give way?

Mr Frew: Yes.

Ms Dillon: Will the Member agree with me that a child can also become a victim because when they see something, it becomes normalised, and they think that if it was good enough for their mummy or daddy, it is good enough for them?

Mr Frew: Absolutely. That is the nature of coercive control: it is a crime that goes into your very soul. That is why every art and part of the judicial system could struggle with this. That is one of the reasons why we need independent supervision and reporting, which we will talk about later. Those are the safeguards that we have to play with. That is why the Committee is strengthening the Bill, and we will talk about that later.

The offence goes right to the soul of a person; it will change everything about that person. It will change their body, their form and their mindset, and it will condition them. They become coercive or they become a victim. Sometimes, they will not even know it because that is normal to them; it is what they have to live with. They get on with it and become immune to it. That is no way to live.

So many people are living like that. That needs to change. We need to support them. Many are supporting those people, but they are fighting as if they had one hand tied behind their back. The Bill will go some way to releasing their second hand so that they can put up a fight and defend those who need defending: the victims of domestic violence and coercive control.

I will move on to the other amendments in the section. I support the change in age from 18 to 16, which the Minister proposes. Changing "may" to "must" is something that the Committee asked for, and I thank the Minister for that. It just makes it a bit stronger. It is tidying-up language, but it is very, very important.

The message that must go out to victims from this Consideration Stage is that we hear them; we know what they are going through and we are trying to fix it. They have an ear in this Assembly, and we are going to listen to them and pass this legislation. Do you know what? We are going to report on this legislation and come back to it when we can and strengthen it if we have to. If we have to make it better, we will in order to safeguard victims. We are saying to the perpetrators, "You must stop this behaviour. In some cases, you might not even know that you are doing it. You might be as conditioned as the victim you are creating, but it has to end. We cannot abide it any more".

We have failed our people for too long. We need to get this legislation passed as soon as possible and get it into play. We need to get all the arts and parts of the judicial system trained up to cope with this legislation, cutting-edge though it may be. We have to get to a point where we start to protect the victims of domestic abuse, domestic violence and coercive control. I support the Bill 100%.

Ms Rogan: It is a significant day for me as an MLA as I debate my first bill on the Floor. It is legislation that I have been scrutinising along with my Sinn Féin colleagues and my colleagues on the Justice Committee. The Bill will make a real difference to many lives across the North. As many of my colleagues on the Justice Committee have done, I thank those who gave such powerful testimony. At times, it was harrowing and heartbreaking to listen to, but they did it, and they did it with dignity and gusto, knowing that the small glimpses of what they had to suffer that they gave us would shape the Bill. The new domestic abuse offence is what makes the legislation such a transformative Bill and one that will make tangible differences to the lives of many.

Clauses 1 to 4 are a radical departure from the existing legislation that has failed victims for so long. We all know that domestic abuse is not just physical violence but often includes psychological abuse, threatening behaviour and financial abuse. We know that domestic abuse can involve isolating victims from their friends, family and other sources of social interaction, depriving victims of their freedom and controlling their day-to-day activities. There is humiliation, degradation and intimidation among much else. It is usually damaging and repulsive behaviour, so I am thankful that the legislation will recognise it for what it is.

The Hourglass charity deals with the abuse of older people. It warns that over 20,000 elderly people in the North are abused every year. Most of the abuse reported was psychological, including threats, intimidation and mockery. Hourglass also warned of a significant increase in the abuse and neglect of elderly across the North due to lockdown and self-isolation during the pandemic. We need to support the voluntary and community organisations that have mobilised during the COVID crisis to assist and protect the vulnerable.

I, therefore, greatly welcome clause 5, which defines broadly the types of relationships to which the new domestic abuse offence will apply. Many view domestic abuse through the outdated and uninformed lens of intimate relationships, but clause 5 ensures that other relationships, including children, parents, grandparents or siblings, are included. It is an important clause that ensures that protections are provided in the Bill. Some organisations raised questions around that during the Committee Stage, but it was established that clause 5 is necessary in cases where an

individual may have suffered considerable abuse over a period of time but, due to its extent and nature, it has become normalised and, as a result, the person is unaware that they have been abused.

As Sinéad Bradley said, the Hart case was one of the most stark. Luke Hart said that his father spent most of his time belittling his family. He used money as a way to control, stopped his wife going for a coffee, told his daughter that she was stupid and said that his sons were not real men. Then, after years of abuse, he killed them with a sawn-off shotgun. When speaking to the BBC, last year, Luke said that the violence seemed to come out of nowhere but control had always been growing. Murder is the ultimate act of control. It was the next step on his journey. The domestic homicide review in that case stated that they had been suffering intense domestic abuse for many years and did not know it, but there was no physical abuse. That is a heartbreaking case, but, as we know, that type of coercive control and abusive behaviour happens every day across the country, and there are many victims like Claire and Charlotte Hart who are stuck in abusive relationships and need our protection.

The legislation will create laws that will provide protection from all types of domestic abuse, from sibling to sibling to parents and grandparents. The Bill also includes additional protections for children. Children are the hidden victims of domestic abuse. Research has shown that adverse childhood experiences have long-term impacts on children's mental, emotional and physical well-being. Clause 8 provides for an aggravation of the domestic abuse offence where the victim in the relationship is under the age of 18. Clause 9 provides for an aggravation where a child is involved. I want to note the importance of these clauses. As we know, lots of times the domestic abuse may be targeted at a partner in an intimate relationship, but children often carry a huge burden from the abuse, and they themselves are victims. Such abuse can have a long-lasting impact on the child, and it is only right that that impact be recognised in the law through this aggravation.

I also welcome the fact that this clause provides that a child only has to see, hear or be present during the abuse to constitute the aggravation, and that amendment No 7 will provide that the child does not have to have any awareness or understanding of the perpetrator's behaviour. These clauses will go some distance to protect children from the horrors of this abuse.

Ms Armstrong: I will not be very long with this, because I appreciate that it is a very long debate, and there have been fantastic contributions so far. There have been a lot of thanks this evening, and I thank the Justice Minister, the previous Justice Minister, the Chair and members of the Justice Committee and, of course, all the staff who have been involved in getting this Bill this far. I rise, as my colleague Paula Bradshaw did earlier, to support most of the amendments that have been tabled. Unfortunately, I cannot support amendment No 1 and the opposition to clause 3, and I will explain why.

I am not on the Justice Committee, but I am a constituency MLA. Just to give a bit of an idea and a personal connection —. I know that the Committee has been talking to a number of people and will realise the emotion that you can have when you are dealing with the victims of domestic abuse. I was very recently dealing with a case where the victim was a woman whose mother had been the victim of domestic abuse. This was an adult woman who was at her wits' end. We talk about harm and say that it is not defined in criminal law. All I can say is that I witnessed a person who had been absolutely harmed by domestic violence. I will not go into too many details of the case, but her mother had been beaten so badly that she now lives in a care home and has dementia. The daughter has no recourse. She is watching her mother disintegrate, and because of COVID she cannot get to visit her very often. I see her as a very definite victim of harm. She did not live in the house and she was not beaten, but she is now living with the fact that she feels so guilty that she did not protect her parent. She was not able to stop that abuse, and now her mother is dying in front of her.

Harm is horrendous. It is very hard to put a finger on or to define. I know that, when the domestic abuse Bill across in Westminster was being considered, many other options were added in. Mr Frew has mentioned some of them. He talked about strangulation and rough sex. Those are things that are within that intimate relationship between a man and a woman, a man and a man or a woman and a woman, but there are those implications, and this Bill is trying to deal with that when it comes to children of victims. I have to say that, while children of victims may be under 18 and mentioned in this Bill, adults who have been children within a family where domestic violence has taken place carry that with them. Unfortunately, in my lifetime I have spent some time with charities that work with those children who are out the other end. They have grown up and moved away, and you will see the same

coercive behaviour happening and the same situations happening within households. Some girls are prepared to put up with so much, and some men are prepared to do so much. It is sickening. That is why, when this Bill is going forward, the importance of clause 3 is there.

As the Minister has said before, this is about criminalising the behaviour as opposed to just the outcome, and that is why it is so important. There are other things that we can say about harm. For instance, there are some things that are not crimes at the moment. For instance — some of the papers from Westminster that I read talked about it — if someone discloses sexual, intimate photographs of a person, that is a crime, but threatening to do it is not. So you can have control over a person without physically doing something to them, and you may have that psychological harm, but there is no criminal offence of saying, "I am going to share photographs of you". Being harmed is not covered in law, but this part of the Bill is about the impact on the victim. In Northern Ireland, we already see things and are doing things to help to protect victims. For instance, in the welfare benefits system, we have already separated welfare benefits because we recognise the threat of harm and economic control, yet we do not have anything in law to recognise the impact on victims. It is right that we have that and right that it is included.

6.00 pm

I thank those who have tabled amendments, including Mr Frew and Miss Woods. The type of considerations that have been made for this Bill are so important. All of you could be like me and be sitting in your office on any day of the week when a victim walks in to ask about something as simple as a food-bank voucher or a school place for a special educational needs student and you end up in conversation with that person and hear what has been going on with them for years. I sincerely hope that the Bill is passed as quickly as possible so that there are no more victims like the lady who was in my office and her mother, who now cannot remember her daughter's name, where she is living or that the abuse actually happened to her. I encourage everyone: let us get this done.

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

I know that this will be a long debate tonight. There will be a lot of groups out there listening to this debate and hoping that we take this forward as quickly as possible. I ask all Members to work with the Minister and the Committee and let us get this passed as quickly as possible.

Miss Woods: Like others, I want to begin my remarks by thanking all the individuals and organisations that submitted evidence to the Committee; the Committee staff for all their hard work; the members who scrutinised the Bill in great detail; the Minister for bringing the Bill forward; and Claire Sugden for starting this process.

Paul has probably already made my arguments for me, so I could probably just sit back down, but I am not going to. I will address only the amendments to clause 9, which are amendment Nos 3 to 7. I take us back to what I said at Second Stage, which was that, if we want to give our children the best start in life, we must also look to the effects of domestic abuse on them and ensure that the home is a place of safety for children and young people, now and for the future. Domestic violence, as we know, has a devastating impact on children and young people that can last into adulthood, and Kellie Armstrong outlined her experience with a constituent in that regard.

A UNICEF report estimated that as many as 275 million children worldwide are exposed to violence in the home, and children are often the hidden victims of domestic abuse, and the long-term impact on children includes a detrimental impact on their mental health, child development, risk of harmful sexual behaviour, future cycles of abuse and potential for youth offending. It is important that legislation reflects that a child can be aware of and negatively impacted by domestic abuse in the home, even if they do not see or hear the moment in which it occurs. Children can pick up on a parent's distress or be impacted by the parent's compromised capacity for parenting in the context of fear. Threats to hurt and abuse children are often used as part of the course of behaviour that seeks to control, isolate or frighten the victim. Crucially, that is what the amendments capture.

Clause 9 has been debated extensively by the Committee, and I am sure that some Committee members will be glad when I stop talking about clause 9. I am looking to the Chair, in particular, but, of course, I make that assumption based on my experience of it. Clause 9 provides for the domestic abuse offence to be aggravated where it involves a child. Under the clause, as it is currently drafted, the aggravation would apply where it has been shown that the perpetrator directed behaviour at the child, or the perpetrator made use of the child in directing behaviour at the

victim, or the child saw, heard or was present during an incident of behaviour. Therefore, in order for the aggravation to be applied, one of those conditions would have to be met and appropriately evidenced by the prosecution.

The first option to apply the aggravation is clear: where the accused abused the child. The second option, where the accused made use of the child in the abuse of the victim, may include instances where, as mentioned in the Committee report, the accused directs a child to spy on the day-to-day activities of the victim or alleged victim so as to enable the accused to control or monitor their movements and interactions. The third option is also clear: when the child sees, hears or is present during incidents of abuse.

The Committee engaged with many children and young people's organisations as part of its evidence gathering, hearing a variety of concerns about the legislation and ideas for moving forward on children's rights and children's safety and well-being from abuse. That included discussions of abuse in the home, abuse between family members, abuse in youth relationships, parental responsibility and child abuse. Organisations such as Women's Aid also pointed to the realities of domestic abuse in the home and to the experiences of many that involved their children, with perpetrators directing their abuse towards the children to hurt and control them. In effect, Members, that is coercive control. Not every instance of domestic abuse will be heard or seen by a child, but that does not mean that the child cannot be affected by it. It does not mean that a perpetrator's actions are any less harmful, nor should it mean that the aggravator in clause 9 should not apply.

A number of organisations raised concerns over the wording and potential operation of clause 9. I will outline a few of those concerns for Members' consideration. Women's Aid stated that clause 9(2)(b), where:

"the child saw or heard, or was present",

does not adequately address the issue or recognise the persistent, ongoing nature of the impact of the abuse on a child living in a home with domestic violence and abuse. It called for children to be recognised as victims in their own right and not as associated persons. Action for Children agreed with that assessment by Women's Aid, noting that the experiences of those children and young people are often overlooked. Barnardo's highlighted the importance of recognising that a child can be aware of, and impacted on, by domestic abuse in the home even if the child does not see or hear it. Barnardo's specifically mentioned clause 9(2)(b) in that regard and suggested that it should be expanded to recognise that children do not need to witness the abuse to be negatively affected. The Children's Law Centre also recommended extra provision in clause 9 to account for circumstances in which the child does not directly witness an incident but has still been aware of, or affected by, the abuse.

The Northern Ireland Commissioner for Children and Young People (NICCY) reiterated the fact that children are adversely affected by domestic abuse beyond only occasions when they see or hear an incident and called for further consideration of how that could be reflected in legislation. NICCY also noted that the Scottish Act provides that children do not have to be aware of, or understand the nature of, the abusive behaviour for the aggravation to apply and that the provision effectively captures the impact on children who may, for instance, reside in a different household from that in which the abuse occurs. The NSPCC also noted that the Scottish legislation, on which clause 9 is based, includes a reasonable person test, which means that the aggravation can be applied where a reasonable person would consider the abuse likely to adversely affect a child. It said that that provision was included in the Scottish Act in large part to avoid children having to give evidence in court about their experiences. For that reason, the NSPCC recommended adding the reasonable person test to clause 9.

The Human Rights Commission agreed that children should provide evidence directly to the court only when absolutely necessary and, where that is done, in an age-appropriate manner, with consideration given to alternatives such as live links. It also recommended age-appropriate counselling for the child before, during and after the trial. The Bar of Northern Ireland indicated that the current wording of clause 9(2)(b) suggests, in practical terms, the child being required to give evidence as to their awareness of the accused's behaviour and any adverse impact caused by it. The Bar also noted the similarities between clause 9 and provisions in the Scottish Act. It queried why the Department did not include subsections similar to that legislation that would address the concerns and issues raised, specifically section 5(5) of the Scottish Act, which reads:

"For it to be proved that the offence is so aggravated, there does not need to be evidence that a child—

(a) has ever had any—

(i) awareness of A's behaviour, or

(ii) understanding of the nature of A's behaviour".

In the light of the sheer weight of evidence, the Department's initial refusal to consider properly the concerns and issues raised, not just by me, or by Mr Frew for that matter, but by all those organisations that I have mentioned, is frankly baffling. When the Committee reiterated its concerns and suggested possible solutions, the Department claimed that the conditions for applying the aggravation under clause 9 as drafted were wider in scope than the Scottish provisions because there is no requirement for a reasonable person to consider that the abusive behaviour would adversely impact on the child. The view was that the requirement in the Bill is simply that the child sees, hears or is present during an incident of abuse: in other words, that, in comparison with Scotland, there are fewer hoops to jump through in order to apply the aggravation.

As mentioned in the Committee report, we discussed extensively with officials the wording of clause 9 and particularly clause 9(2). I continually pressed for an explanation of the Department's rationale for adopting a different approach to the Scottish legislation on this clause. To this day, I do not believe that the Committee or I have been given a satisfactory explanation. It was continually reiterated that there were three options for applying the aggravation and stated that they did not consider that an amendment reflecting the additional provisions of the Scottish legislation was required.

In my view, that represents a complete disregard for the evidence that was in front of the Department. Needless to say, the Committee began work on an amendment to strengthen the clause. It also asked whether the Department would consider adding greater clarity by amending the EFM to address the concerns.

After considering the Committee's draft amendment, the Department reiterated its stance that clause 9 as drafted had fewer hoops to jump through to apply the aggravation in comparison with Scotland and that the proposed Committee amendment would be unnecessary, add nothing to the clause and could risk confusing matters.

It was not us who were confused. After further discussions between the Committee and officials on 24 September, the Department advised that its interpretation of the Scottish legislation was wrong and therefore the advice given to the Committee up until that point was incorrect. The Department apologised for the error and clarified how the Scottish provisions work. The crux of the mistake and the misinterpretation of the Scottish provisions had formed the basis of the Department's rebuttal of the recommendations and suggestions, which were based on the evidence provided by all stakeholders up until that point. This should not be glossed over.

The Department correctly claimed that there were three options to apply the aggravation under clause 9 as drafted. It also claimed that that was preferable to the Scottish legislation because, under the provisions of its Act, the options to apply the aggravations were coupled with the requirement of a reasonable person to consider the abuse to affect the child adversely. However, that was wrong. The reasonable person test is, in fact, an additional option to apply the aggravation in circumstances or cases in which the other three may not apply.

A further option to apply the aggravation that exists in Scotland was removed by the Department because it was not understood and was an unnecessary hoop to get through. That meant, with clause 9 as drafted, we would have no option to apply the aggravator where a reasonable person would consider the abuse to affect the child adversely where it is not possible to apply it using the other three options.

To be clear, this provision exists in Scotland, so we would be left, essentially, with a legislative gap. Even though the error was acknowledged, before the Committee finalised its report, remarkably, no solution to this gap was offered, other than suggesting that they would add some wording to the Bill's explanatory notes to clarify that the child did not have to be aware of or understand the abuse. As we know, Members, the EFM is not legislation. We were then left with a suboptimal clause compared with Scotland and weaknesses in the Bill with respect to the operation of the child aggravation.

It is also worth noting that, two days after I published my amendments to clause 9, alternative amendments were tabled at the eleventh hour, so to speak, which, it is important to mention, the Committee had no notice of and was able to discuss only by virtue of the postponement of the Consideration Stage debate. I welcome yesterday's letter to the Committee from the Justice Minister outlining

that she will not be moving her amendments today, specifically amendment Nos 5 and 6.

I also put on record my thanks to Mr Frew, who stuck to his word and added his name to the amendments that I had tabled, and for his ongoing commentary, scrutiny and support.

While the Minister's amendments reflect similar provisions in Scotland, it is not clear why a residency condition is included, given that the scope of our offence differs so greatly, in the sense that it applies to a much broader range of personal connections and relationships beyond simply partners and ex-partners, which is captured in the Scottish law. The Minister's amendments added another hoop to jump through, an unnecessary condition that the Department, throughout this whole debate on clause 9, was seeking to avoid.

There is nothing anywhere else in the Bill that states that those involved in abuse or affected by it have to be a resident in a particular place, so why is this in now? What if the child lived with Granny? A child could live with C, visit A and B regularly and perhaps stay over, but does not reside with A or B, or both. Perhaps the child is next door, with the headphones on during an incident. Perhaps A abuses B, but the child does not see or hear it or is not present. What would happen then? Contrary to the further confusion and uncertainty that would ensue with a residency condition, my and, now, Mr Paul Frew's amendments would finally put clause 9 to bed. I urge all Members to support them.

6.15 pm

Mr Frew: I thank the Member for giving way. Again, I hold that up as an exemplar of how MLAs can work together with a common purpose to achieve something good.

It would also lead to the example that may be common to us all, in that, when granny or grandad sees conflict or a problem in a household, they encourage children to stay with them as much as possible. Even victims would encourage that as much as possible. You then get a scenario in which A and B's child stays with granny and grandad as often as they can to get them away from the scenario and the household where the violence and abuse are taking place. They would not be encapsulated if the clause were left unamended.

Miss Woods: I thank the Member for his intervention. We must look at the impact on the children as well. We have so much to do with the Bill, but we have to put the alleged victims and children at the centre of it. I look forward to working together with you again in the future. I am certainly happy to do so, especially when we have common ground.

My first amendment — amendment No 4 — deals with a very specific issue that was raised during discussions between the Committee and officials. Mr Frew, in particular, sought clarity on what scenarios would fall under clause 9(2)(a)(ii), which states:

> *"A made use of the child in directing behaviour at B".*

The Committee sought clarity from officials that that provision would capture circumstances in which the accused had threatened to abuse the child as part of the course of abusive behaviour that was directed at the victim. Unfortunately, that is a common occurrence in domestic abuse cases in which children are involved. In my view, the amendment provides the required clarity.

Clause 9, as drafted, does not take into account that specific issue explicitly in its wording. It should fall under one of the options to apply the aggravation and, in my view, sits clearly in clause 9(2)(a)(i). The amendment strengthens the clause by making it clear that threats to abuse children will be captured by the aggravator and sends a clear signal from this place that such abusive behaviour should be treated with the utmost severity.

My second amendment to clause 9 — amendment No 7 — resolves the mess and confusion that are tied to the misinterpretation of the Scottish legislation and fills the legislative gap that I have outlined. It means that the aggravation can be applied where the other options do not apply but where a reasonable person would consider the abuse to have adversely affected the child.

Subsection 2(A) of the amendment works in the same way as it does for the offence to reflect that the child may not be aware of how the abuse has impacted on them or even that abuse is abuse. That subsection is also crucial to avoiding a scenario in which the prosecution is forced to rely on evidence given by the child in court in order for the aggravation to be applied.

Subsection 2(B) does not take anything away from that provision but clarifies that nothing in subsection 2(A) prevents people from consulting the child or young person. It is not a requirement for evidence, but a simple

clarification. There are times when we need to reflect the child's voice, as well as deploying adequate protections and support that is covered in different parts of the Bill, but there is nothing in the amendment that forces or even encourages children to have given evidence. That is all covered in subsection 2(A)

Not all children see, hear or are present during incidents of abuse, not all perpetrators make use of children in abusing their victims, and not all perpetrators abuse children directly. Yet, there are many ways in which domestic abuse negatively impacts on children, and we must make sure that that is captured and reflected in the legislation and the sentencing. It is about coercive control.

There are victims with dependent children who suffer from economic abuse, which leads to financial strain and an inability to provide for their children. There is psychological abuse or coercive control in which the child has never witnessed behaviour but the effects on the victim have a knock-on effect on the child through the victim's reduced capacity to provide care, support the child's basic needs and so on.

The Scottish provisions are there for a reason. According to one key stakeholder in that jurisdiction, the Scottish clause was a significant compromise in the legislation between those who wanted to see children treated as victims in their own right and those who had reservations about attempting to do so. We cannot and should not accept lesser provisions than those that exist elsewhere. We should bring forward the best possible legislation for the people of Northern Ireland. These amendments would mean that the aggravation could be applied where a reasonable person considered the domestic abuse likely to have a negative effect on the child. They would help to prevent the potential of many children having to give evidence in court, where they would be forced to relive the trauma that they had already suffered. I encourage all Members to support amendment Nos 4 and 7.

Ms Sugden: I noted the Minister's comments at the weekend. I say this to her: keep going. It is certainly not my job to finish the Bill; we depend on her to do that. As Mr Frew said, the Bill is three years too late.

I will speak particularly about amendment No 1 and the opposition to clause 3. I am happy to support all the other amendments. I was going to speak briefly on amendment No 9, but Miss Woods covered all the detail that I intended to cover, so I do not need to go over that again. In relation to amendment No 9, however, I thank the Minister for specifically including in the Bill the aggravating offence in relation to children. We all know — others have spoken about it — that domestic abuse is a form of trauma that can perpetuate a cycle. It could even perpetuate a cycle of domestic abuse if children see it happening in the family home. We need only look at our criminal justice system to see the damage and trauma that it causes. Domestic abuse is a form of that trauma. I commend the Minister for committing to take that forward. I have no doubt that the House will support that amendment this evening.

I do not intend to support Mr Allister's amendment or his opposition to clause 3, but I will talk about them because I recognise and respect his practical experience from his previous career in relation to the application of criminal law. My comments are not meant to be an obstacle to the actions that the House will take; they are about ensuring that we are right in what we are doing. Legislation is one thing — we can get it on to the statute book — but it is the implementation that is really critical. Mr Allister raised valid concerns about the issue of harm and the reasonable person who considers that harm.

Mr Frew, rightly, said that the Bill does not mention coercive control. I am keen to hear the Minister's thoughts on why that was not included. Maybe it was not included because of a practical legal consideration. Perhaps it would provide clarity on the concerns that Mr Allister raised. I will play devil's advocate: we intend to put this clause in assuming that the victim does not know what harm is, but we assume that a reasonable person will. What does that mean? What does "harm" mean? Before the debate, I spoke briefly to the Minister about potentially creating a definition of harm in law. However, I recognise that that could have its own limitations, in that it could constrain the interpretation of what harm is. We need to be very careful about what we mean by that and what the intention is.

I tried to crystallise this group of amendments. Essentially, there are three elements: the intent; the action, abuse, or, as others described it, behaviour; and, finally, the harm. Essentially, it is the last bit — the harm — that conveys the sense of coercive control that is not yet defined in Northern Ireland law. Of course, I support that. That was my intention when I made it my overarching priority, because I recognise that psychological abuse often leads to more serious forms of abuse. Every Member will have heard, "The wounds and scars will heal; it's the mental torture that I have to live with for

the rest of my life". That is an impact for not just the individual; it is an impact that has implications for wider society. Having intent linked to harm is absolutely right, but do we need to go further and define that harm so that, when it comes to the practical application of the law in a criminal court, it will be possible to apply this? The worst thing that we can do is give victims of domestic abuse hope, only for them to find that, after going through the awful process of criminal justice, it will not be upheld in a court of law. I do not know. This has not been applied here before. The Minister suggested that it will be on the basis not just of the words that are down on paper but on the basis of precedent and previous decisions. I am keen to hear where there are any examples of that, just to give me comfort that the application of it, as it is written, will actually have a practical effect when it is taken through the courts.

To add a human side, the reason that I cannot, ultimately, support Mr Allister's amendment is that, for me, it would give rise to concerns about the impact it would have on the victim. How do we determine physical and psychological harm in a court of law? Is it something that, for example, a medical practitioner has to be able to state is the case? Are we getting into a situation where the victim becomes the person investigated rather than the perpetrator of the offence? I am keen for Mr Allister, if he wishes, to intervene to share his thoughts on that.

Mr Allister: The harm, as drafted in my amendment, can be "physical and psychological". Physical harm might speak for itself. However, I would have thought that, in any case such as this, particularly of psychological harm, it would be entirely appropriate, just as if it were an assault case, that medical evidence would be called as part of the prosecution. If someone is charged with assault occasioning actual bodily harm or grievous bodily harm, one would expect a medical report to be — often agreed, but if not — contested by the evidence called. More particularly, if there is an allegation of psychological harm, it, almost inevitably, would lead, as part of the proofs of the prosecution, to the calling of evidence from a medical expert.

Ms Sugden: I appreciate the Member's intervention. Those are my thoughts looking at the practical application. Yes, I absolutely recognise the sentiment. No one in the House wants it to become law more than I do, although, of course, the Minister wants that, too. I have been advocating for it for four or five years. It is long past time that we need to put it into statute. However, again, we would do a great disservice to victims of domestic abuse if we cannot put into statute something that will actually be workable and which the police and the Public Prosecution Service can understand.

I appreciate that there is an amendment that relates to training around that, but what about the general public? There is no reference in the Bill to a public awareness campaign. Maybe we need to do something to strengthen training. I am not saying that we train the general public. Where I am sympathetic to Mr Allister's comments about the interpretation of that particular line is that we assume that people know what harm is. People do not know what coercive control is, which is why it has been able keep victims in its grip for so long. I am not saying that we should necessarily object to what is in the Bill. However, I wonder whether there is anything that we could to strengthen it. Maybe that could be done by adding public awareness, so that the reasonable person would be able to make a reasonable judgement about what coercive control is.

I speak to many people and could nearly challenge them on their own behaviour, and they would be the first to say, "I do not behave like that". However, when that behaviour is described, they start to think twice about it. Therefore, alongside that, I would certainly encourage the Minister to look at allowing the reasonable person, if you like, to understand what coercive control is, and maybe Mr Allister would not have the same objection. I do understand the ambiguity, and we cannot do that to victims.

Ironically, and I know that they are almost mutually exclusive, I do not support Mr Allister's opposition to clause 3 because, to come back to the point, the harm element of that clause is, essentially, the coercive control element. That was the intent and purpose of it. By including that clause, we are creating a new offence in Northern Ireland. That is important, as, hopefully, it will pave the way towards fewer instances of domestic abuse. However, I will come back to that particular line.

Mr Frew: I thank the Member for giving way. She is right to highlight the fact that it is the first time that we are putting down a domestic abuse offence in legislation. Whilst we want to create the best law possible, we also recognise that other jurisdictions have had more than one go at this. It may be the case here that we need to strengthen the legislation or add something more rigorous. I would not rule that out. That is why the monitoring and reporting of that offence is so important.

6.30 pm

Ms Sugden: I appreciate that. If there is an opportunity to get it right in this instance, we will prevent more victims being created. Other jurisdictions have had the experience of seeing the legislation in action and where its limitations are and have been able to go back and improve it. We are in the fortunate position — if you can call it that — of having seen over the past three years how it has worked in other jurisdictions. Perhaps we can do something to ensure that we do not have to come back to it for a second time. Our mistakes will affect lives. Perhaps there is something that we can do to strengthen it. I am not saying, "Remove it"; I am saying, "Strengthen it". I do not know the answers on this. I have not had the same focus on it as I would have had were I still in the role.

I appreciate the attention that the Justice Committee has given to it. I also really appreciate the evidence that the victims have put forward. I cannot imagine how difficult that has been. To an extent, it may have retraumatised them, but, if they are working towards trying to ensure that it does not happen to someone else, that is the biggest compliment that we can give them. As I said, I encourage the Minister to look at that.

In a topical question earlier, I asked the Minister about harm and how we define that in law. We have to be cognisant of the fact that, perhaps, a reasonable person would not understand what we understand. We are in a position where we have been given requested information, and we understand it, but people outside this Building may not, so is there a way in which we can strengthen their understanding so that what we have here will work in practice?

Mrs Long: If I may briefly, I want to put on record my thanks to the Justice Committee, the Chair and the Deputy Chair for their assistance in progressing the Bill to Consideration Stage, particularly during what has been quite a challenging time. Their scrutiny has been robust and diligent and, as they have said themselves, is an exemplar of best practice in Committee legislative scrutiny. I look forward to us continuing to work together as the Bill progresses through its final stages in the House. Thanks also are due to the Committee staff for facilitating not just engagement with my Department but the many witnesses, some of whom were victims of domestic abuse, in making their contribution to the Bill. It is for them that we do this.

I thank all the stakeholders and victims and survivors who provided evidence and helped to shape the Bill. I am determined and have been determined since taking up office to deliver for them and with them so that we provide the best possible legislation.

I put on record my thanks to Claire Sugden for her work on the Bill while she was Justice Minister. I also thank my officials, who are passionate and dedicated to addressing domestic abuse. They have, despite challenging circumstances, maintained focus and pace not just in the last few months but over recent years, and legislation is only one part of the work that they do.

I thank the Committee and the Members who have tabled amendments, and I look forward to debating the issues today.

For too many people, home is not a safe place; instead, it is a place of hurt and fear. That situation has been exacerbated during the current pandemic. Now, it is more important than ever that we work together to put an end to domestic abuse and coercive, controlling behaviour. The most recent police statistics from August 2020 show that, from 1 July 2019 to 30 June 2020, there were 32,127 domestic abuse incidents reported in Northern Ireland. That represents a 1·8% increase on the previous year and is the highest level on record since reporting began in 2004-05. Furthermore, the police recorded 18,796 domestic abuse crimes during that same period. That shows an increase of 13·3% on the previous year and is one of the highest levels since reporting began. That equates to 17 domestic abuse incidents and 10 crimes committed per 1,000 of the Northern Ireland population.

It is important to note that those are only the reported figures. Many more victims suffer across Northern Ireland but do not feel able to report that to the police. It is important, too, that we recognise that it is for those people that we do this work. We have also seen an increase in male victims during this period and an increase in victims from younger and older age groups. It is important that we recognise that not all domestic abuse involves a current or former partner, but that it can, in around 35% of crimes, involve another familial relationship. It is important to put that on the record because it is for those people that we are here today.

Before I turn to my amendments in this group, I want to address the amendments proposed by Jim Allister. Amendment No. 1 would remove the condition contained in the domestic abuse offence:

> *"that a reasonable person would consider the course of behaviour to be likely to cause B to suffer physical or psychological harm",*

It replaces that with the condition that the person:

> *"suffers physical and psychological harm"*

for the offence to apply.

We had a long discussion earlier in respect of why I do not believe that that is the case, so I am not going to labour the point at this stage. In the same vein, Mr Allister has given notice of his intention to oppose the Question that clause 3 stand part of the Bill.

Clause 3, as it stands, provides that an individual does not need to have suffered physical or psychological harm for the offence to be committed. It also states that it is not necessary for the effects of the behaviour covered by clause 2, such as dependency, subordination, isolation or control, to have been suffered by the partner or connected person for the offence to be committed. That is because a reasonable person test applies in relation to physical or psychological harm and relevant effects.

The proposed amendment to clause 1 and removal of clause 3 would fundamentally and detrimentally alter the nature of the offence, and the Bill. We would be unable to provide protection, and, indeed, to secure justice, in some of the most horrific cases where an individual is suffering ongoing and extensive non-physical abuse but has normalised that within their own mind.

It would also fail to recognise the insidious and invading nature of domestic abuse, and how it fundamentally operates where physical violence is not present. As I advised the House previously, I consider those provisions vital in the fight against domestic abuse and in ensuring that the focus continues to be on the abusive behaviour of the offender and not the harm caused.

It would be a travesty were someone to be not guilty of domestic abuse despite carrying out a prolonged and detailed form of abuse on a person simply because that person was resilient. That would be completely wrong, so it is important that we recognise that, as I said earlier, the action of getting behind the steering wheel of a car and driving when intoxicated with alcohol is, in itself, an offence. It does not have to lead to harm in order for someone to be prosecuted. It is important that we understand that it is the course of action that we are criminalising, not the outcome.

Many people up and down this country are suffering abusive behaviour day in and day out but they have never known anything different. They accept it as normal, and, in some cases, consider that that is just how relationships work.

For those who know anything of this, a prime example is the case of the Hart brothers — a number of Members referred to that tragic case — whose mother and sister were killed by their father. The domestic abuse homicide review stated that they:

> *"had been suffering intense domestic abuse for many years and didn't know this ... as there was no physical abuse."*

That illustrates perfectly the types of behaviours that the Bill is intended to cover.

The focus must remain on the actions of the offender, that is, whether there is abusive behaviour that a reasonable person would consider would cause harm, and that it has been carried out intentionally or recklessly to that effect.

It is vital that offenders cannot escape justice because a victim has become so used to having their movements controlled, contact with family or friends restricted, and that it does not necessarily any longer cause them fear, alarm or distress.

In relation to Paul Frew's comments about why we opted not to state in the legislation terms such as "coercive control", "gaslighting", "technological abuse" or "financial abuse", to do so, as he rightly said, would lead to a defence that because it was not listed in the legislation, it was not an offence. Of course, how people control and abuse individuals is often complex and changes over time. Any list could become dated. It could also become a hierarchy, suggesting that some forms of abuse are more concerning than others.

Mr Allister also previously raised the concern that, even if there is no complaint of abuse and no objective finding of harm, a person could be sent to jail for 14 years and that that would be disproportionate. If a serious and prolonged course of action that is designed to intimidate and threaten has not happened and there is no evidence to suggest that it has happened, a person would not be subject to the maximum penalty. Suggesting that people will end up in jail for 14 years for doing nothing, essentially, or that someone against whom there is no coherent or cohesive evidence will be prosecuted is a false logic.

Ms Dillon: Will the Minister give way?

Mrs Long: I will, yes.

Ms Dillon: Will the Minister agree that one of the specific examples of that is when the Hart brothers talked about the point where one of them had a nut allergy and their father brought nuts into the home and sat them on the kitchen shelf, knowing that their mother would know what it meant? That would not be enough to make a case against somebody, but, along with all the other actions, it certainly would. In that circumstance, it was very clear what that was about, but that would not be the case in every home where somebody had a nut allergy and nuts were brought in.

Mrs Long: That is precisely the point. Incidences and activities that may look innocent from outside can, in the context of an abusive relationship, take on a very different colour. We spoke with victims who said that, whenever they are out in company, their partner is absolutely, perfectly fine, but that if they transgress against the rules that are being imposed on them so that they are able to go out in public, the partner will whistle a tune or hum a song. Things that to an outside observer appear trivial have significance to that person because they know the consequences of those actions. We have to capture that behaviour. We have to make sure that people who are being subjected to a consistent and persistent line of abuse cannot have it continue with no law to back them up.

It is also important to remember that inherent to the domestic abuse offence are a number of thresholds and safeguards, checks and balances that must be met before the test for the offence is met. Mr Allister is right. Alleged victims and alleged perpetrators have the right to a fair trial, and it is important that there are, therefore, safeguards, checks and balances. The behaviour must be considered to be abusive, a reasonable person would have to consider that it would cause harm and the person must either intend to cause harm or be reckless to that. Importantly, there are safeguards associated with that defence. Where the defence of the behaviour is considered reasonable in the particular circumstances of the case, it is not considered part of this offence. I do not support this amendment, and I call on the House to reject it. Should the amendment be made, we will have failed in our bid to protect those who suffer from domestic abuse.

I will move to my amendments in this group. Amendment No 2 is a minor drafting amendment to neaten a small aspect of wording in clause 8, which deals with aggravation where the victim is under 18. I propose that the words "constituting the offence" are replaced with:

> *"by virtue of which the offence is constituted".*

That does not represent a material change to the provisions; rather, it is simply intended to reflect that the course of behaviour is not the sole element of the domestic abuse offence and avoids giving the sense that the behaviour alone constitutes the offence. That is similarly the case with amendment No 8.

Clause 9 deals with an aggravation where a relevant child is involved. I need to make it clear that clause 9 does not require behaviour to be abusive. It establishes aggravation of the offence for sentencing purposes. I have tabled three amendments to clause 9, amendment Nos 3, 5 and 6, on aggravation where a relevant child is involved. The purpose of the three amendments was to make, in discussions with the Committee, the provisions on the child aggravator as robust as possible, with amendment Nos 5 and 6 intended to address concerns that were raised previously by some Justice Committee members. There has been extensive debate on these clauses, including at a Committee session that I attended last week, and I listened to the concerns that were raised by some members that amendment No 6, regarding residency, would damage the Bill; for example, where a child resides elsewhere, such as via kinship care or other arrangements. Having reflected further on that and as I already advised the Justice Committee, I therefore do not intend to move amendment Nos 5 and 6. That means that the decision of the House is on the alternative amendment No 7, from Rachel Woods and Paul Frew.

I welcome the alternative amendment which, with the exception of a residency requirement, makes similar provision to my amendments.

6.45 pm

Amendment No 3 will make it explicit that the child aggravator can be applied if "any or all" of the limbs of the child aggravator are present. That is where behaviour was directed at the child; where use was made of them to direct behaviour at the victim; where a child saw, heard or was present for the abusive behaviour; or where a reasonable person would consider

the behaviour to be likely to adversely affect the child. While it is considered in the current draft that any or all of the aggravators could apply, I want to make it explicit and clear that this is the case and that a number of the aggravating aspects may apply at any one time. As I have just mentioned, I will not move my second amendment to clause 9 — amendment No 5 — which provided that the aggravator would also apply if:

> *"a reasonable person would consider the course of behaviour, or an incident of behaviour which A directed at B as part of the course of behaviour, to be likely to adversely affect the child".*

This is, however, captured in amendment No 7, the purpose of which is to provide that where, for example, the abuser controls the victim's movements to such an extent that they are unable to leave the house to ensure that their children get to school or to get them to appointments with a doctor, then the court can determine that this amounts to behaviour:

> *"likely to adversely affect the child."*

It can also cover circumstances where the effect of the abusive behaviour is such that a reasonable person would consider it likely that a child's general well-being and development would be adversely affected.

Again, I do not intend to move my third and final amendment to clause 9 — amendment No 6. As with amendment No 5, I think that it is captured within amendment No 7. This will provide that there does not need to be evidence that a child ever had any awareness or understanding of, or was actually adversely affected by, the behaviour of the accused for the aggravator to apply. However, it does not prevent evidence of this from being laid before the courts. These provisions will have the added benefit of reducing the likelihood of a child having to give evidence at court, although good practice should already seek to reduce that as far as is possible.

The House will wish to note that amendment No 5 would have had a condition that, for the "reasonable person" aspect of the aggravator, the child would have had to live with the victim or offender. This was simply intended to reflect the fact that living in an environment in which domestic abuse is carried out is what is most likely to adversely affect a child. However, having reflected on the concerns raised by Committee members, who viewed that as damaging to the Bill, I am content that this should not form part of the provisions. For that reason, amendment Nos 5 and 6 will not be moved. I consider that my amendment No 3, along with amendment No 7, provides robust provisions to ensure that the impact of domestic abuse on children can be fully reflected in the sentencing that a court may impose, so I ask the House to support those amendments.

Amendment No 4, tabled by Rachel Woods and Paul Frew, amends clause 9 to provide that the child aggravator also applies if, at any time in the commission of the offence, the accused "threatened to direct" behaviour at a child. While I considered that the threatening behaviour aspect is already captured by the offence, with the child aggravator then applying to this, this provision would make that aspect explicit. For that reason, I will support the amendment and ask the House to do the same.

Amendment No 10 makes an addition to clause 13, "Alternative available for conviction", to state that:

> *"This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment)."*

This amendment is for the avoidance of doubt as to the effect of clause 13 on section 6(2) of that Act, which contains general provisions for alternative verdicts in indictment proceedings, and so that there can be no cross-contamination between the two enactments.

I am proposing two amendments to clause 25 in response to a request from the Justice Committee. The first amendment — amendment No 16 — provides that my Department "must", rather than "may", issue guidance. I stress that there was never any doubt that guidance would be prepared, and work is already well under way on this. A second meeting of the multi-agency task and finish group was held yesterday to consider the revised content of the guidance, and good progress is being made with regard to that.

Secondly, amendment No 17 provides that the guidance issued by my Department will include:

> *"such other matters as it considers appropriate"*

as to criminal law or procedure relating to domestic abuse in Northern Ireland. At present, the clause only refers to:

"other matters as to criminal law or procedure relating to domestic abuse in Northern Ireland."

In conclusion, there are a number of issues that cannot be addressed by the Justice Department alone. They will require other Ministers to also contribute. I want to put on record my appreciation for the support and cooperation of other Ministers, not only for the Bill, but for their ongoing support for the wider domestic abuse landscape and the domestic abuse strategy, which will take many of those issues forward. That includes issues such as the public awareness-raising campaign, which Claire Sugden has raised and in which my Department is heavily engaged. That campaign is to raise awareness of domestic abuse in our society, to challenge preconceptions of who may be a victim or perpetrator and to increase confidence from the public that they should intervene and report when they believe that domestic abuse is occurring. Indeed, in response to the COVID pandemic, we invested additional resources in addressing public communications.

This has been a useful and helpful debate. I am happy that that concludes, at this stage, my comments on this group of amendments.

Mr Deputy Speaker (Mr Beggs): I call Jim Allister to make a winding-up speech on the debate on the group 1 amendments.

Mr Allister: Thank you, Mr Deputy Speaker. I hope that I do not have to say this, but I will say it: I am not interested in providing any refuge for any domestic abuser. Domestic abuse is insidious and iniquitous, and it deserves the full rigour of the law. I am interested in the sanctity of the criminal law, and that is why I laid out my arguments. I acknowledge that I have not convinced the House, and I have to accept that. I accept that I have not overturned the predetermined collective view of the Committee. I regret that, but it is reality.

I am glad that I made the points, because there could come a point when this legislation is looked back upon and questions are asked about why we thought that it was right to create an offence where the law requires an intent or a recklessness to doing harm but we decided that you could be guilty of domestic abuse without actually doing harm. I drew the parallel that you would not think that you could be convicted of theft without actually stealing. However, the House thinks that you can be convicted of domestic abuse without causing the harm from such abuse. In that, I respectfully suggest that the House is wrong and that it does a disservice to the certainty and sanctity of the criminal law.

I am not going to labour the point, but I will ask the question, "What is the mischief that we are trying to address?". The mischief, surely, is that women and men — but women predominately — are abused. That is why we call the offence "domestic abuse". It says it in there: this offence shall be called the "domestic abuse offence". Yet, we rush our fences to the point where we decide that we do not actually have to have any abuse in order for someone to be guilty of that offence. If the direction of travel is to deal with coercive abuse, why does this legislation not make an offence of coercive abuse? Why is that not the offence? I could understand that: if that is the target, make it the offence. Make the offence "coercive abuse", have the evidence that that was the intention, and, in those circumstances, you could lay a path to justifying external evidence that that would be perceived to be coercive abuse.

When you make the offence actual domestic abuse, however, you cannot dodge the necessity, I say, of showing that there is abuse and there is harm. Otherwise, you arrive at the ridiculous situation in which you invite a jury to convict someone who fails in their intent, who fails to cause harm and who fails to cause psychological harm, and nonetheless you say, "Convict".

That is why I say that we are doing despite to the essence of the criminal law and the need for an actus reus and a mens rea. All that you have in this offence is mens rea and someone else, who is not the victim but some mythical, reasonable person, who believes that there was an actus reus. That is a bit farcical, but I recognise that I have not persuaded the House. I regret that, but you have your view and I have mine, and, in due course, we may see the wisdom of whatever path was trod.

Amendment No 1 negatived.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3 (Impact of behaviour on victim)

Mr Deputy Speaker (Mr Beggs): Before I put the Question, I remind Members that we have debated Mr Allister's opposition to clause 3. The Question will be put in the positive as usual.

Clause 3 ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clauses 5 to 7 ordered to stand part of the Bill.

Clause 8 (Aggravation where victim is under 18)

Amendment No 2 made: In page 5, line 24, leave out "constituting the offence" and insert "by virtue of which the offence is constituted".— *[Mrs Long (The Minister of Justice).]*

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9 (Aggravation where relevant child is involved)

Amendment No 3 made: In page 6, line 6, after "if" insert "(any or all)"— *[Mrs Long (The Minister of Justice).]*

Amendment No 4 made: In page 6, line 8, after "directed" insert ", or threatened to direct,"— *[Miss Woods.]*

Amendment No 5 not moved.

Amendment No 6 not moved.

Amendment No 7 made: In page 6, line 11, after "behaviour." insert

"Or

(c) a reasonable person would consider the course of behaviour, or an incident of A's behaviour that forms part of the course of behaviour, to be likely to adversely affect the child.

(2A) For it to be proved that the offence is so aggravated, there does not need to be evidence that a child –

(a) has ever had any awareness or understanding of A's behaviour, or

(b) has ever been adversely affected by A's behaviour.

(2B) Nothing in this subsection prevents evidence from being led about—
(a) a child's observations of, or feelings as to, A's behaviour, or

(b) a child's situation so far as arising because of A's behaviour.".— *[Miss Woods.]*

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

Clause 10 (Behaviour occurring outside the UK)

Amendment No 8 made: In page 6, line 38, leave out "course of behaviour would constitute the domestic abuse offence" and insert "domestic abuse offence would be constituted by virtue of the course of behaviour".— *[Mrs Long (The Minister of Justice).]*

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

Mr Deputy Speaker (Mr Beggs): Members, it has been a long session. I propose, by leave of the Assembly, to suspend the sitting until 7.15 pm.

The sitting was suspended at 7.03 pm and resumed at 7.15 pm.

Debate resumed.

Mr Deputy Speaker (Mr Beggs): We now come to the second group of amendments for debate. With amendment No 9, it will be convenient to debate amendment Nos 11 to 14. I call the Minister of Justice to move amendment No 9 and to address the other amendments in the group.

Clause 11 (Exception where responsibility for children)

Mrs Long: I beg to move amendment No 9: In page 7, line 15, leave out "18" and insert "16".

The following amendments stood on the Marshalled List:

No 11: In clause 17, page 9, line 21, leave out "18" and insert "16".— *[Mrs Long (The Minister of Justice).]*

No 12: **New Clause**

Before clause 21 insert

"Definitions for child cruelty offence

Meaning of ill-treatment etc. in offence provision

20A. In section 20 (cruelty to persons under 16) of the Children and Young Persons Act (Northern Ireland) 1968—

(a) in subsection (1), the words from '(including' to 'derangement)' are repealed,

(b) before paragraph (a) of subsection (2) insert—

'(za) a reference to—

(i) ill-treatment is to ill-treatment whether physical or otherwise;

(ii) suffering or injury is to suffering or injury whether physical or otherwise;'."— *[Mrs Long (The Minister of Justice).]*

No 13: **New Clause**

After clause 24 insert

"**Interim protection for the victim**

24A.—(1) The Department of Justice may by regulations, within 24 months of commencement, make provision for measures which may be made for the purposes of protecting and supporting the victim or alleged victim.

(2) The regulations may include provisions about —

(a) court orders,

(b) measures other than court orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Northern Ireland Assembly."— *[Mr Givan (The Chairperson of the Committee for Justice).]*

No 14: **New Clause**

After clause 24 insert

"**Amendment to the eligibility requirement for civil legal aid**

24A. In The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, Article 10 (1), at end insert —

"(ab) advice and assistance or representation in proceedings for, or in relation to, any order referred in Article 8(1) of the Children (Northern Ireland) Act 1995 where the client is a victim of domestic abuse in accordance with the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020."."— *[Miss Woods.]*

Mrs Long: Amendment No 9 is being moved as a consequence of amendment No 12, through which the offence of child cruelty will explicitly cover non-physical ill treatment of children aged under 16.

Clause 11 as it stands provides that the domestic abuse offence does not apply where a person has parental responsibility for someone under 18 years of age. I propose an amendment to change the age from under 18 years to under 16 years. That is to ensure that non-physical abusive behaviour of a 16-to-18-year-old by someone with parental responsibility is captured under the new offence. It is necessary, given that section 20 of the Children and Young Persons Act 1968, which is to be amended through amendment No 12 to capture non-physical ill treatment of a child by someone with parental responsibility for them, applies only to persons under 16 years of age. Doing otherwise would mean that those aged 16 to 17 would not be protected from non-physical abusive behaviour.

Clause 17 provides that an offence cannot be aggravated by reason of involving domestic abuse if the partner or connected person is under 18 and the accused has parental responsibility for them. I propose an amendment to the clause — amendment No 11 — to change the age from under 18 years to under 16 years. That is for the same reasons as I have just set out for the previous amendment.

Amendment No 12 inserts a new clause on the definitions for the child cruelty offence. Evidence received by the Justice Committee during its deliberations on the Bill highlighted concerns that non-physical abuse of a child by someone with parental responsibility for them was not captured by current child protection provisions. In order to respond to that, I have tabled the amendment to amend the child cruelty offence in section 20 of the Children and Young Persons Act 1968. The amendment makes it clear that non-physical ill treatment of a child by someone with parental responsibility for them is an offence. The offence applies to those under the age of 16. It will also provide that references to an offence around unnecessary suffering or injury to a child explicitly state that that relates to the suffering or injury being physical or otherwise, again ensuring that non-physical behaviour is captured in the offence. That will enable

matters such as isolation, humiliation, bullying and many others to be captured under the offence. Discussions have been held with the Department of Health on the amendment, and the Health Minister is content with the change.

While the ill treatment or abuse of a child or young person falls into the child protection arena, it is important to ensure at this point that the necessary protections are afforded to all our young people. While we can debate whether the child cruelty offence should have a threshold of under 18 as opposed to under 16, it is not possible to provide for that in the Bill. Ultimately, my focus is on ensuring that abusive behaviour against children can be dealt with through whatever means. For that reason, amendment Nos 9, 11 and 12 make it explicit that the child cruelty offence covers both physical and non-physical ill treatment of those aged 16 and under while extending the domestic abuse offence to those aged 16 and 17. Without those three changes being made together, there would not be the necessary protections for those aged 16 and 17. A failure by the House to approve amendment Nos 9 and 11 would mean that protection from abusive behaviour was not afforded to those aged 16 and 17.

In relation to those provisions, I reassure Members that we are not criminalising normal family disagreements or parental responsibility. For example, where a young person is grounded, their allowance is removed or they no longer have access to electronic communications and social media because of their behaviour, that would not be within the scope of the offence. There are more than sufficient safeguards in legislation to ensure that, given that there are three hurdles that must be passed before the offence occurs: these are that behaviour must be abusive and occur on two or more occasions; that a reasonable person would have to consider the behaviour likely to cause harm; and that the accused must intend to cause harm or be reckless as to that. There is also a defence of behaviour being reasonable in the particular circumstances.

I turn now to amendment No 13, which is a Committee for Justice amendment. I understand that the Committee has concerns about the introduction of provisions for new domestic abuse protection notices and orders and that, to a certain extent, the provision is intended to act as a stopgap in case the necessary legislation is not made to provide for these. I have made it clear that it is my intention that provision will be made for this in the justice (miscellaneous provisions) Bill, and, therefore, I consider the amendment unnecessary. More importantly, explicitly stating a restrictive two-year time frame for the introduction of an untested policy that has not yet been subject to public consultation leaves my Department exposed to a successful judicial review and unnecessary levels of risk. There are many factors outside our control that could mean that it is not possible to achieve this, which is particularly important when we consider the current pandemic and the impact that it has had on how all of us work. There are also significant resource implications to an approach that would require my Department to progress through both primary and secondary legislation at the same time. These are resources that we simply do not have.

Inclusion in the justice (miscellaneous provisions) Bill will enable the detail of the provisions to be set out in primary legislation, as well as the necessary policy development and consultation to be undertaken ahead of this. I reassured Members of that in my earlier remarks. I consider that the notices and orders will garner much public interest and that it is only right that a full public consultation be undertaken and the House has the opportunity for the detail to be set out in primary legislation. The approach adopted by the Committee amendment would mean regulating in secondary legislation an issue that takes the form of around 35 clauses in Westminster legislation, which is, effectively, the extent of a medium-sized Bill. I consider that the Executive and the House should be aware of and pass the broad intent of such expansive provisions in primary legislation, setting out clear authority for any such measures. While the provisions will be brought forward at amendment stage of the justice (miscellaneous provisions) Bill, due to the stage of policy development that we are at, and will, therefore, not be subject to the usual Committee Stage process, I have given my commitment that the Department will engage fully with the Committee on the preparation and progress of the provisions in such a manner as the Committee sees fit to ensure that it has the appropriate scrutiny of the clauses. That approach will also ensure that the House has two opportunities at amending stage to debate the detail of the provisions in the Bill finalisation. For those reasons, I cannot support the amendment and ask Members to support me in resisting it.

Amendment No 14 would confer a discretionary power on the Legal Services Agency to waive the financial eligibility test in private family law cases in circumstances where the applicant has been the victim of a domestic abuse offence. I am deeply sympathetic to the intention behind

Rachel Woods's amendment. It is clearly a laudable aim to ensure that victims of abuse are supported to establish safe and stable arrangements for the care of their children. Nevertheless, there are three important reasons why the approach taken here is not the right one and why we should seek to provide the support in another way.

First, it is not clear to me that the amendment would provide the right protection for such victims. For example, while a waiver would provide access to legal aid, it would not be free of charge. Victims would need to make an upfront contribution to the cost of the representation. Where a victim of abuse is unable to access their resources — where they are being controlled by their abuser, for example — that would still leave a very vulnerable person without representation. Furthermore, a person who is the victim of abuse but whose abuser has not been convicted of the relevant offence under this Bill would also not be assisted by the proposal. For example, if someone was to be convicted under the alternative options available for prosecution, they would not benefit from the proposal. There is a range of protections that might be afforded to victims and a range of circumstances in which they could be made available. I take the view that the best approach to determining the form of protection is engagement with stakeholders to construct a form of protection that will address the real issues that victims of abuse face. I agree with the Member who proposed the amendment that those issues are real and need to be addressed.

Secondly, at present, I am unable to state with confidence what impact the amendment would have on victims of abuse or on the operation of the family courts generally and nor can I be clear about what its costs might be. Legal aid is a complex and contested area of law, and it interacts in complex ways with the experience of people in contact with the civil courts. Research work is still required to understand the likely impact and cost of the protections that we offer. It simply does not make sense to act hastily by introducing changes with no clear idea of the impact that they will have, unless the situation is urgent.

We are not in that state of urgency because, thirdly, the Department has powers to make secondary legislation to provide the protection that is required. Secondary legislation is the appropriate vehicle for technical amendments of this type. It is not just a question of appropriateness or propriety: by using secondary legislation to provide those powers, we give ourselves time to engage with stakeholders and understand the most appropriate forms that the protections should take and can conduct research so that we fully understand the likely impact and cost of those reforms. Crucially, it also means that we can monitor those changes and their impact and act promptly to make changes to the system if it is not having the impact that we want. If we put that provision in primary legislation, we would lose each of those opportunities, and, almost inevitably, the people whom we are trying to help would be less protected than they might otherwise be as a result. For those reasons, I cannot support the amendment, and I ask Members to support me in resisting it. I am committed to working constructively with the Justice Committee to develop subordinate legislation to address this important issue.

That concludes my comments, at this stage, on this group of amendments.

Mr Givan: I will cover the amendments in this group that were tabled by the Minister and by Miss Rachel Woods MLA, before setting out details of the Committee's proposed amendment.

On amendment Nos 9, 11 and 12, questions were raised with the Committee by a wide range of organisations, particularly those that represent children, regarding the fact that the domestic abuse offence does not apply where an individual has parental responsibility for someone under the age of 18 and whether existing children's legislation provides adequate protection for child victims of non-physical abuse. The Committee discussed the position with NSPCC and Barnardo's representatives when they attended to give oral evidence and requested further information and clarification from Department of Justice officials, who indicated that the Department had given careful consideration to the scope of the domestic abuse offence to ensure that children would be captured within it in their own right where they are in a relationship or are a family member, while preventing criminalisation of parental responsibility.

The officials also outlined that, having considered the matter further and taken account of the concerns expressed to the Committee, discussions were taking place with Department of Health officials on a possible amendment to child protection provisions in health legislation to make it clear that non-physical ill treatment of a child by someone with parental responsibility for them is an offence and to provide that references to an offence around unnecessary suffering or injury to a child explicitly state that that relates to suffering

or injury being physical or otherwise, again ensuring that non-physical behaviour is covered. That should enable matters such as isolation, humiliation, bullying etc to be captured. Amendment No 12, the text of which was furnished to the Committee by the Department, provides for that by amending the child cruelty offence in section 20 of the Children and Young Persons Act 1968.

When the Department provided the wording of the proposed amendment towards the end of Committee Stage, it advised the Committee that the child cruelty offence applied only to those under the age of 16. As was explained by the Minister, to ensure that non-physical ill treatment of those aged 16 and 17 in the context of a parent-child relationship could be provided for in the legislation, the Department considered reducing the age threshold for the parental responsibility exclusion from under age 18 to under age 16, as provided for in amendment Nos 9 and 11. Although the Committee was concerned about the gap that the amendment to the child cruelty offence, if made, would cause, it viewed the proposed remedy of reducing the age threshold for the parental responsibility exclusion as a significant change and did not believe that it was in a position to clearly understand the implications or consequences of making it without the input and views of key stakeholders and further time to consider and discuss the issue.

The Department sought the views of the NSPCC and the Northern Ireland Commissioner for Children and Young People to try to assist the Committee, but neither commented directly on the proposal to reduce the age threshold. They remained of the view that children should be wholly captured in the domestic abuse offence and that the parental responsibility exclusion should not apply.

7.30 pm

The Committee accepts that child protection legislation falls to the Department of Health and, therefore, supports the approach taken in the Bill on the scope of the offence. The Committee also believes that the law should be robust and clear regarding the position of non-physical ill-treatment or injury to a child under the age of 16 and is, therefore, content to support the amendment to the child cruelty offence.

The Committee sought but did not have sufficient information to properly consider the proposal by the Department to reduce the age threshold for the parental responsibility exclusion from under age 18 to under age 16 before the Committee Stage of the Bill was due to be completed. Therefore, it noted the proposed amendments to clauses 11 and 17.

The Committee advised the Department that, assuming that the amendment to the child cruelty offence was made, it expected it to ensure that the gap created for 16- and 17-year-olds was fully addressed. It also indicated that it would consider any further information provided on the implications or consequences of the Department's proposed remedy and/or any other options available to address the issue. The Department subsequently advised the Committee that it did not consider that there were other options to address that gap in the Domestic Abuse and Family Proceedings Bill and that the Minister intended to table the amendments to clauses 11 and 17 to change the age from under 18 years of age to under 16 years of age to ensure that non-physical abuse of a 16- or 17-year-old by someone with parental responsibility is captured by the new offence. The Department also indicated that any wider changes in that area would be the responsibility of the Department of Health and that it understood that no further changes are being considered at this stage.

When the Minister attended the Committee meeting last Thursday, the amendments were discussed further. Following that, the Committee agreed that it was content to support them to ensure that the gap is addressed. However, the Committee is of the view that that is a suboptimal solution and that work will need to be done with the Department of Health to ensure there is better alignment across the board in these areas.

The Committee has not had an opportunity to consider and reach a position on Ms Woods's amendment No 14 about the eligibility requirement for legal aid. Therefore, I will address that later, when I speak in a personal capacity. My colleague Paul Frew will also elaborate on the DUP's position on that amendment.

The Justice Committee has tabled amendment No 13 to provide for measures to protect and support victims and alleged victims of domestic violence and abuse. The Minister has outlined her objection to the amendment, and I want to set out the reasons why the Committee has tabled it and the rationale for framing it in the way that it has. As the Assembly has heard, the Department of Justice took legislative powers to provide for domestic violence protection notices and orders similar to those in England and Wales, in the Justice Act (Northern Ireland)

2015. However, for a number of reasons, the Department has never introduced them. In England and Wales, they are now being replaced by new domestic abuse protection notices and orders under the Westminster Domestic Abuse Bill. The new notices and orders will address the broader definition of domestic abuse that is being introduced there and will make other changes to address some of the operational shortcomings that were experienced with the old-style notices and orders.

In the evidence received by the Committee on the Bill, recognition of the limitations of the old-style notices and orders and support for the introduction of domestic abuse protection notices and orders came from a range of organisations, including statutory bodies, advocacy groups and trade unions, which highlighted that they will soon be available in England and Wales. Although some of the organisations noted that the Department was considering progressing that matter in future legislation, others believed that it should be covered in the Bill.

The 2019 Criminal Justice Inspection Northern Ireland thematic report on the handling of domestic violence and abuse cases by the criminal justice system in Northern Ireland urged progress on protection notices. The Northern Ireland Policing Board, having benchmarked with England and Wales through police performance monitoring on domestic violence and abuse, is also of the view that there is considerable merit in introducing domestic abuse protection notices and orders and would support that in legislation.

The chairperson of the Northern Ireland Policing Board performance committee recently wrote to the Justice Committee highlighting the fact that the performance committee had considered police performance against measures in the annual performance plan for 2020-21, with a focus on repeat victims, repeat offenders and the delivery of effective crime outcomes on domestic violence and abuse. The performance committee had discussed a potential gap in legislative provisions in the Bill before us today to provide for domestic abuse protection notices and orders and how that could impact on the police's ability to protect victims further, and it asked the Committee for an update on progress in that area.

The Committee sought the views of the PSNI on the potential benefits for victims of domestic abuse of such orders. In their response, the police highlighted their concerns regarding the old-style domestic violence protection notices and orders that are in operation in England and Wales and that the Department was continuing to work towards in Northern Ireland and suggested that, rather than introducing them, further formal consultation in determining the most effective way ahead in Northern Ireland would be beneficial.

In August, the Department advised the Committee that it was looking at proposals for the introduction of domestic abuse protection notices and orders and, due to the policy and operational lead-in time required, that would be taken forward at the amendment stage of the proposed miscellaneous provisions justice Bill. The Minister subsequently advised the Committee in September that, given the concerns expressed by the statutory and voluntary and community sector bodies during discussions, and the issues evident from England and Wales, she did not believe that the old-style domestic violence protection notices and orders should be introduced in Northern Ireland, and the Department would instead focus on policy development on the new domestic abuse protection notices and orders. Suffice it to say, it has been a long drawn-out process by the Department to get to this point.

The Committee recognises the benefits of domestic abuse protection notices and orders in providing short-term protection to victims for a time after an incident and giving them time and space to consider their next steps. The Committee also understands that there is a need to develop the policy in this area and identify the most appropriate option for Northern Ireland. Members are, however, concerned and frustrated about how long Northern Ireland has already been without any form of protection notices, and we do not find any reassurance in the fact that legislative provision in this area will be advanced by the Department only during the progress of the proposed miscellaneous provisions Bill.

In order to ensure that progress is made, the Committee agreed to table amendment No 13 to place a duty on the Minister to provide for a scheme within 24 months of commencement of this legislation for the purposes of protecting and supporting victims or alleged victims of domestic abuse. Rather than being prescriptive, the amendment provides for the details of such a scheme to be set out in regulations, thus enabling the Department to identify and progress the most appropriate scheme for Northern Ireland. The Minister advised the Committee on 1 November that she considered the amendment to be unnecessary, and she has set out her reasons for that today.

Let me be clear: the Committee could have taken the detailed provisions in the Westminster Bill relating to domestic abuse protection notices and orders and tabled them as amendments to this Bill. However, we are aware that Scotland intends to introduce a form of protective orders for people at risk of domestic abuse. The Committee wants to provide the Department with the opportunity to develop the most appropriate policy option for Northern Ireland. Therefore, rather than being prescriptive in the Bill and setting out a particular approach or simply lifting a scheme wholesale from another jurisdiction, the Committee amendment deliberately gives flexibility by providing for the details of court orders or measures other than court orders to be set out in regulations.

The timescale of 24 months from the commencement of the Bill is, in our view, entirely reasonable, particularly given that the Department advised the Committee in August that it was already considering proposals for domestic abuse protection notices and orders. Although the Committee notes the Minister's stated intention to make provision in the proposed miscellaneous provisions Bill, as I outlined earlier, the Committee does not find reassurance in that position, particularly as the intention is to do so during the amending stages of the Bill rather than at its introduction. Until we see the proposed provisions and, indeed, the Bill being introduced, there is no guarantee that legislative provision in this area will be available. The Committee therefore sees no reason not to take the opportunity to make legislative provision in this Bill.

The Minister recently advised the Committee that she hopes to introduce the miscellaneous provisions Bill in March 2021. If that happens and the Department introduces relevant provisions for domestic abuse protection notices and orders or something similar at the amending stage, the Department can also repeal the Committee's provision in this Bill, assuming that it is made, as it will then not be necessary. We would be content with that approach. If, however, for whatever reason, the Department is unable either to progress the miscellaneous provisions Bill or bring forward provisions for domestic abuse protection notices and orders during its passage through the Assembly, the Committee amendment will provide a legislative basis on which to progress that issue within a reasonable time frame. If we do not take the opportunity provided by this Bill to put in place that provision, there is the possibility that progress in this area may not be made until a new Assembly mandate. That is totally unacceptable, given the length of time that Northern Ireland has already been without this type of scheme.

The Committee fails to understand the Minister's lack of support for the approach that we are taking and her assertion that it places the Department at considerable risk of successful judicial review if the timescale of 24 months cannot be met, particularly given her commitment that she is bringing forward provisions as part of the miscellaneous provisions Bill, which will be introduced well within that timescale.

Mrs Long: Will the Chair give way?

Mr Givan: I therefore ask the Assembly to support the Committee amendment. I am happy to give way to the Minister.

Mrs Long: I am happy to elucidate the reasons that there could be problems. It is an untried and untested policy. There has been no public consultation. There has therefore not been the opportunity for us to shape the domestic abuse protection notices. Although I share the Committee's frustration at the domestic violence protection notices not being able to be proceeded with in a more timely fashion, the risk is that, if we go out to consultation and significant issues emerge about the operation of domestic abuse protection notices in other jurisdictions or there is significant resistance to the introduction of domestic abuse protection notices during that consultation, we will be considered to have acted in a way that is not taking account of those who responded if we are already committed in law to undertaking a course of action.

Mr Givan: I thank the Minister for that intervention. I will not repeat all the rationale that the Committee considered, because that is exactly what I would be doing, as I have already addressed it. Of course, the Minister will make the winding-up speech on this group of amendments and, I am sure, will be capable of adding more detail. The position that I have outlined on behalf of the Committee has already been stated on the record.

I will speak briefly in a personal capacity. My colleague Paul Frew will address amendment No 14 in more detail. Suffice it to say, as the Minister has outlined, there is a lot of sympathy and, indeed, support for the rationale behind it. The Minister outlined in her comments some concern that there would still be upfront costs to address the impact on victims, even if the amendment were to be made; indeed, she highlighted some concerns around costs. As I

said, my colleague Mr Frew will deal with the amendment. If the amendment is passed, some of the concerns that the Minister has outlined could be addressed at Further Consideration Stage. As far as the DUP is concerned, however, we are very sympathetic to the intended purpose of amendment No 14. At this point, I am content to resume my place.

Mr Sheehan: I welcome the opportunity to speak in the debate. I was on the Justice Committee when Claire Sugden was Minister, and I was on it when the institutions were resurrected earlier this year. I have since moved on. The issues that I want to deal with overlap with Health. It is clear that there are overlaps in the Bill between the realms of Justice and Health. That is most apparent in clauses 9, 11 and 17, which deal with the child aggravator and the exception to the aggravation where the perpetrator has parental responsibility over a child.

7.45 pm

I recognise that organisations raised some issues about the parental responsibility exception, specifically the question of whether existing child protection legislation provided adequate protection for child victims of non-physical abuse. That was raised by organisations such as the Commissioner for Children and Young People, Victim Support, Barnardo's, the NSPCC, Women's Aid, the Children's Law Centre and many others, and I thank them all for their important contributions. It is directly because of those important contributions to the discourse on the Bill that the Department of Justice decided, in consultation with officials from the Department of Health, to amend the Bill to provide for more explicit protections for children. It is my view and that of my party that, quite clearly, abuse, be it domestic abuse or child abuse, is not limited to physical abuse. It is important that all victims of abuse are afforded the same protections from non-physical abuse.

Such abuse has a stark, damaging and lasting impact on a child, and such adverse childhood experiences — they are known as "ACEs" — can lead to serious damage to a person's life. ACEs are a growing topic in academic and political discourse due to the increasing awareness of the impact that they can have on a child in later life, including mental health issues, addiction issues, educational, social and economic inequalities and more.

The UN Convention on the Rights of the Child must be the baseline used when making decisions on protecting children. More specifically, I want to draw attention to paragraph 1 of article 3 of the UNCRC, which states:

> *"the best interests of the child shall be a primary consideration."*

I believe that amendment No 12, which amends child cruelty legislation to make it explicitly clear that abuse can be non-physical, is important, because it will engage the UNCRC much more meaningfully and provide much greater safeguards for children who may be subject to abuse. The amendment will make it clear that it is an offence to cause suffering or injury to a child, be it physical or psychological in nature; for example, isolation, humiliation or bullying. That goes further than provisions in legislation in all other jurisdictions of these islands, and that is to be commended.

Ms S Bradley: First, I will speak directly to amendment Nos 9 and 11.

The SDLP recognises that the lowering of the age to 16 ensures that victims aged 16 to 18 who cannot seek legal redress through other provisions will be captured in the new offence. We note that the Bill is not intended as the legislative pathway for persons under the age of 16 for domestic abuse offences against them. Unlike 16- and 17-year-olds served by the amendment, they are reliant on the Children and Young Persons Act.

I was going to quote from the letter from the Minister at this point, but I think that that is sufficiently on the record at this stage. In the letter, the Minister talks us through the reasoning behind the Department's thinking, and I accept that. What I will say is that, while I support the Minister's amendment in that regard in wanting to cover all young people, the SDLP shares the concerns raised by others that an inequality in sentencing will arise from that disjointed approach. I appreciate that I had the opportunity to speak briefly to the Minister about that during our last Justice Committee meeting, and I accept that the outcome is not entirely within the Minister's gift to resolve. Although, arguably, it is the correct thing to do, I urge her, along with the Minister of Health, to ensure that, if any inequality is raised at the time, urgent action is taken to swiftly rectify that.

Amendment No 12 would insert a new clause, "Definitions for child cruelty offence". Again, I see how that is required to ensure that there is alignment on the age factor, so we will support it.

The Chair of the Committee outlined very well the Committee's position on amendment No 13. It is a reasonable presentation at this time, and it allows for a reasonable period for the Department to act. Rather than reiterate what has been said and further to the Minister's intervention, I highlight that the amendment is sufficiently vague about the regulations. The amendment states that:

> *"The regulations may include provisions about—",*

so any consultation process will have sufficient regard to what is heard during that consultation. I do not accept that that is a valid ground not to move and support amendment No 13.

The Member who tabled amendment No 14 will know that I have huge sympathy for it. It was my intention, although that has been unsuccessful to this point, to genuinely try to understand the position of the victim. In very many cases, unless we have right the piece where we talk about supporting the victim, victims may never present themselves. They may never have the confidence to come forward. We had to look at all the empowering tools that we could reach for in order to help those victims to come forward and present their case. One concern that I had and continue to have is that financial restraint — the perpetrator restricting access to finance — could mean the person fails to come forward. That could be the deciding factor in not taking action.

Likewise, the amendment speaks to legal aid. It is that recurring effect, and I know that the Member who tabled the amendment will speak to that. The perpetrator is trying to break the person in every way they can. If one of the tools for them to do that is to continually and persistently bring that person to court over minor and unfounded offences, just the process of having to do that and defend yourself is another form of abuse. I can see how the legal aid system stepping in would prevent the effect that the perpetrator hopes to achieve. The victim who is being dragged to court perpetually will not become financially broke by that if legal aid sweeps in and supports them. As the Minister said, however, this piece has not been developed as fully as it could be. What of those victims who may not run the full course of the Bill but are taking a case outside it? They, too, would deserve that support.

I spoke at length with the Member who tabled the amendment. I am torn, because I see that it is not a perfect piece at this stage. That said, the SDLP will support it because to anchor it now in the Bill is the right thing to do and allows us to tease out those further conversations around it.

Mr Beattie: I will be brief, because a lot of information has come across already that addresses an awful lot. There is no point in talking just for the sake of talking. There are others who I need to listen to before I can make a fully informed choice, if I am really honest.

We absolutely support amendment Nos 9 and 11, which would move the age down from 18 to 16. We understand what it is trying to achieve. It is not ideal, but we will support those amendments.

The new clause proposed by amendment No 12 really is welcome. A definition for "child cruelty offence" is really needed. I am glad that the Minister tabled that amendment, because it will give us so much power to protect children.

I am struck by this line in amendment No 13:

> *"protecting and supporting the victim"*

Clearly, the whole Bill is about protecting and supporting the victim in one way or another, and domestic abuse protection orders and notices are one of the ways to do that.

I guess that nearly everybody in here has come across someone who has been a victim of domestic abuse in one way or another. I certainly have, and the individual whom I know was a male who was being abused by his wife while the children were in the house. When I say "abused", I mean that he was physically abused. After he had been abused, he would leave the house because that is what men do; they leave the house and leave the children and the wife there. When he went out the door, there was nothing to protect or support him legally. All he could do was traipse back into the house to be abused all over again. That cycle continued until I got him out of the house and into accommodation. I moved him away from there, and I went through a system of getting him access to his children.

The new clause introduced by amendment No 13 is a justified and a good clause, and we should definitely support it. My party will support it. I have absolute sympathy with the Justice Minister, and maybe, in the Further Consideration Stage, we can enhance it. However, it needs to be in the Bill. To use a phrase that has already been used, it needs to be anchored in the Bill.

I am absolutely minded to support amendment No 14. We have discussed it with Ms Woods,

and I absolutely understand what she is trying to achieve. However, I need it expanded a little more. I do not think that I have as much information as I want. At the start I said that I want to finish because I want to hear other Members, and one of the other Members I want hear from is Ms Woods to give us some information on this. I think that Mr Frew will talk about it as well. It says a lot for the Assembly that you can listen to other Members and possibly change your mind on a clause. I am minded to support it. It certainly is a clause that we can get into the Bill and enhance at a later stage, but I would like to hear more information about it. I do not know whether this addresses it or not, but we all know of occasions where one parent in an abuse case is getting legal aid and the other is not and one is financially drying the other one out completely. That is another form of domestic abuse. It is an endless cycle, I suppose. A little more information on that would help me out, but I am certainly minded to support amendment No 14.

Ms Bradshaw: I support amendment Nos 9, 11 and 12 and oppose amendment Nos 13 and 14.

Amendment No 9 is an important clarification that non-physical ill treatment of someone aged 16 or 17 will be captured by the offence. It has been placed in the group alongside amendment No 11 to clause 17 because it does the same thing: it clarifies that the domestic abuse aggravator also applies if the victim is aged 16 or 17.

Amendment No 12 is an additional clause that enhances that, based on evidence received by the Committee, making non-physical ill treatment of a child by someone with parental responsibility for them an offence and clarifying that any suffering or injury need not necessarily be physical.

I have concerns about amendment No 13, not because I oppose its intent, but because, in fact, I support it. I do not believe, however, that such an important process — a significant element, amounting to 35 clauses of the equivalent Bill for England and Wales — should be taken forward through regulations; instead, it should be properly consulted on with the public and scrutinised by the Assembly, not least the Justice Committee, as part of forthcoming primary legislation in this Assembly term. In my and my party's view, the interests of victims are best served by a thorough process, making sure that we get it right.

While I suspect that I have sympathy with the intent of amendment No 14, I am unclear about the wording. I simply do not believe that it would be workable as it stands.

It should be emphasised that legal aid is already available to anyone who needs it to secure a non-molestation order. People with high incomes make a small contribution towards their representation, but no one is paying thousands or even hundreds of pounds for that. Nevertheless, we will continue to look at this, particularly because one common means of control is to remove access to funds. If the intent is to ensure that no one is unable to bring a case of domestic abuse due to a lack of funds, we would like to achieve that in the Bill, via an appropriate amendment, if necessary.

Finally, it is worth emphasising that no one is removing parental responsibility. There is a reasonable behaviour defence, and standard penalties such as grounding or removing access to social media, do not fall within the scope of the Bill.

8.00 pm

Mr Frew: This is the second stage of the debate, which has been a good one, and I have really enjoyed it. This is definitely the business end of our job. We have a certain group of amendments and clauses to look at.

Amendment No 11 reduces the age from 18 to 16. I think that we all recognise the gap, and there is no problem with that. There is no issue with lowering the age in regard to aggravation and also lowering the age in regard to the other issue. We could see the anomaly that had been created, so there is no problem there.

There is no problem with amendment No 12, which is a new clause on the meaning of ill treatment etc in offence provision. Doug told a story about that, and I agree with his assessment.

I will move on to amendment Nos 13 and 14. I remember tabling an amendment in the last Assembly mandate. I think that was an amendment to the Justice (No.2) Bill, but, as my memory is sketchy, it could have been the Justice (No.1) Bill. It was to do something similar with regard to orders. The Minister at the time was Mr David Ford, and he gave me a commitment in this very House that, if I withdrew my amendment, he would carry it on. He criticised the wording and said that it was untidy — I agree with him; it probably was — but I felt that having that amendment on the list and forcing the Minister to talk to it would mean that I could effect change in that regard. That

change did not happen. It did not happen anytime soon. I thought that I was doing a good thing by removing the amendment and not pushing it — I had the word of the Minister — but, with all due respect to the Minister, time moves on, things happen and things do not get done. I understand that, and I understand why it was critical that the Committee, having had the opportunity to table the amendment, grasped it.

Amendment No 13, which is a new clause on interim protection for the victim, is a gift for the Minister. It is a gift that the Committee has presented to the Minister. The Committee could have gone down a more arduous route. It could have taken legislation from other arts and parts — other jurisdictions in the United Kingdom — and put it in this Bill. However, the Committee recognised that that would not be the right thing to do, because our Justice Minister and Justice Department needed to make sure that whatever vehicle they use is fit for purpose for Northern Ireland, which is important. It is important that we adapt the vehicle to suit us. That is why it is so vague in the way in which it is written:

> *"The Department of Justice may by regulations, within 24 months of commencement, make provision for measures which may be made for the purposes of protecting and supporting the victim or alleged victim."*

This is all about protecting and supporting the victim:

> *"(2) The regulations may include provisions about—*
> *(a) court orders,*
> *(b) measures other than court orders."*

You cannot be any more vague than that.

When I brought my amendment, away back then, during the Justice (No. 2) Bill, I think, to Minister David Ford, it was very prescriptive. I basically nailed my colours to the mast and asked David Ford, who was the Minister at the time, to do something. I withdrew that amendment, and, to be honest with you, I regret it. We should not withdraw this amendment; we should move this amendment.

The amendment should be passed in this House because it is affording the Justice Minister of today the ability to shape the vehicle that she wishes to use to take it forward in a timely fashion. Twenty-four months should not be too ambitious, and, if it is, there is something badly wrong with the system. We know that cogs turn slowly in this place — too slow for my liking — but 24 months to get something that is desperately needed —

Mrs Long: Will the Member give way?

Mr Frew: Yes.

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

Mrs Long: Will the Member accept that, within that 24-month period, there will be a change of Executive? There will be a general election called in respect of the Assembly. The Executive will have to enter into negotiations to reform an Executive, and that can take a considerable time. During that period, officials would not be in a position to take direction from a Minister.

We also know that, this year, with the onset of COVID, there are other indeterminables and unforeseeables that could happen in that period. Putting in primary legislation a duty to do something within a time frame of two years places the Department at high risk. The difference between us is not whether this needs to be done but whether it is wise to place the Department — not me — at risk of judicial review should this fall. No doubt, it will be a different Minister who will end up having to fight that case in court.

Mr Frew: I thank the Member for the intervention. I hear her appeals. If we want to amend this so that it is a shorter time, I am up for that debate. Twenty-four months is enough time. What the Minister failed to point out is this: she has told the Committee and the House that she will bring forward legislation that will deal with the issue straight away.

Mrs Long: I thank the Member again for giving me the opportunity to clarify. This would place a duty on my officials to do two things: to engage in nugatory work to bring forward secondary legislation, which we do not believe is the correct vehicle, and, at the same time, the same officials and the same resource would be split to try to advance primary legislation where the matter can be dealt with properly.

I realise that the Member gets frustrated at the pace of change, but each person has only limited capacity to deliver. If they are to do both those things, one of those things will suffer, and one of them is unnecessary. It is not helpful to ask a small team — it is a small team — to divert all its attention to producing secondary and primary legislation on the same issue and divert them from all the other work, including the domestic abuse strategy. The Member

would be the first to criticise us if we were to do that.

Mr Frew: I thank the Minister for her intervention. She can make all the excuses for her Department that she wants, but the Committee wishes to see the amendment through, and I hope that the House sees the rationale for why we need to see the amendment through.

It is not duplication, and it is not placing a burden on the Department when it is the same thing that we are asking for and the outcome will be the same. Surely the Minister and her officials can see that this is the endgame. This is where we need to get to. For the life of me, I cannot see why the Minister and the Department are so against amendment No 13, which asks her to do that. Her Department shapes the vehicle for her to move forward to protect victims of this heinous crime. For the life of me, I do not see what the problem is with that. It is happening everywhere else but here.

Mrs Long: Will the Member give way?

Mr Frew: Yes.

Mrs Long: The Member said that he does not understand why there is a duplication of resources. I know that it is unusual for a Minister to ask a question of a Member, but does he understand that primary legislation is a completely different vehicle, a completely different drafting exercise and has completely different standards from secondary legislation? They are not the same thing. It is not about drafting legislation that will either be primary or secondary: primary legislation is different from secondary legislation. Does the Member understand that that requires us to do two things at the same time and split our resources between them, rather than focus on the one thing that he wants, which is to get these delivered?

Mr Frew: I thank the Minister for her intervention. However, she must realise that an amendment to a Bill can be cooked up and produced in hours or in days. That is the process that, the Minister outlined, she will use as the vehicle. We can have a tennis game all we want tonight, but it will not serve any more purpose. I plead with the House to consider the amendment and everything that I have said about my history and my experience in this place in trying to effect change. The Committee gave the Minister as wide a scope as it could. This is a gift to the Department and the Minister. I wish and hope that she takes it.

I will move on to Rachel Woods. This is becoming a habit, and I will have to stop it. I will get into real trouble with my party, because I will have to praise her once again. Here is the thing, and it is very important: Rachel Woods came onto the Committee, and she gets the Bill. I think that this is her first attempt at the legislative process, and she gets it. If every Member was as committed as she is, what a Chamber and Committees we would have. I will really have to stop this. Why am I so passionate about this? I thank Rachel for her amendment because it ticks a very big box. I admit that it has taken me a while to see what the amendment does, and I would suggest that we probably need to go further. I am up for that debate. We are probably a wee bit limited in the time available before Further Consideration Stage, but I put the Minister on notice.

Why is the amendment needed? My colleague Jonny Buckley organised a meeting a number of months ago with a young lady — she will remain nameless, of course — who wanted to meet me and the Chairperson, Paul Givan. She outlined in great detail the absolute devastation caused to her life and her children's lives because an ex-partner would not let her go and tormented her, day in, day out. That was not through nuisance phone calls, stalking, rumour or gossip but through the court. I am sure that Members will know of such experiences and will have heard such stories, but make no mistake: people use the court as a weapon, and it is a powerful tool in the hands of the wrong person. Here is how that can happen: a perpetrator of domestic violence or any other crime can go to court to gain access to children, and they can keep going back. There are meant to be safeguards in place in court. If a certain Member were in the Chamber, I am sure that he would remind me about that, but those safeguards seem to be failing. There are people in this country — female and male — being taken to court over and over and over and over and over and over again. Hansard will enjoy that. People keep being taken to court, and their financial capacity is being reduced to zilch, to zero, to niets. That is not fair. It reduces the capacity for people and their children to move on with their lives.

8.15 pm

Mr Buckley: I thank the Member for giving way and for his particular reference to my constituent's case. I have listened to what the Member has said and seen what the Committee has done on the Bill. I thank the Chair of the Justice Committee and the Member for giving her the opportunity to speak to them and tell her

story. She has been empowered by the actions that have been taken by the Justice Committee.

Does the Member agree that the continual attempts to bring her and her family through the courts affected the young lady not only financially but psychologically? They financially crippled her in such a way that her grandmother had to give up so much to ensure that the young lady could keep her family together. I thank the Member for his comments on the case.

Mr Frew: Yes, and you can see the unfairness in that. You can see where hard-earned cash and life savings have been reduced at each stage of the way. Court proceedings are not pretty. It is not a case of going in on the Tuesday and coming out on the Wednesday. A court process has stage upon stage and lasts month after month. There are solicitors to pay and sometimes barristers, and there is no legal aid available. The perpetrator can get legal aid, however. The perpetrator has nothing to lose, but the victim has everything to lose. It is the case that court is being used as a weapon. The house of justice — the very place of justice — is being used against a victim: a person who is a single mum, with, I think, three children. That has to be stopped.

Mr Givan: I appreciate the Member giving way and elaborating on our party position. I also thank my colleague from Upper Bann Mr Buckley, who brought the lady to see us. Miss Woods will no doubt elaborate on this, but my reading of the amendment is that it relates to victims of the offence that is being created, so there is not a retrospective nature applicable to it, or a wider net for other types of offences. Nevertheless, it could be the catalyst for the wider changes that we as a party would like to see made to support victims of domestic abuse and ensure that the courts are not used for the very reasons that the Member has outlined.

Mr Frew: I could not agree more. I thank the Member for putting that on the record. When the Committee spoke about the issue last week, departmental officials were unclear on what the cost burden of the new clause would be. To be fair, it is not their area of expertise, so we got further clarification. It was cited that it could run into tens of millions of pounds, if my memory is right.

Miss Woods: I thank the Member for giving way. I believe the term was "double-figure millions".

Mr Frew: Thank you for that clarification. My memory is not what it used to be. When I heard that in Committee, my mouth hit the floor. If that is the cost burden to legal aid resulting from the Bill, equate that to a single mum's purse, equate that to a single dad's purse, equate that to a nurse, equate that to a spark, equate that to a binman or binwoman. If that is the case, that amount of money is then going out of the hands of people who have worked hard to earn it. The Department cannot have it both ways. If it is millions upon millions — yes, I will give way to the Minister, who raises her hand.

Mrs Long: Will the Member accept that, equally, Members cannot have it both ways? They cannot demand that the Department bring the bill for legal aid under control and reduce it and, at the same time, argue that the bill for legal aid and the rules for legal aid should be changed without due diligence on our part and without checking how much it will cost so that we can quantify the changes and make sure that they are effective, proportionate and affordable.

Mr Frew: I thank the Minister for her intervention. It was very powerful, and she has hit the nail right on the head. Why is legal aid not protecting people like this? In fact, why are we financing people to use this as a weapon against the victims? Yes, the Minister has indicated by putting her hand up.

Mrs Long: I thank the Member for being generous in giving way, because it is important that we deal with the issues as they arise. It is already within the gift of the judiciary to rule that claims to go back to the family courts are vexatious. The judiciary must reach a decision. If a partner continues to drag his partner into court on a repeated basis for no reason other than to cause them harm, the judiciary can already say that they should not be allowed to do that and can exercise that power at any time.

Currently, there is also a waiver in place that will allow people to access legal aid in cases where they do not meet the financial threshold, but that relies on them still being able to make some contribution to the costs, which, at the higher courts, can be very significant. We are not talking about a complete waiver, and it would affect only those who are convicted of these specific offences, not other offences that might also constitute domestic abuse, for which alternative provisions have been made, in terms of prosecution. We discussed them earlier. The reason why some people can do this and others cannot is simply about their means. If you have

the money to fund your case, you are expected to do so, and, if you do not, the Legal Services Agency is there to support you in order that you can access justice.

Mr Frew: I thank the Minister for further clarification, but, as I understand it, this amendment from Miss Rachel Woods allows the director of legal aid services to disapply financial eligibility rules for victims of domestic abuse in family proceedings — for example, child contact and residence orders. This will go some way to providing financial support and access to justice for victims who are having their resources drained and are subject to retraumatisation and further abuse by perpetrators exploiting the justice system. If I am wrong in that, I am happy to give way to either the Minister or the proposer of the amendment.

Women's Aid will be watching this, and I am sure that they are screaming at the TV, because this happens every day. That organisation has to fight tooth and nail for the victims daily. I received an email from Women's Aid not long ago, on 13 November — I have lost track of time — that outlined the cost burden for a victim in this regard. I will not go into the itemised costs, because it would take me all night, but, from May 2019 to October 2020, there were six sittings of court. From May 2019 to October 2020, which has just ended, you can imagine the psychological burden on a victim of having to prepare for the next court sitting. May, November, July, September, October, October: when is there a free month there? When is there a month in that space of time when that victim can get their head showered? Then, of course, you have your counsel fees, your solicitor's fees, your court fees and everything else. The professional costs and outlays for that period were £2,950·50. The person involved is a single mum with a job, trying to provide for her family, with a mortgage, with car payments, with school fees and with lockdown.

Mrs Long: Will the Member give way?

Mr Frew: Yes, I will give way to the Minister.

Mrs Long: To save the Member and the Chamber some time, I will say that there is no need to convince me that there is an issue. I acknowledged that in my opening remarks. There is an issue. It is a serious issue that I wish to address. However, I do not believe that the amendment has the policy development behind it to ensure that it is adequate for purpose or that, in how it addresses the issue, it allows us to look at all the other mechanisms that are in front of us. There is no need to labour the point about the seriousness of the issue: we, in the Chamber, are all agreed on that. It is simply about the appropriate way to address the problem that we have a slight difference.

Mr Frew: I thank the Minister for her intervention, but, yes, it is correct that we clearly define the problems that are out there. It is correct because we have a problem here. We have an amendment. You disagree with it. The House will decide. It is important that we elaborate on these issues and stress the importance of this and how it impacts on people's lives so grievously. It is important for the people involved that we lay all that out.

That is only one court session that I described. There was then defending the appeal in the family care centre, which robbed that person of another £1,000. Again, the person involved is a single mum with child maintenance for two children and everything that goes with it. These people are being deprived of their funding and their hard-earned cash. That is money that they were prepared to save in order to ensure that their children get everything that they need — everything that is required for school, for holidays, for breaks away and for food on the table. They are being deprived. Their money is going down, and it is the court and all its legal services that are taking it off them because a perpetrator is using court as a weapon. That is the long and short of it.

That is why I support the amendment. That is why the amendment is needed. I do not think that it goes far enough, but it could be the start of a journey that leads us there. If it takes the whole gamut of legal aid to do it, let us do it. There should be no mountain too big to climb for the Assembly, Executive or any Minister. Let us tackle legal aid once and for all. Let us get it sorted, and let us not beat about the bush. I support Miss Rachel Woods's amendment. Let us see where it takes us. I make this plea to the House tonight: you have the time to support Rachel Woods's amendment No 14 and to support the Chairman, who has tabled amendment No 13. That is important. Do not lose the opportunity. Do not waste the time. Take it now. Grasp it. Do not be like me. I withdrew an amendment on the sound commitment that the Minister made in the House on the record. It did not work for me. Pass the amendments. Let us get this done.

8.30 pm

Mr Lynch: As a former member of the Committee and a current member of the Policing Board, I speak in support of amendment No 13, which is a Committee amendment that would place responsibility on the Justice Minister to make provisions for domestic abuse protection orders and notices within 24 months of commencement or other measures aimed at protecting and supporting victims of domestic abuse.

Current legislation provides for domestic violence protection orders and notices, but they were never introduced. I also note that, as outlined by the Chair, the orders and notices were replaced by new domestic abuse protection orders and notices in England and Wales to address the broader definition of domestic abuse and some operational shortcomings that were experienced in relation to the orders. There is widespread support for the introduction of the new orders; indeed the issue was considered by the Policing Board, which agreed that there would be considerable merit in their introduction and that they would provide victims with protection for a period after an incident. Although there is no outright objection to the introduction of those orders, the PSNI highlighted concerns about existing arrangements and suggested that further consultation prior to their introduction would be beneficial.

It is concerning that victims of domestic violence in the North of Ireland have already gone a considerable time without any form of protection notice and would like to see them introduced. However, I understand the need for more consultation to ensure the best possible form of protection. Victims must be afforded all possible protections to ensure their safety and that cycles of abuse are ended. I welcome the amendment, as it places a duty on the Justice Minister to provide a scheme within 24 months of the commencement of the legislation, and I would welcome its introduction through the justice (miscellaneous provisions) Bill, which, I believe, will come next year.

The success of legislation depends on its effective implementation. Although the reporting of domestic abuse has increased, particularly since the introduction of lockdown due to COVID-19, it remains an under-reported crime. The figures outlined earlier by the Minister are stark. I welcome the proactive focus of the PSNI on tackling the increase in domestic abuse cases seen during the COVID-19 pandemic.

The Domestic Abuse and Family Proceedings Bill will be landmark legislation that, once implemented, will make a huge difference to the lives of so many. I have full confidence in the PSNI's ability to implement the legislation; however, it will need support in its efforts to do so. The legislation will be transformative to the lives of many victims. It must be a priority for the Department to ensure that appropriate resources are dedicated to that work so that the full potential of the legislation is realised.

Mr Dunne: I welcome the opportunity to speak today on the important issue of domestic abuse. I welcome the significant steps that have been taken over recent years to get us to this advanced stage. I will not go in to all the details. I am very fortunate, as a DUP Member, to have two colleagues with great experience: the Chair, Paul Givan, and the former Chair, Paul Frew, who have covered the amendments in great detail. I am willing to follow their lead in relation to those issues. I do not always follow their lead, but I will do on this occasion.

I acknowledge all the victims' agencies across the community and voluntary sector and the officials and justice agencies, including the PSNI, that continue to support victims of that most horrific form of abuse and which have constructively engaged in the process to get us to where we are today. The dedication of organisations that work to support victims and survivors of domestic abuse in Northern Ireland must be commended. They have, literally, been a lifesaver to so many people across our communities, giving victims security, safety and hope for the future. There is no doubt that there is greater public awareness of domestic abuse. That is down to the hard work of many groups and organisations across society that work day and night to tackle this serious issue. I pay tribute to North Down and Ards Women's Aid, which is based in Bangor in my constituency. I have had engaged with it and know that it plays a valuable role in supporting victims of domestic abuse.

Considerable work has been done to get to this advanced stage, and we have heard about that in great detail during the debate. That includes work by all members of the Committee, who have worked constructively to tailor the Bill to best meet local needs. From the various evidence-gathering engagements and sessions that the Justice Committee has had, I know that there is a united desire — almost united — to ensure that no stone is left unturned as we seek to eradicate this appalling abuse, which, unfortunately, still happens every day and night across Northern Ireland.

As has been said, domestic abuse can affect everyone, regardless of their age, race, religion,

gender, wealth, address or disability. Very often, it has no end point. It is torturous and, sadly, can result in generational harm that can never be repaired. Home should be the safest place for everyone. However, tragically, it can become the most dangerous place to be.

Throughout the COVID pandemic, with the lockdowns and periods of restrictions, places to escape from the home may have been closed, whether that was simply going to a football match or going out for a coffee, a haircut or a chat with friends or family members. Domestic incidents and crimes in Northern Ireland were already at a 15-year high before the COVID-19 pandemic, and data from the Northern Ireland Statistics and Research Agency (NISRA) shows that, in the last year, the number of domestic abuse crime cases rose to 18,796. That is an increase of 13% on the previous year and an average of 51 incidents per day. According to the Department, over 8,300 incidents of domestic abuse were reported to the PSNI during the COVID-19 lockdown period between April and June of this year, and a further 567 domestic abuse calls were made to the police in the final week of March. Those alarming statistics confirm the need for action to tackle domestic abuse.

Those statistics were replicated across the UK, but, alarming as they are, just as alarming, if not more so, could be the number of cases of abuse that were not reported due to the fear of repercussions. Tragically, we will never see that figure — the number who remain silent — in our newspapers or in a Minister's answers, but those people must never be forgotten. That is why we need further progress on the issue.

The PSNI must be given tools that are robust and far-reaching, with legislation to support victims through any form of domestic abuse and, ultimately, bring the perpetrators to justice. I regularly engage with the PSNI in my North Down constituency and often hear of incidents of domestic violence. The fact that we are the only part of the UK that does not have non-physical abusive behaviour, including coercive control, as a criminal offence, limits the powers of the PSNI to tackle the problem effectively.

Operation Encompass was discussed extensively by the Committee. That provides the option of notifying schools when domestic abuse incidents have taken place the night before in a child's home. That tool has the potential to support children who may have directly or indirectly witnessed a form of domestic abuse. However, those notifications would have to be carried out in a sensitive and confidential manner to ensure that children are not further victimised through, perhaps, peer bullying in the classroom, should the PSNI notify the school in a non-discreet way.

Prevention and early intervention are crucial, and domestic abuse can have an impact even on unborn children. Research has identified that domestic abuse is an adverse childhood experience and a contributing factor to a wide range of issues, such as educational underachievement, which our Education Minister, Peter Weir, very much recognises and is working to address through a partnership approach in his Department. Children are often the unseen victims of domestic abuse, and those who are the victims of domestic abuse can suffer from a wide range of long-term mental, emotional and physical effects.

I welcome the progress to date, and I trust that we will continue to see further progress through the House. I look forward to hearing from the Minister, from whom we have heard quite a bit, but I look forward to that as, finally, we seek to support victims of domestic abuse, many of whom suffer in silence.

Mr Gildernew (The Chairperson of the Committee for Health): I am delighted to speak tonight on this important legislation. Earlier in the debate, someone mentioned that this is possibly some of the most important legislation that will be considered during this mandate. That is absolutely true. In my previous career as a social worker, I became aware of the hugely pervasive and pernicious nature of this type of offence and behaviour in our society, so I am glad. I am also struck tonight by recalling that the first meeting that I attended officially after becoming an MLA was, in conjunction with my two colleagues here, Jemma Dolan and Seán Lynch, with Women's Aid in Enniskillen. We committed to try to do something, as MLAs, on the issue. I am pleased and proud to, at least partially, do that tonight.

In speaking as the Health Committee Chair, I recognise that the vast majority of the work on this has been done by the Justice Committee. I am impressed by the level, quality and rigour of the debate tonight on every element of the Bill. It is a fascinating process to see the work that goes into that.

As Chair of the Health Committee, I wish to speak to amendment No 13, in particular, in this group. The Committee took evidence from Women's Aid, the Men's Advisory Project and the NSPCC, who flagged the range of areas in which more could and should be done to support survivors of domestic abuse, to ensure

that the justice system does not exacerbate an already difficult situation for victims and to reduce the risk of people staying in abusive and dangerous relationships due to practical fears around financial support or losing their home. The regulation-making power proposed in amendment No 13 could create an opportunity to address some of the deficits identified, and I would like to set out three areas where this power could usefully be considered as a means of providing support.

First, the Committee agreed that the case has been made for speeding up and streamlining the handling of domestic abuse cases from start to finish. The victims of these crimes are particularly vulnerable. The abuse has a high and enduring impact, which can be compounded by protracted proceedings. A commitment to a shortened time frame could encourage people to come forward and make use of the new offence.

Secondly, the Health Committee was persuaded by the stakeholder evidence of the need for paid leave to facilitate victims of domestic abuse making arrangements to separate from their partner. For a victim to extricate themselves from such a situation creates enormous upheaval, and worries around finance and job security can tip the balance away from making the right choice for an individual or a family. Paid leave could alleviate that pressure somewhat.

Thirdly, a key concern highlighted by stakeholders is the risk of homelessness. The Committee noted the inherent problem in expecting the victim to move out of the family home — often with children — as a key step in dealing with abuse. There is an added difficulty where, for example, the home is adapted to cater for disability. The Committee also acknowledged that the absence of sufficient refuge places could also limit effectiveness of the Bill. The Committee heard evidence from Women's Aid that refuges are usually running at 100% occupancy, while the Men's Advisory Project stated that there are no refuges for men experiencing domestic abuse. The Committee was concerned that consideration should be given to help to avoid situations where people stay in abusive relationships through fear of losing their home. I welcome, therefore, the indication given in the Chamber that the Minister for Communities is considering that issue.

I thank the stakeholders who assisted the Committee with its deliberations around the parts of the Bill related to health.

The Health Committee has not formally considered amendment No 13 but would wish these objectives to be achieved by that or other means.

8.45 pm

Ms Armstrong: As I did with my comments on the group 1 amendments, I will not take too long. The House has had much debate so far, and people mentioned issues that I wanted to talk about. I stand tonight in support of amendment Nos 9, 11 and 12. However, having listened to the debate, I agree with the Minister and must oppose amendment Nos 13 and 14. With regard to the new clause that is created by amendment No 13, the rationale for my opposition is that the domestic abuse protection notices and orders provisions should be included in future primary legislation. The Minister said that those provisions are being planned for inclusion in the miscellaneous provisions Bill, where the details can then be set out. While it may not intend to do so, amendment No 13 would relegate to secondary legislation provisions that are made under 35 clauses in English and Welsh legislation, as others mentioned.

Moving on to the new clause that is created by amendment No 14, as the Minister said, the judiciary can prevent repeated cases being brought to court. However, we must also remember that that would confer discretionary power on the Legal Services Agency to waive the financial eligibility test in private family law cases in circumstances in which the applicant has been the victim of a domestic abuse offence. While I can certainly understand the intent of the amendment, there are several technical reasons why it would not do what it is intended to do. As the Minister said, victims may need to pay something up front. That makes it very difficult for someone who is on benefits and may have been denied access to money. If we are thinking about the victim here, we need to think about that cost. A victim of domestic abuse whose abuser has not been convicted of the relevant offence would not be helped by that amendment.

Legal aid is complex. I absolutely support Mr Frew when he says that legal aid needs to be sorted out. As much as that needs to be sorted out, unfortunately, the Bill will not do that. More work needs to be done on that to scope out its consequences, including any unintended consequences — for instance, the victim may not be the only person who gets legal aid.

The Department of Justice already has the power to do some of that. To do it more slowly,

after engaging with stakeholders and scrutinising it properly, is the way forward. I appreciate the fact that Women's Aid and other groups have put their positions across. I am one of many people whom they have emailed. However, we need to look at the unintended consequences. That is why, at this point, I support the Minister and oppose the new clause that would be created by amendment No 14. There are ways in which we need to help people. I do not believe that amendment Nos 13 and 14 are the way in which to do that.

I am delighted that the group 2 amendments deal with parental alienation. How many of us have dealt with men or women who no longer have access to their children, with children being used as a battering ram against them? The new clause that would be created by amendment No 12 is fantastic. Parents who do not live with their children and are being alienated from them need that sort of provision. I welcome that. I said that I would be brief tonight.

Ms Dillon: Thank you, Mr Deputy Speaker, for the opportunity to speak on the amendments in group 2. The Chair and the Minister referred to bullying. This is anti-bullying week. We should acknowledge that in the Chamber tonight. We do not need to go into detail; we have heard on many occasions on the Floor about the impact of bullying. Domestic abuse and coercive control are bullying by another name. I want to make that point and remind Members that it is anti-bullying week, that we should speak out and that, at every opportunity, we should make people aware of it and the fact that we will do what we can to prevent bullying. The Bill is part of that.

The Chair outlined the purpose and intention of amendment Nos 9 and 11, which relate to changing the age from 18 to 16. It is not a perfect solution, as Sinéad Bradley outlined. In fairness to the Minister, however, to deal with it in a more rounded manner, she would have to go outside the scope of the Bill and outside the competency of her Department, because this needs to be done in conjunction with the Health Department. The Minister and her colleague in the Health Department, Robin Swann, have come up the most suitable solution. It is not a perfect solution, but the law is very rarely perfect.

That leads me on to some of my other comments. We want to get the best legislation possible, and we have made that clear. Not the Minister, not one Member, not any officials and not any Committee staff who have worked on the Bill do not want to see the best legislation, but it will not be perfect. It just will not, and we have to accept that. Mr Frew has already said that we may have to come back to the issue. I hope that we do not have to come back to it too soon. In our comments on reporting and oversight, we will probably talk more about the importance, if we indeed have to come back to it, of coming back to it based on good-quality information. That is why the amendments that we will speak to later will be so important.

We also support the Minister's amendment No 12. It is a very welcome introduction to the Bill, in that it provides the meaning of "ill treatment".

Amendment No 13 is a Committee amendment, and it is about domestic abuse protection orders and notices. Although I take on board and accept all of what the Minister said, and, indeed, I have sympathy with what she said about how difficult and challenging a job her Department has, we as a Committee feel that the provision is too important not to be in the Bill. At the beginning of Committee Stage, one of the issues that I personally raised was that of non-molestation orders, the difficulties with them, the difficulties that people seem to have in accessing them and the fact that, within weeks of being given a non-molestation order, a person is back in court to get it removed. My hope is that protection orders and notices give some relief to victims. I hope that that is what they deliver. I urge the Minister to bring forward such a provision. She has already said that she will bring it forward in the miscellaneous provisions Bill. I absolutely welcome that intent. If it is included in that Bill, it will resolve all our issues. We are concerned that the amendment may not serve the purpose that I and the Committee want it to serve, so we look forward to seeing what comes forward. I will be supporting the Committee amendment tonight, however.

I have concerns about amendment No 14, and I have raised those concerns with Rachel Woods. To be honest, I have been back and forth on this one with different Members, including Rachel and Members from our party. I have spoken to other parties, and I have listened to what the Minister had to say. Again, I have a lot of sympathy for what the Minister says about the amendment. My main issue with it is that, as Mr Frew outlined, it does not go far enough. I do not think that it serves the purpose that I want it to serve, much like I fear that the amendment on protection orders and notices does not go far enough. I really am concerned that amendment No 14 does not go far enough, however. To be fair to Ms Woods, she accepts that she would have liked it to go further. I agree with the Minister that the issue needs to

be dealt with in the round. In the absence, however, of something else — something better — I feel that we have to support it, so we will be supporting amendment No 14 tonight. I would certainly welcome discussions with the Minister on the issue, as, I am sure, would other Committee members. I do not doubt the Minister's sincerity when she says that it is an issue that she wants to deal with in the round, because it does go much deeper. Very often, it is the working poor and people whom other Members already talked about who are affected.

Paul Frew spoke about the cost being £2,900. For some people, it might as well be £2 million. If you have not got it, you have not got it, so it does not matter how much it is. I can certainly speak from experience, not on this issue of legal cases, but I know many people — my family included and people whom I care about — who have been in that situation. If you do not have money, it does not matter whether it is £30 or £300,000 — you do not have it, and that is it. That is a real issue.

The Committee would probably have liked more time to scope this out and to delve further. I told the officials on Thursday that we would be open to amendments at Further Consideration Stage if it would improve this. As I said, we are open to having that conversation with the Minister to address the issue, because the threshold for people to access legal aid is probably going to be too high. From my understanding, and from what Miss Woods told me, it is similar to accessing help in relation to non-molestation orders, and I outlined that that is a challenge. The threshold is probably too high.

The one effect that we are hoping that it might have is that, if people think that their partner, ex-partner or other person will have access to legal aid, it may well prevent them from taking them to court continually. They do that as a further means of abuse. It is financial abuse and mental —.

Mr Buckley: I thank the Member for giving way. She addresses acutely the point about the crisis that many working poor face. Does she agree that, albeit the lure is to quit their job and become unemployed to follow the legal aid route, the fact that they want to have the ability to break free from coercive control by controlling their own life and family budget is testament to their courage? The fact is that they cannot access fair and adequate treatment from the state in legal aid while those coercive partners try to take them to court to take from them everything that they hold dear.

Ms Dillon: I absolutely agree, and, as the Minister outlined, she is open to the argument. We are pushing at an open door, so I hope that we have a fuller discussion on that issue. There are also those who have had to say, "I'm going to have to give up my job and go onto benefits. That's the only way that I'm going to protect myself, my family, my children". We know that that happens. There is a cost to the public purse, somewhere along the line, when we push people to that stage.

That is our position on group 2.

Miss Woods: I seem to be rising quite a lot, with a lot of Members needing me to clarify things. Hopefully, I will be able to do that.

Initially, I want to speak to the amendments laid by the Minister that deal with necessary changes to legislation residing in the Department regarding the child cruelty offence and the issue of parental responsibility. I hope that further work can be carried out to fill in the cracks that have been uncovered by this, as others have stated.

In response to concerns raised by organisations around the parental responsibility exclusion, the Department stated that it had given:

> *"careful consideration to the scope of the ... offence in order to ensure that children could be captured within it, in their own right, where they are in a relationship or are a family member".*

It was indicated that having considered the matter further, and taking account of the concerns, the Minister was going to table this amendment to make it explicit that, where a child was ill-treated, it would include non-physical abuse. I welcome that.

Discussion on that and how it interacts with parental responsibility exclusion in the Bill raises important issues, essentially due to the fact that the legislation that covered child protection and the child cruelty offence applies only to those under the age of 16. Therefore, amendments to clauses 11 and 17 had to be tabled to ensure that non-physical abuse of 16- and 17-year-olds in a parent/child relationship was provided for and to ensure that there was no gap. It exposed clear differences between the two pieces of legislation on what constituted an offence. The abuse committed against a 14-year-old as opposed to a 17-year-old carries different consequences. Whilst I understand that the amendments in question — amendment Nos 9 and 11 — are necessary right now, they do not address those

differences; in fact, they create an arbitrary distinction between children of different ages and mean that abusive behaviour receives different maximum sentencing depending on age. That concern was brought to the Committee by children's organisations, including the NSPCC and NICCY, and I fully support them in seeking to resolve it.

The Department has stated that no other jurisdiction locally provides for criminalisation in relation to parental responsibility under domestic abuse legislation and that the provisions in the Bill covering the offence on children go further than others already provide for.

9.00 pm

Nevertheless, I agree with the view that there should be no such arbitrary distinction in legislative protection or a sentencing ceiling that is based simply on age, and that is why I raised the possibility of introducing an equivalency in the maximum penalty across the two offences. Officials responded by saying that it was not possible to do that in the Bill given that it was a matter for the Department of Health. Even though amendment No 12 would change the child cruelty offence, it is also a matter for the Department of Health. So, I hope that the Justice Minister can work with Executive colleagues to look at that, and I also encourage the Health Committee to gather the relevant evidence in order to consider any possible solutions. I welcome amendment No 12, which would strengthen the child cruelty offence to amend the definition of ill treatment.

(Mr Speaker in the Chair)

I turn now to amendment No 14 and the need to help victims and survivors of abuse in family proceedings. Again, Mr Frew set it out. I am going to have to stop making a habit of this. I am sure that this will come soon, no doubt, or is that possibly tempting fate? The issue was first raised at the Committee on 17 September during the informal deliberations, when Mr Frew said:

> *"The other piece is about using the court, itself, as a weapon. You have the scenario where one parent gets legal aid and the other does not. The parent with legal aid goes to court all the time, and it drains the resources of the other parent, who sometimes has responsibility for the child; it drains the family assets or savings. There is a potential conflict around access to justice, which we have to be mindful of, but I think that something needs to be put in here. I am not convinced yet that family proceedings and the other bits cover it at all; I do not believe that it does. For me, the struggle is trying to get something that I have in my head down on paper, but we need to do something."*

I totally agree. We do need to do something to address that, and that is why I tabled the amendment. At the time, I asked the Committee whether access to legal aid was something that we could look at, but I recognise that, with the sheer number of issues that are not covered in the Bill that we explored and deliberated on, somewhere along the line this one was overshadowed by focusing on working out potential improvements that would definitely fall within the Bill's scope. I also recognise that there may not have been the appropriate political consensus for me to try to push the issue further through the Committee's work, and that is why I came to table the amendment on my own.

Returning to the very brief discussion that we had on 17 September, I first want to elaborate on the main problem that the amendment seeks to resolve, which is perpetrators and former abusers exploiting the court system in order to further harm victims. In 2015, Women's Aid published research that looked at women's experience of the family court in Northern Ireland. It found that roughly one in five women did not have access to legal aid and that the respondents reported the cost of litigation as a deterrent to seeking court orders.

Members may be aware that the Department introduced a waiver for financial eligibility limits for civil legal aid through regulations in 2015, which essentially means that those who are above the income and capital threshold who apply for non-molestation orders are still eligible for legal aid. That was an important step and reflected what Women's Aid was calling for at the time, namely the extension of the legal aid system to provide for free legal aid to women seeking protection orders. The study also identified significant wait times, women having to travel long distances in order to attend court and women having to attend court anything from six to 10 times, particularly with child contact cases. Indeed, the vast majority of the women surveyed were in court for child contact cases.

That brings me to the amendment. The Bill in its current form does not address all the difficulties that are faced by victims in the justice system, and many issues remain with how the courts are used by former abusers and convicted

perpetrators in order to further harm and inflict misery on survivors. The amendment deals with one of the most common methods used by perpetrators to further the abuse, that is, disputes over children and court proceedings relating to orders under the Children (Northern Ireland) Order 1995. The most common court orders made under that legislation are, of course, child contact orders, which are tools that are essential to protect children who have been living in a violent or abusive domestic situation. When orders are made that place restrictions on access, visitation and residence on former abusers, they can, of course, be appealed. That is the nature of our justice system, and it is important to reiterate that the amendment would in no way interfere with the rights of citizens to appeal or to challenge court decisions, nor does it tamper with the rights of appellants to seek legal aid. Those two things remain unchanged. Nevertheless, there is a fundamental problem with the nature of some of these cases and, indeed, others types of proceedings more generally relating to court orders. That is where a perpetrator continuously and relentlessly challenges decisions of the court or seeks other ways to heap pressure and strain on their former victim. This behaviour, which should be recognised as a form of abuse in itself, is deeply damaging on a psychological and emotional level for the survivor of the abuse.

Mrs Long: I thank the Member for giving way. Part of the reason why this domestic abuse legislation is so important is because it will specifically criminalise that kind of behaviour, which is not captured under the existing law. Therefore, it potentially makes the changes proposed with regard to legal aid unnecessary, as well as peremptory and without the proper research backup. I entirely agree with the Member about how the system is abused, but I reiterate that judges already have the ability to rule such repeat applications to the court as vexatious and to say that they will no longer be heard.

Miss Woods: I thank the Minister for her intervention. I welcome that. That is why I supported clauses 1 to 4, which include this type of abuse. However, it does not address the point that I will come to, which is the financial aspect. The judicial system has that option, but it is clearly not being utilised enough, which brings me on to a further point that I will make about amendment No 15 in group 3 about the requirement for training.

I am speaking about court cases that are not optional or elective. In fact, if you speak to advocacy and support organisations, such as Women's Aid or Victim Support, you will soon hear the extent to which some victims are dragged through the courts for no clear reason other than to further the abuse. You will read some personal stories and quotes from victims and survivors in the 'Women's Voices' document, which was submitted by Women's Aid to the Committee in June. Here are some of the things that they said:

> *"Judges need to recognise that the abuser is also using the court to abuse their partner",*

> *"He's using the system to torture me",*

> *"My ex had no interest in my daughter, by taking me to court was just another chapter in his game which was to cripple me financially as it cost me to go but not him as he was unemployed. I had to go several times but he did not turn up on several occasions. He thought this was funny. This caused me stress, anxiety and put me into debt paying court fees".*

I also ask Members to consider the evidence provided at one of the informal meetings by someone whom I will call "Joanne" in order to protect her identity. I will quote her directly for the record. Joanne had a very poor experience of the family courts. She has been very nervous in being in the same building as the perpetrator, and she states that:

> *"Being in the same building as someone who has so much control over you can have an effect on the quality of evidence that you give".*

Her ex just has to give her one of his looks to make her nervous, and he has done that whenever she has been giving evidence. She and her eldest child describe it as:

> *"A look that still makes them want to run and hide".*

With regard to the evidence of abuse, she was told that the judge would not want to hear details of abusive text messages and was told that financial abuse was not relevant to her case. She said that:

> *"Victims can be told what they feel is important is of no relevance".*

On an occasion in child contact proceedings, Joanne was told that her evidence regarding domestic abuse, which included details of rape

and other abuse, was not relevant to the case and was not proven. When supervised access was discussed, Joanne said that she would ask her child, who was then 12, how she would feel about it. However, the judge called her an "irresponsible parent" and was told that she would be required to ensure contact. The child's review does not matter, despite their having witnessed traumatic incidents. She feels that if you try and keep your children safe by withholding contact then you are being a bad parent. However, if they go and are subjected to abuse then you are a bad parent for not protecting your children.

Joanne's ex has taken three cases to the family court, which he subsequently dropped. He gets legal aid, but Joanne is not eligible as she works, so she has to pay the legal expenses and childcare costs and to take time off work. He went through with the fourth case and was allowed unsupervised contact, but he has not gone ahead of the majority of the scheduled contacts. Joanne can apply to prohibit him from bringing any further orders against her to the family courts. Her solicitors are applying for two years, although their normal duration would be for one year, which means that she will face the same situation again and again, and that adds to trauma. Joanne has other examples of the cases that her ex has taken against her that are without merit, and she does not understand how he can continually be able to be funded through legal aid to take those cases. She feels that it is in the interests of solicitors to take the cases and prolong them. Joanne said that, in her view, it would be in her interest for cases to conclude more quickly, but she is so concerned for the well-being of her children that she will fight them. She feels that there is enough evidence to show that he is using the court system to further the abuse, but his parental rights seem to trump everything that is good for the child.

Joanne's experience mirrors those of other victims and survivors who have no access to legal aid while their former abusers do. That is absolutely abhorrent. It is totally unacceptable that anyone should have to endure that. As one support organisation expressed to my researcher, "They are being bled dry", and that puts an enormous strain on their mental and physical health and their ability to care and provide for their children, not to mention revisiting all the trauma through having to see and be present with their former abuser in a court setting. I also have friends who have been in that situation. For 10 years, I have had to listen to a close friend who has been dragged through the courts and bled dry to the extent that she had to give up her job. I thank Hannah, which is not her real name, who contacted me yesterday. I thank her for getting in touch with me recently. It is devastating to hear what some victims and survivors have had to endure. Her story is very similar to the one that I have just outlined.

We cannot stand by and allow this to continue. It is an awful, tragic ordeal that no victim or survivor who has done everything that they can to leave an abusive situation should have to endure. Many will have to take time off work to attend court or pay for childcare. As legal costs for their solicitor pile up, the strain on their finances increases, and therefore their means of providing for their children get more squeezed. The amendment, through allowing victims to access legal aid, would go some way to remedy and help to prevent that injustice.

Mr Beattie: I thank the Member for giving way. She has made some really important points, but I want to add a bit of balance, if I may. As we speak, I am getting emails about the very subject that we are talking about. I have received one from a man. It is not always women who are affected; men are affected too. Sometimes, we forget about that. The man who has just emailed me was given custody of his children three years ago but has never been allowed to have access to them. Why? His ex-partner has used the legal aid system to take the case to court in order to keep him away from them. He has had to fight that, and the email that he has just sent to me says, "And now it's too late. My kids are that old that there is no point in fighting on with it". I fully appreciate the Member's point, but I wanted to provide some balance. Men are suffering, maybe not as many, but they suffer in exactly the same way.

Miss Woods: I thank the Member for his intervention. Rest assured that the amendment makes absolutely no distinction between men and women. This is a victim-focused amendment, and the Bill should also be victim-focused.

As I mentioned, under article 10 of the 2015 regulations, the director of legal aid services can disapply financial eligibility rules for victims of abuse in the case of non-molestation orders, but there is no such help or support when it comes to child orders. That means that victims and survivors of abuse who have modest incomes or savings are falling outside the financial eligibility limits and have no recourse to legal aid.

The system, as it sits, is, effectively, saying to victims, "We will provide you with financial

support to obtain a non-molestation order, but you cannot receive any financial help for child dispute cases if you fall outside the financial limits". Those limits currently stand at any disposable earnings over £234 per week and disposable capital over £3,000 for the lower courts. We are not talking about people missing out because they have a lot of money.

I appreciate that this might be a catalyst for further reform. I welcome that, and I raised it at Committee. However, what if, on paper, it looks like you are loaded? What if it looks as though you have thousands of pounds in the bank, but you do not because your finances are being controlled by your abuser? I am more than happy to look at expanding this to take into account the reality of financial abuse, which is outlined in this offence.

I will move on to another aspect of the comments on contribution of costs. This aspect misses the point, and it has been addressed. Abusers often leave or refuse work in order to financially abuse and bankrupt victims through the courts. We are talking not about people with a lot of money but about victims and survivors who may be teachers, nurses, admin staff or hospitality staff. Depending on their circumstances, earnings and savings, that could mean that they are not eligible for legal aid, and, all the while, their abuser keeps bringing them to court. Their legal fees continue to rise while the financial and psychological harm to them continues.

9.15 pm

This amendment would grant victims the right to access legal aid and take away some of the burden of what they are going through. I recognise that the amendment does not, and cannot, address the entire issue, but it will go some way to help victims and survivors. It would give the director of legal aid services discretion to disapply the financial eligibility rules for civil legal aid where the client is a victim of abuse and involved in court proceedings relating to the child disputes. This is exactly what currently happens when a victim requires a non-molestation order for their protection. Members, it already exists, it is not new. Many survivors are vulnerable single parents with modest incomes and with mouths to feed and whose job or occupation means that they fall outside of what is currently deemed to be eligible. It is not right that former abusers can use the courts to drain their finances and retraumatise them. I believe that the amendment will go some way to provide the help and support and access to justice that they deserve.

I understand that some Members will have concerns around the cost and who the waiver will apply to, or, to put it simply: how do you define a victim? Clearly, these are issues that will need further work, and, in many respects they are interlinked. I would, of course, welcome further engagement with the Minister, the Department and the Committee as to how these things can be clarified should the amendment be made. I believe that these issues can be resolved, and I urge Members to consider the principle and the merit of the amendment.

First, on costs, I was extremely disappointed to hear the words "double-figure millions" last week. There was no rationale or basis given for that figure other than the fact that the waiver would be uncapped. Guesstimates such as this are unhelpful, but as Paul Frew pointed out at the time, if this really is the scale of the problem, then it strengthens the case to do something —.

Mrs Long: Will the Member give way?

Miss Woods: I will.

Mrs Long: Given that the Member has brought this proposal to the House, could she give us her financial assessment of the likely costs?

Miss Woods: I thank the Minister for her intervention. No, I cannot. I have been trying to obtain calculations and figures from the Legal Services Agency that could be used to come up with more sensible estimates, but I am still waiting to hear back from it. Again, I would welcome input and help from the Department, the Minister and the Committee in bringing this back for further clarification at the Further Consideration Stage.

Mr Givan: Would the Member give way?

Miss Woods: I will.

Mr Givan: Would the Member agree that every time the Committee raises the issue of legal aid and how we can control the budget, the Department repeatedly advised the Committee that this is a demand-led issue? Therefore, to have a fixed amount of money for the legal aid budget is not possible. Therefore, what the Minister is asking the Member to do is equally applicable to the Minister.

Mrs Long: With respect, if the Member will give way *[Inaudible.]*

Miss Woods: Yes.

Mrs Long: The issue is not the same. It is, of course, a demand-led service. What the Member is proposing is to add to the demand at the same time as the Committee is asking for the demand to be reduced. You cannot present a fixed budget for something which is demand-led, but you can cap and control the demand. I have no issue with the principle of this, and I have said that tonight in the Chamber. What we are doing here is entering into a situation where we create additional demand, the extent and the cost of which is unknown. That is a risky strategy to take, given that the Finance Minister was clear that he agreed the Bill on the basis that it did not incur additional costs.

Miss Woods: I thank the Member and the Minister for their interventions. To comment on the demand-led service and adding to that demand, it is adding to the demand where it is needed for victims. I do not believe that I have asked for the legal aid services bill to be reduced. That is a different matter.

Mr Frew: I thank the Member for giving way. Access to justice is incredibly important for everybody who needs to obtain it. What we are talking about here is the need for a level playing field. If we are concerned about cost, then hear this: that cost, if it is not on the Department or legal aid services, it is in the hands and the pockets of the victims. I know where I would rather have that cost.

Ms S Bradley: Will the Member give way?

Miss Woods: Yes.

Ms S Bradley: Perhaps it is unfair to ask the Member to give way. However, on the issue of demand, is there not an argument to be made that there is a perpetual habit of bringing the victim to the court and having this system in place would diffuse that? Demand would, therefore, reduce, and costs that are being incurred at the court, which should not be required, would fall. Is it also true to say that, at this stage, nobody can truly put a figure on this, because we have never had a Bill that deals with domestic abuse? How do we measure it? How do we measure the numbers, which we hope will come out of the woodwork and be captured via the Bill?

Miss Woods: I thank the Members for their interventions. Ms Bradley's point brings us into the group 3 amendments and the importance of reporting and having adequate data on the functioning of the Bill. One thing that we are trying to get is the current number of uptakes of the waiver in relation to non-mols. My researcher has been fundamental to this, and I put on record my thanks to him. I would not be standing here today without him. He has found that the take-up of non-mols is not what it could be. I ask the Minister to comment on that. It is my understanding that the Legal Services Agency is trying its best to spread awareness and boost take-up among solicitors, but, clearly, there are victims and survivors who could access that financial support for protection orders but are not doing so.

The Women's Aid research, which I mentioned, noted that 80% of women surveyed in the family courts were receiving legal aid. The study is outdated, and we need more up-to-date figures, but, if we are to assume that one in five of abuse victims who find themselves in the family courts in relation to child orders would benefit from the amendment to introduce the waiver, I do not think that we would be talking about gigantic sums of money. I also encourage Members to reflect on the big difference that this could make to victims and survivors who find themselves in that situation. I do not think that you can put a price on preventing abuse or putting a stop to the awful scenario in which victims are having their finances drained through the legal costs of their former abuser dragging them through the courts.

I understand that Members may also have concerns about how a victim is defined for the purposes of applying the waiver. The text of the amendment is open in that regard. In my view, it is important to be wary of how prescriptive it is, because that would have the potential to exclude. Committee members have had that argument put to them on a number of things that they wanted to be included in the Bill. I pick up on what Mr Frew said about stalking, strangulation and so on. We cannot be prescriptive. We also had that argument about the insertion of coercive control, and that argument was successfully made by the Department. The Legal Services Agency needs clarity on that in order to operate the waiver effectively. I will continue to engage with them on that to ensure that it is practicable.

I note that the power is also written into the Bill by the Department by the insertion of article 11A on future regulations on court proceedings. It is, therefore, already in the Bill under clause 26. It is the prohibition of cross-examination in family proceedings, with the Department having a duty to bring forward regulations that specify what evidence of domestic abuse will be sufficient for the purposes of the court prohibiting cross-examination by the

perpetrator. In response to Women's Aid's concern about what a specified defence will be, the Department has stated that regulations will not be drafted until the Bill becomes law and that they will be consulted on. It also said that the types of evidence that might be specified include a letter from a health professional or organisation that provides support services to victims of domestic abuse. The multi-agency risk assessment conference (MARAC) programme could also be used. In that programme, a number of statutory bodies such as the PPS, the public protection unit and the PSNI use a victim-focused meeting to assess risk, identify a safety plan and refer on. I will engage with those groups.

I believe that, if any changes or more detail are required, it can be done at Further Consideration Stage. My argument for its having to go in at Consideration Stage is the same as Mr Givan's argument on interim protection for victims. If it is not in legislation, how will we be guaranteed that it will happen? I encourage all Members to support amendment No 14 at this stage. We must make the Bill victim-focused.

Mr Speaker: I call the Minister to make a winding-up speech on this group of amendments.

Mrs Long: Thank you, Mr Speaker, and I thank Members for their contributions. As I stated, amendment No 12 is to make clear that the non-physical ill treatment of a child under 16 by someone with parental responsibility for them is an offence. Amendment Nos 9 and 11 are linked, reducing the parental responsibility exclusion threshold from under 18 to under 16 in the context of the new offence, as well as the generic statutory aggravator. Together, those close a legislative gap, by ensuring that non-physical abuse of a child under 18 by someone with parental responsibility for the child can be dealt with. I welcome the support for those changes, and I concur that further work is needed on the issue in the health sphere. I commit to working with Minister Swann to support any changes that he may wish to develop.

Sinéad Bradley raised the issue of the difference in offences and penalties that will occur as a result of the means by which we have included 16- and 17-year-olds in the Bill. For the domestic abuse offence provisions, that not only will cover non-physical abusive behaviour but could include serious violent and sexual assaults, and that is reflected in the higher penalty of 14 years.

Children under 16 are being dealt with under Department of Health child protection legislation. The penalties associated with that are a maximum of 10 years and have been in place for some time. As Justice Minister, I cannot alter that, and any changes would have wider ramifications for the Department of Health, which has policy responsibility for the area. It is therefore appropriate that I allow the Health Minister to take the matter forward. I will support him when penalties are being discussed.

I turn now to amendment No 13.

Mr Givan: Will the Member give way?

Mrs Long: I will, yes.

Mr Givan: Apologies. Before you move on to amendment No 13, I want to make a point. Forgive me for intervening on you, but I ran out of time to raise the point with the Chairman of the Health Committee. At the start of proceedings, I thanked the Health Committee for the work that it did and for its engagement with the Justice Committee, which we appreciate. The Chairman raised an issue around special paid leave, as well the housing issue, which is to do with the Department for Communities. The Committee looked at that issue, and it is in our report. The Minister for the Economy has asked her officials to consider special paid leave for it and other employment issues, and, if provision can be made and consensus reached with the Executive, a suitable legislative vehicle will be taken forward. Minister, I just wanted to address the issue that the Chair of the Health Committee raised and thank him and his Committee for their work with our Committee.

Mrs Long: It is very much appreciated, and I will move on to the issues that Colm Gildernew raised in his contribution; in fact, given that they have now been raised, it may be worth doing that now.

The issues that we have to address span more than the Justice Department; indeed, a number of issues raised this evening extend beyond the responsibilities of the Department of Justice. I did not, however, leave those issues simply to gather dust on the shelf. I wrote to Minister Dodds, because she is, as you know, taking forward a review of statutory leave provisions, and I asked her to look into this as part of her review of employment law. Furthermore, Minister Ní Chuilín, as you rightly say, has said that she will look at the issue of housing and the availability of shelter accommodation, because

it falls to the Department for Communities to do so, and I am happy to work with her in that regard.

It is, however, also the case — this needs to be stressed again, because it is often forgotten — that there is already good work being done in this field, and there should not be an automatic assumption that, when someone is subject to domestic abuse or domestic violence, they should have to flee their home. Provision is already in place for someone to be excluded from the home if they are a domestic abuser, and the Safe Places work that is being done with the Department for Communities and my colleagues across the Executive allows people to create a safe space in their own home so that they are able to remain there and in their own community, with the benefit that that brings of having social contact and support that they need. Instead, it is the abuser who is asked to leave the home and made to stay away from it to allow the family to continue living there. The moving of those who are subject to abuse has serious ramifications for, for example, children and their schooling, so there is a genuine challenge around how we deal with the issue. It is therefore important that we do not presume that it is the abused party who has to leave the family home.

I turn now to amendment No 13. I intend to bring forward detailed primary legislation to provide for domestic abuse protection orders and notices. I will resist the Committee amendment for that reason. By stipulating a restrictive two-year period, it places an unnecessary risk on my Department.

I am hugely sympathetic to the views of the Committee when it comes to this matter. I have been clear in my intention that I want to do this under the future miscellaneous provisions Bill, that I consider this amendment unnecessary, and that the risk to my Department is great. I have sought the Executive's permission to add the domestic abuse protection notices and orders to the miscellaneous provisions Bill. Explicitly stating a restrictive two-year time frame for the introduction of an untested policy, which has not yet been subject to public consultation, leaves my Department exposed to a successful judicial review and unnecessary levels of risk, including financial risk. That would impact on not only the Department of Justice but all Ministers because, ultimately, it is for the Executive to bear those risks. Including provision in this Bill does not enable the detail of the provisions to be set out in primary legislation, ahead of which necessary consultation must be undertaken.

9.30 pm

The Committee is understandably concerned — a number of members have referred to it — about why the domestic violence protection orders and notices were not progressed. First, it could not happen during suspension of the Assembly, so there are three of the years that are taken out of the mix. When the Assembly was restored, I sat down with officials to look at what needed to be done to introduce them. However, by that point, we were aware, through operational experience gained in England and Wales, that there were considerable problems with the operation of the notices and orders, and that they were going to be superseded by domestic abuse protection notices and orders in the new Domestic Abuse Bill. It seemed to me to be a waste of resource in the Department to bring forward the domestic violence protection notices and orders when, as part of my programme of work in the Department, I intend to bring forward the new and improved domestic abuse protection orders and notices. It was not that we, as a Department, simply decided not to bother, as seems to have been insinuated by some in the debate today. There was good reason why the Department did not bring these things forward despite the fact that they were allowed for in previous legislation.

The detail of this policy is being discussed with voluntary and community sector partners. Therefore, I hope to be in a position shortly to consult on my policy proposals. As explained, however, given the timings of that consultation and the introduction date for the miscellaneous provisions Bill, which will be an expansive piece of legislation and will take a considerable time to pass through the House, these measures will instead be brought forward as amendments, ahead of the Consideration Stage of that Bill. It is going to take time for us to be able to get the Bill through the Assembly. We also have the pressure on the Office of the Legislative Counsel in the drafting of this legislation and all the legislative pressures that will come at this time. Bringing this forward as an amendment will allow us to do the full policy development that is required and then amend the miscellaneous provisions Bill. I have said that I am happy to bring those amendments forward so that, while they will not be in the Bill as introduced, they will be available to the Committee in order for it to be able to take evidence and to work with us in developing them.

Despite our disagreement on how to proceed at this juncture, I welcome that the Justice Committee and its Chairman have indicated that it is supportive of the development and

progression of these measures in due course. I believe that primary legislation is the right place for that to reside. As I have explained, it will not be possible to have formal Committee scrutiny of the provisions on those notices to the same extent as normal. However, I will take whatever steps are necessary in order to ensure that the Committee has the opportunity to consider and comment on those draft clauses ahead of their being brought to the House for consideration as part of the Consideration Stage. The inclusion in primary legislation will mean that there is also Executive oversight of the policy proposals and draft amendments. This House, crucially, will also have the opportunity to debate the details of those provisions during the amending stages of the Assembly legislative process, both at Consideration Stage and Further Consideration Stage. While that might not be as fulsome as is usual, it is certainly better than being relegated to a short clause in this Bill. It will be enhanced greatly by the public consultation that we intend to take forward. In fact, in his contribution, Seán Lynch rightly highlighted the need for further consultation and policy development in this area. Yet, he has indicated that he will support a means of proceeding to secondary legislation at this stage without either being in place.

Members have again said that they do not understand why the Department will not be able to deliver regulations on protections within two years. It is simply not feasible for my Department to work on bringing forward detailed and extensive primary legislation, the size of a medium Bill, while progressing regulations on the same issue. That is the duty that that proposed clause would place on the Department. We simply do not have the resources to do the job twice in two different ways. If we allocated resources to that, they would be taken from elsewhere, particularly from the front-line work that we do on domestic abuse and support for victims. If we are to be victim-centred, we need the officials in my Department who lead on that to focus on it rather than to replicate work that will have nugatory effect. As I said, provision through primary legislation is a more appropriate vehicle for a change of that nature. For that reason, I will not support the amendment.

Amendment No 14 proposes a technical change to the rules on financial eligibility for legal aid. It is well-intentioned; no one in the House tonight believes that that area does not need to be looked at and developed. However, by acting with such haste, we would lose the opportunity to undertake the research and engagement that would result in stronger proposals whose impact we better understand. We would also reduce the ability to evaluate, review and, if necessary, amend the provisions in order to ensure their effective operation in practice, which would be gained if the Committee took it away and looked at it with me as secondary legislation. There is a place for secondary legislation. This is precisely such a place. Placing those duties in primary legislation would create significant difficulties for the Legal Services Agency and the Department. The potential cost of amendment No 14 is unqualified. Without clarity, it could be many millions of pounds annually, and we would not be able to say that it will afford the protection that is required. It is not only potentially expensive and uncosted, which is not the way in which we should do business in the House, but it would not necessarily provide the protection that some Members seem to believe that it will.

We need to make sure that proposals that come here are effective and affordable. The Department of Finance approved the Bill on the basis that it would not require additional resources. The Minister of Finance could not have been clearer about that. If passed, amendment No 14 would drive a coach and horses through that and would have implications for every other Minister, from whom money would have to be taken in order to fund it. It also flies in the face of the Committee's demands that the cost of legal aid be reduced and brought under control because it would introduce uncosted and uncapped demand into the system. That is a serious matter that is in conflict with what has been said all along. Many Members said that, if the costs are not carried by the Department and the Legal Services Agency, they will be carried by someone else. The costs that we are concerned about are a reflection of not just the scale of the problem but of the poor framing of the amendment. The fact is that it may not be sufficiently targeted to deliver the results that people wish. The amendment, despite its expense, would not, as some seem to believe, stop someone's financial resources being drained by repeated court actions. If you have capital of more than £3,000, you will still have to pay a contribution amounting to the whole cost of proceedings in the higher courts. The waiver does not help that person at all.

I understand where Sinéad Bradley is coming from, but she assumes that the only reason that people drag partners through the courts is to financially damage them. That is not true. People will drag their partner through the courts even where there is no financial detriment because they are using it as another means to exert control, fear and anxiety on their partner. It is another form of abuse. The suggestion that

removing the financial incentive will remove the behaviour is simply not coherent. They will continue to do that —.

Ms S Bradley: Will the Minister give way?

Mrs Long: I will draw this to a close.

They will continue to do that. What we need to do and what we are trying to do in the Bill as a whole is to capture that kind of abusive behaviour so that dragging people back to court becomes an offence in itself, therefore placing more pressure on the judiciary to exercise the law that it already has to hand in order to rule against bringing people repeatedly back into the court system. It has the capacity to do that.

In good conscience, and as a member of the Executive, with my responsibilities and duties to other Executive members and Departments, I cannot stand over or support amendment No 14. I agree absolutely that there is a need to reform legal aid, and I remind Paul Frew, who said that there is a need for legal aid reform to be reviewed, that my predecessor tackled legal aid. It was not too big, painful or difficult for Minister Ford. He took it on, and I am happy to take it on — via the correct vehicle. The Bill is not that vehicle. This is not a Bill for legal aid reform; it is a Bill to deal with domestic abuse. By developing secondary rather than primary legislation, we can ensure that the issues are addressed correctly with due diligence, that it captures what Members want to achieve, and that we can refine it in light of the experiences that we have in the courts when we introduce such changes. For that reason, I do not support amendment No 14, and I ask Members to think carefully before they support it. Once it is in the Bill, we will be unable to change or reduce the onus that it will place on the Department at Further Consideration Stage. The duties on the Department can only be increased at Further Consideration Stage, so I ask Members to think carefully about how they vote on the Bill. That concludes my remarks on the second group of amendments.

Amendment No 9 agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

Clause 12 (Defence on grounds of reasonableness)

Mr Speaker: No amendments have been tabled to clause 12, but the Chair of the Committee for Health, Mr Colm Gildernew, has indicated a desire to speak to the clause standing part of the Bill.

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

Mr Gildernew: Before the Question is put on clause 12 stand part, I would like to put two questions to the Minister, based on stakeholder concerns raised with the Health Committee. First, will she outline the safeguards that are in place to protect victims with mental health conditions from the inappropriate use of the reasonable person defence? Secondly, does she have any plans to review the operation of the clause?

Mrs Long: The Department has considered the issue of capability with respect to the abuse of the reasonable person defence. However, that would be one of the considerations that the reasonable person test would take into account. In the same way that, for example, denying children their pocket money or access to their digital devices would not be captured by the defence, if someone is using or taking care of someone else's money for reasons of incapacity, the proposed victim would be captured by the reasonable person defence.

On the second question about the review of the clause, it is intended that the entire Bill will be open to report and review throughout its operation. We will get to the reporting when we discuss the next group of amendments, but it is hugely important. I certainly believe that there is a role for the Department of Health and the Health Committee in reviewing the Bill and feeding into our responses and the changes that may be necessary once it is in operation.

Question put and agreed to.

Clause 12 ordered to stand part of the Bill.

Clause 13 (Alternative available for conviction)

Amendment No 10 made: In page 7, line 40, at end insert "(3) This section is without prejudice to section 6(2) of the Criminal Law Act (Northern Ireland) 1967 (alternative verdicts on trial on indictment)."— *[Mrs Long (The Minister of Justice).]*

Clause 13, as amended, ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15 ordered to stand part of the Bill.

Clause 16 ordered to stand part of the Bill.

Clause 17 (Exception regarding the aggravation)

Amendment No 11 made: Leave out '18' and insert '16— *[Mrs Long (The Minister of Justice).]*

Clause 17, as amended, ordered to stand part of the Bill.

Clauses 18 to 20 ordered to stand part of the Bill.

New Clause

Amendment No 12 made: Before clause 21 insert

"D*efinitions for child cruelty offence*

Meaning of ill-treatment etc. in offence provision

20A. In section 20 (cruelty to persons under 16) of the Children and Young Persons Act (Northern

Ireland) 1968—

(a) in subsection (1), the words from "(including" to "derangement)" are repealed,

(b) before paragraph (a) of subsection (2) insert—

"(za) a reference to—

(i) ill-treatment is to ill-treatment whether physical or otherwise;

(ii) suffering or injury is to suffering or injury whether physical or otherwise;".".— *[Mrs Long (The Minister of Justice).]*

New clause ordered to stand part of the Bill.

Clauses 21 to 24 ordered to stand part of the Bill.

New Clause

Amendment No 13 made: After clause 24 insert

"**Interim protection for the victim**

24A.—(1) The Department of Justice may by regulations, within 24 months of commencement, make provision for measures which may be made for the purposes of protecting and supporting the victim or alleged victim.

(2) The regulations may include provisions about —

(a) court orders,

(b) measures other than court orders.

(3) The regulations may not be made unless a draft has been laid before and approved by a resolution of the Northern Ireland Assembly.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

New clause ordered to stand part of the Bill.

New Clause

Amendment No 14 proposed: After clause 24 insert

"**Amendment to the eligibility requirement for civil legal aid**

24A. In The Civil Legal Services (Financial) Regulations (Northern Ireland) 2015, Article 10 (1), at end insert —

"(ab) advice and assistance or representation in proceedings for, or in relation to, any order referred in Article 8(1) of the Children (Northern Ireland) Act 1995 where the client is a victim of domestic abuse in accordance with the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020.".".— *[Miss Woods.]*

Question put, That amendment No 14 be made.

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

Question, that the amendment be made, put a second time.

Mr 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 also remind

Members to ensure that social distancing continues to be observed while the Division is taking place. Please be patient at all times and follow the instructions of the Lobby Clerks. Clear the Lobbies.

The Assembly divided:

Ayes 44; Noes 7.

AYES

Mr Allen, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Ms S Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Catney, Mr Chambers, Mr Clarke, Mr Dunne, Mr Durkan, Mr Easton, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Ms Hunter, Mr Irwin, Mrs D Kelly, Mr McCrossan, Mr McGrath, Miss McIlveen, Ms McLaughlin, Mr McNulty, Mr Middleton, Mr Nesbitt, Mr Newton, Mr O'Toole, Mr Robinson, Mr Stalford, Mr Stewart, Mr Storey, Ms Sugden, Mr Swann, Miss Woods.

Tellers for the Ayes: Mr Frew and Miss Woods

NOES

Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long, Mr Lyttle, Mr Muir.

Tellers for the Noes: Ms Armstrong and Mr Lyttle.

The following Members voted in both Lobbies and are therefore not counted in the result: Ms Anderson, Dr Archibald, Mr Boylan, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Ms Rogan, Mr Sheehan, Ms Sheerin

The following Members' votes were cast by their notified proxy in this Division:

Ms S Bradley voted for Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Mr McCrossan, Mr McGrath, Ms McLaughlin, Mr McNulty and Mr O'Toole.

Mr K Buchanan voted for Ms P Bradley, Mr Buckley, Ms Cameron, Mr Dunne, Mr Easton, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Newton, Mr Robinson, Mr Stalford and Mr Storey.

Mr Butler voted for Mr Allen, Mrs Barton, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Mr Dickson voted for Ms Armstrong [Teller, Noes], Mr Blair, Ms Bradshaw, Mrs Long, Mr Lyttle [Teller, Noes] and Mr Muir.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Dillon, Ms Dolan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan, Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Miss Woods [Teller, Ayes] voted for Ms Bailey.

Question accordingly agreed to.

New clause ordered to stand part of the Bill.

Mr Speaker: That concludes the debate on the group 2 amendments. I propose, by leave of the Assembly, to suspend the sitting until 10.25 pm.

The sitting was suspended at 10.15 pm and resumed at 10.26 pm.

Debate resumed.

(Mr Deputy Speaker [Mr Beggs] in the Chair)
Mr Deputy Speaker (Mr Beggs): We have come to the third group of amendments for debate. With amendment No 15, it will be convenient to debate amendment Nos 18 to 26. I call the Minister of Justice to move amendment No 15 and address the other amendments in the group.

New Clause

The following amendment stood on the Marshalled List:

No 15: Before clause 25 insert

"**Requirement for training within relevant bodies**

24A.—(1) Each of the following must provide such training on the effect of this Part as it considers appropriate for its personnel —

(a) the Police Service of Northern Ireland,

(b) the Public Prosecution Service for Northern Ireland.

(2) The Department of Justice must provide such training on the effect of this Part as it considers appropriate for staff within the Northern Ireland Courts and Tribunal Service.".— *[Mrs Long (The Minister of Justice).]*

Amendment No 15 not moved.

Mr Deputy Speaker (Mr Beggs): I will call the Chairperson of the Committee for Justice, Paul Givan, to move amendment No 18 and to commence the group 3 debate in a moment. Before that can happen, we must dispose of amendment Nos 16 and 17, which have already been debated.

Clause 25 (Guidance about domestic abuse)

Amendment No 16 made: In page 13, line 28, leave out "may" and insert "must".— *[Mrs Long (The Minister of Justice).]*

Amendment No 17 made: In page 13, line 30, leave out "other matters" and insert "such other matters as it considers appropriate".— *[Mrs Long (The Minister of Justice).]*

Mr Deputy Speaker (Mr Beggs): We return now to the third group of amendments for debate. With amendment No 18, it will be convenient to debate amendment Nos 19 to 26. I call the Chairperson of the Committee for Justice, Paul Givan, to move amendment No 18 and address the other amendments in the group.

Mr Givan: I beg to move amendment No 18: In page 13, line 31, at end insert

"(1A) In supporting the operation of Part 1, the Department may by regulations make provision for informing the school of a child who saw, heard or was present during a domestic abuse incident.".

The following amendments stood on the Marshalled List:

No 19: In clause 25, page 13, line 34, leave out from "may" to end of line 35 and insert

"must —

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

(b) revise any guidance issued under this section if it considers revision to be necessary in light of review.".— *[Mrs Long (The Minister of Justice).]*

No 20: **New Clause**

After clause 25 insert

"**Guidance on data collection**

25A.—(1) The Department of Justice —

(a) may issue guidance to the relevant bodies about the sort of information which it seeks to obtain from them for the purpose of the assessment by it of the operation of this Part, and

(b) must have regard to information which it obtains from the relevant bodies in relation to the operation of this Part when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Part.

(2) The relevant bodies are —

(a) Police Service of Northern Ireland,

(b) Public Prosecution Service Northern Ireland,

(c) the Northern Ireland Courts and Tribunals Service, and

(d) such additional bodies as the Department considers appropriate.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

No 21: **New Clause**

After clause 25 insert

"**Training**

25A.—(1) It shall be the duty of the Department to ensure that sufficient training of policing and criminal justice agencies, including but not limited to —

(a) Police Service of Northern Ireland,

(b) Public Prosecution Service Northern Ireland, and

(c) the Northern Ireland Courts and Tribunals Service, and

is made available to allow for the effective operation of this Act.

(2) Training must be provided annually.

(3) Training is mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies, including but not limited to the agencies listed in subsection (1).

(4) Having identified the relevant staff in subsection (3) at the beginning of an annual reporting period, the Department must publish the uptake of training by each relevant organisation at the end of each year.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

No 22: As an amendment to Amendment No 21, in clause 25A(1) after "sufficient" insert the words "resources and".— *[Miss Woods.]*

No 23: **New Clause**

After clause 25 insert

"**Independent oversight**

25A.—(1) The Department of Justice must not later than 1 year after the commencement of this Act appoint an independent person to —

(a) contribute to the development of the guidance under section 25, and

(b) review, report and make recommendations in relation to the operation of Part 1.

(2) The person must produce a report annually on the activities in subsection (1), starting not later than 2 years after the commencement of this Act.

(3) The Department must —

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.

(4) The Department may by regulations set out the date, not less than 7 years after commencement, when the independent person may cease the duties in subsections (1) and (2).

(5) Starting on the date when the independent person ceases duties, the Department must publish a report on subsection (1)(b) every 3 years thereafter.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

No 24: **New Clause**

After clause 25 insert

"**Report on the operation of this Act**

25A.—(1) The Department of Justice must prepare a report on the operation of —

(a) an offence under section 1(1), and

(b) an offence that is aggravated as described in sections 8, 9 and 15.

(2) The report must set out, in relation to those sorts of offences —

(a) the number of cases for which criminal proceedings are undertaken,

(b) the number of convictions in criminal proceedings,

(c) the average length of time —

(i) from service of the complaint or indictment,

(ii) to finding or verdict as to guilt (including plea of guilty),

(d) information about the experience of witnesses (including witnesses who are children) at court,

(e) such additional information as the Department of Justice considers appropriate.

(3) The report must, in relation to those sorts of offences, include distinct statistics for each of them.

(4) For the purpose of the report, the Department of Justice must seek information on how court business is arranged so as to ensure the efficient disposal of cases involving those sorts of offences.

(5) The report must also include —

(a) activities and associated timespans for delivering the guidance in section 25 and any plans for review,

(b) strategies to communicate the provisions of Part 1 to the public and to victims in particular, and

(c) any additional activities which support the operation of the Act.

(6) The Department must prepare a report under this section —

(a) not more than 2 years after commencement, and

(b) thereafter, at intervals of not more than 3 years.

(7) The Department must —

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

No 25: As an amendment to Amendment No 24, in subsection (2)(b), at end insert —

"(ba) the number of cases where it has been –

(i) specified that the offence is aggravated by reasons as described in sections 8, 9, and 15.

(ii) proved that the offence is so aggravated,

(bb) information on A and B as described in Section 75 of the Northern Ireland Act 1998,".— *[Miss Woods.]*

No 26: As an amendment to Amendment No 24, in subsection (2), at end insert —

"(2A) The report should also include the number of offences recorded within each police district in Northern Ireland,".— *[Miss Woods.]*

Mr Givan: I will cover each of the Committee amendments in this group in turn. I know that the hour is late, but this is the culmination of the Committee's scrutiny process over several months, which I outlined in great detail at the start. We make no apology for giving it proper justice and the Assembly continuing to carry out its role. Members have been doing that, some at length, but that has been necessary. I commend them for the way in which they have carried themselves in the debate so far. They have gone over this in great detail. As Chairman of the Committee, I need to convey the wider issues that the Committee has considered and try to reflect all of that. Therefore, my speeches, necessarily, have been longer than those of other Members. I am doing that on behalf of all of the parties where we have agreed on that. That is why some Members do not need to be as elaborative as I have been. However, I need to keep doing that, despite the hour being 10.30 pm and we are now into the seventh hour of our consideration of this. I will continue the proper deliberations that are required.

10.30 pm

I will begin with amendment No 18. The first time that the Committee became aware of Operation Encompass was when the Chief Constable gave oral evidence in February 2020, not long after the Committee was established. He stated that it was a programme operating in England and Wales that he was familiar with and that he wished to see introduced in Northern Ireland. There were, however, legislative impediments that he hoped could be overcome with the support and assistance of the Committee and other partners.

When providing evidence to the Committee on the Bill, a number of organisations also highlighted their support for the introduction of an Operation Encompass-type approach in Northern Ireland. They believed that it is complementary to the intentions of the Bill and merits consideration, given that it ensures that schools are in a better position to understand and be supportive of the child's needs and possible behaviours as a result of being notified when a domestic abuse incident has occurred the night before to which the police have been called out. The provision of support in the school environment means that children are better safeguarded against the short-, medium- and long-term effects of domestic abuse.

The Committee requested further information on Operation Encompass, and the Department of Justice indicated that a multi-agency task and finish group was exploring how such an approach could be introduced locally and that the intention was to undertake a pilot project later in 2020. The Department also advised that both the police and the Safeguarding Board for Northern Ireland were of the view that there is currently insufficient legislative cover to enable the sharing of information between the police and schools for well-being as opposed to child protection purposes and that legislative change is needed to facilitate that. Given the absence of the necessary legislative cover, the pilot project would operate on a consent basis. The

Department informed the Committee that, in its view, such legislative provision could not be provided in the Domestic Abuse and Family Proceedings Bill.

The chair of the south-eastern area domestic and sexual violence partnership, which covers the locality where the initiative will be piloted, subsequently informed the Committee that, while the partnership is keen to have Operation Encompass rolled out in Northern Ireland and agreed to the pilot in the Down sector of the Newry, Mourne and Down District Council area, there will be limitations, as the pilot will operate on a consent basis, so the PSNI will be able to notify a school only when there is concern for the well-being of the child if it has the consent of the victim to do so. The partnership believes that there may be fewer notifications made as a consequence and that the victim could be at greater risk if the perpetrator learns that they gave their consent for the notification to be made.

The Committee requested clarification on the legislative gap preventing the introduction of the scheme in Northern Ireland and how it could be addressed. The Department advised that, as the purpose of the information sharing is to ensure child well-being and as the delivery will be in an educational setting, it considers it a matter for Education legislation as opposed to Justice legislation, and discussions were therefore ongoing with officials in the Department of Education to determine the appropriate legislative vehicle for the changes. The Department reiterated that, in its opinion, the required legislative provision in this area could not be provided for in this Bill.

The Committee is very supportive of this type of information-sharing scheme being available in Northern Ireland and believes that legislative provision to enable the PSNI to share information with a school on well-being grounds to support children in the context of domestic abuse should be provided at the earliest opportunity. The Safeguarding Board would welcome the necessary legislative provision being included in this Bill, and the Education Authority also believes that inclusion of such provision would strengthen the Bill.

To provide the necessary legislative cover as soon as possible, the Committee decided to table an amendment. In light of the Committee's amendment, the Minister advised us that, while it was not yet clear that the Committee amendment would be deemed admissible, she was in agreement with the Committee that there is considerable merit in provision being made available to enable information to be shared for the purpose of an Operation Encompass approach. While she considered tabling an alternative amendment to ensure that any provision is as robust as possible and fully provides for the necessary regulations to be brought forward, following further discussion and assuming that the Committee amendment is made today, the Minister now intends to table such an amendment at Further Consideration Stage. It will build on the wording of our amendment and provide increased detail and clarity to ensure that the provision will fully meet its intended purpose. The Committee welcomes the approach now being adopted by the Minister and her support for our amendment. We will be happy to consider further amendments to improve our amendment before the Bill completes its passage through the Assembly.

I will now address amendment Nos 20, 21 and 24. Their context relates to the consistent theme running through the evidence received by the Committee of the importance of how the legislation will be implemented. Many organisations and individuals expressed the view that the legislation will be only as good as its practical implementation and that how the legislation is implemented is as important as what it covers. The Committee believes that for this legislation, and in particular the new domestic abuse offence, to be effective and achieve the desired result of better protection and criminal justice outcomes for victims of domestic violence and abuse, getting right the implementation of training for those involved in gathering evidence, in prosecuting and enforcing the new law, in monitoring and reporting on it and in increasing public awareness of it is crucial. The Committee therefore tabled amendments on data collection, training and reporting. Although the Committee agrees that raising public awareness and recognition of the new offence will be very important and welcomes the work that the Department intends to undertake in that area, specific legislative provision is not required for it. The Committee has, however, included a requirement for the Department to report on the strategies to communicate the new offence to the public and victims as part of the reporting obligations on the operation of the new offence as part of amendment No 24.

Amendment No 20 specifically provides for the Department to issue guidance on the type of information and data required to be collected to assess fully and properly the operation of the new offence. The importance of strengthening data collection on domestic abuse and violence, both generally and specifically, in the implementation of the new legislation was

highlighted by a number of organisations. Views outlined a range of gaps, including the nature, extent and impact of domestic violence and abuse on each of the section 75 equality groups and the lack of disaggregated data by sex, gender, ethnicity, disability and age and for children. The need for data — including data on the number of initial reports; on the number of case files referred to the Public Prosecution Service; on how many of those reach the different stages of the court process; on how many reach the prosecution stage; on what the resulting remedy is; and on how many involve repeat offences — to track the journey of abuse investigations through the criminal justice system in order to enable an accurate assessment to be made of how the legislation is working was also emphasised.

The Department advised the Committee that it recognised the importance of robust data and was reviewing how best to secure that for the new offence with partner agencies as part of the operational arrangements. The Department indicated that a range of information is already available, or will be, including information on applications for protection orders and on the number of convictions, as well as higher-level information on the length of processes. The Department further indicated that the PSNI statistics branch currently publishes statistical data on domestic abuse crimes, disaggregated by sex, gender and ethnicity. Information on disability and sexual orientation is not currently available, but the PSNI has been in contact with the Equality Commission about the issue of further data collection on section 75 groups for all crimes. The Committee recognises the importance of the availability of robust data to enable the legislation's effectiveness to be assessed. The data also needs to be consistent across the various criminal justice agencies — something that is not always available — to allow for tracking of cases and analysis at each stage of the process. To ensure that, the Committee tabled amendment No 20 and welcomes the Minister’s support for it.

I move now to amendment No 24, which places a requirement on the Department to report on the new offence. The amendment will require the Department to report on the operation of the new domestic abuse offence and the aggravating factors provided for in clauses 8, 9 and 15 in a range of areas, including the number of cases taken; the number of convictions; the average length of time for cases; the experiences of witnesses; the provision of the guidance required by clause 25; and the communications strategies implemented by the Department to raise public awareness of the new offence. The first report must be available no more than two years after the commencement of the legislation. The report must be laid in the Northern Ireland Assembly and published. Further reports are required no later than every three years. The amendment aims to provide for the effectiveness of the legislation to be monitored and assessed in a transparent manner.

The Committee considered including a reporting requirement in relation to the section 75 groups but decided not to pursue that following advice that that may take our amendment beyond the reasonable limits of the Bill's collective purposes. The Committee is also conscious that, although it wishes to place a reporting requirement on the Department, there is a need to consider what the criminal justice agencies can actually deliver in terms of figures and statistics to enable the Department to fulfil its reporting requirements.

The Committee welcomes the Minister's acknowledgement that there is merit in reporting on the operations of the Bill's provisions and her support for the Committee amendment today. Rather than having two amendments that deal with the same issue for the Assembly to consider, the Committee appreciates the approach that the Minister has adopted by not tabling an alternative amendment and is happy to consider any amendments that the Minister wishes to bring forward at Further Consideration Stage that will build on the intent and purpose of the Committee amendment and refine some of the language so that it more closely aligns with practice in criminal proceedings. I am sure the Minister will expand on that when she speaks in this debate.

Rachel Woods has tabled two amendments to the Committee amendment to add additional reporting requirements. The Minister advised the Committee that she intends to support amendment No 26 but not amendment No 25 due to the section 75 element. I am sure that the Minister will elaborate on her reasons around that. Although the Committee did not discuss those amendments, I suspect that it would have no difficulty with supporting amendment No 26, which provides for reporting on the number of offences recorded within each police district. The PSNI has confirmed that that could be provided. In relation to amendment No 25, the Minister highlighted to the Committee last week that the operational partners indicated that they do not have the capacity in their IT and reporting systems to provide that level of data and that doing so would have substantial operational and financial implications and would require major IT changes.

Amendment No 21 relates to the requirement around training. The Committee brought it forward to ensure that the appropriate and adequate training of relevant personnel takes place. The Minister advised the Committee that she could not support its amendment regarding training and that she would bring forward an alternative amendment. Following discussions at last Thursday's Committee meeting, the Minister has decided not to move amendment No 15. In relation to its amendment, the Committee agrees with the views of a wide range of organisations that stated that there is a need for comprehensive training for anyone involved in gathering evidence and in prosecuting and enforcing the new law and that the legislation will be effective only if that takes place. The ability to investigate and prosecute the new offence will hinge on training police first responders to recognise and identify the signs of psychological abuse and coercive and controlling behaviour, which is manipulative, subtle and, often, covert. It will be vital that appropriate evidence is gathered if full use is to be made of the new offence.

A number of organisations recommended mandatory training for the PSNI and the other criminal justice organisations involved in the prosecution and enforcement of the new offence and that the training should cover issues including the impact of domestic violence and abuse on women and children; a wider understanding of men as victims of domestic abuse; the particular needs of different groups of people, including LGBT and other marginalised and vulnerable groups, such as migrant victims; and the obligations to take appropriate action in suspected cases of domestic abuse affecting children. The PSNI advised the Committee that it recognises that officer training on the definition of the new offence and examples of the behaviours that it involves will be pivotal to the successful enforcement of the legislation. When the Chief Constable attended the meeting of the Committee on 24 September, he outlined that training was being developed in conjunction with the Women's Aid Federation to familiarise front-line officers with what coercive and controlling behaviour looks like. The training, which will be a mixture of online and classroom-based training, will be rolled out from December. Particular roles will also receive specialist training where required.

The Public Prosecution Service outlined that it is considering the establishment of specialist domestic violence and abuse prosecutors. It is envisaged that those prosecutors will receive more intensive training on coercive control and the identification of patterns of domestic abuse behaviours and will act as the first point of contact for police to assist in providing prosecutorial advice and ensure that all reasonable lines of enquiry are pursued in order to maximise the opportunities for bringing fair but robust prosecutions.

10.45 pm

During the Committee Stage, the Department outlined that discussions were being held with the Judicial Studies Board about raising awareness among the judiciary of the new offence. That included considering what lessons can be learned from other jurisdictions. The Department also advised the Committee that it recognised the importance of training but did not consider that a requirement for it needed to be placed in statute. The Committee, however, views training for relevant personnel crucial to the effective implementation of the legislation given that the new offence is a course of behaviour offence that will require the exercise of judgement by the police when gathering evidence and a clear understanding and recognition of the behaviours that are associated with non-physical abuse for others who are involved in the prosecution and enforcement of the new law. The Committee, therefore, decided to table amendment No 21, which places a duty on the Department to ensure that "sufficient" and appropriate training:

> *"is made available to allow for the effective operation of"*

the legislation.

> *"Training is mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies"*

and "must be provided annually", and:

> *"the Department must publish the uptake of training by each relevant organisation at the end of"*

each annual reporting period given the importance of training to "the effective operation" of the legislation.

The Committee has some sympathy with the point that the Minister made during our discussions last Thursday that it would be more appropriate to place the duty for training on PSNI and PPS personnel rather than on the Department. Therefore, if it is made today, the Committee is content to tidy up the wording of its amendment in order to reflect that at Further

Consideration Stage. The Committee does not, however, accept that there is no need for the training to be mandatory and that, by requiring annual training, it could become a tick-box exercise and would place significant problems on the organisations from a capacity perspective. Those were points that the Minister made to the Committee last week. The Committee also questions the Minister's understanding that the PSNI currently does not undertake annual recurrent training in any area, as members are aware of a range of training that it provides annually.

The Committee believes that annual training is an important requirement, and making the training:

> *"mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies, including"*

the PSNI, the PPS and the Northern Ireland Courts and Tribunals Service emphasises the crucial role that training will play in the implementation of the legislation and the new offence.

Mrs Long: Will the Chairperson give way?

Mr Givan: I am happy to give way to the Minister.

Mrs Long: Rather than hold this for my speech later, the point that I made is that the PSNI does not provide annual training for any particular offence. It does, of course, have to provide training that is specific to its operational needs, but it does not provide training on any other offences. That could create a precedent that means that newly introduced offences would be subject to annual training, and that could be burdensome if it were to continue in perpetuity.

Mr Givan: That neatly takes me on. Our amendment is drafted in order not only to ensure that appropriate training is provided but to give flexibility to the organisations to deliver different tiers of training as appropriate, including initial training, annual refresher training and specialist training for particular roles. It does not require the same level of training to be undertaken by every member of staff in every criminal justice agency. The framing of our amendment will also provide parameters against which the Northern Ireland Policing Board can hold the PSNI to account. I ask the Assembly to support the Committee amendment today.

Amendment No 23 provides for the independent oversight of and reporting on the implementation of the legislation for at least seven years. The Committee sees great merit in providing independent oversight of the implementation of the legislation for a period of time until it has fully bedded in. Independent input in that way would hold government to account and build confidence amongst the organisations that support victims that the legislation is operating effectively. Such oversight could also provide valuable input, advice and assistance to the criminal justice organisations when addressing any issues that arise.

Many of the organisations that provided evidence to the Committee noted that the Westminster Domestic Abuse Bill includes provision for a domestic abuse commissioner and supported the call from the Women's Aid Federation for the introduction of such a commissioner in Northern Ireland.

A wide ranging role was envisaged for such a commissioner to include oversight and scrutiny of the implementation of the legislation. While the Committee had sympathy for the calls for the appointment of such a commissioner, and did consider whether it should attempt to pursue this, following further consideration and discussion we decided that the key issue was to provide for an independent oversight function in relation to the implementation of the legislation, and we therefore tabled amendment 23.

The Department can bring the independent oversight function to an end after a period of seven years by regulation, by which time the new offence and the legislation more generally should be well bedded in and any issues or difficulties with its application should have been addressed. The Minister advised the Committee that she agrees with the need for oversight and scrutiny of how the new offence operates. In correspondence to the Committee at the beginning of November, the Minister indicated that she considered our amendment to be akin to a domestic abuse commissioner in all but name.

Following our discussions, I hope that the Minister is now clear that that is not the intention of the amendment; rather it is to create an independent oversight function. Victims of domestic abuse have waited a very long time — much too long — for this legislation. We must ensure that there is confidence that it is being fully and effectively implemented and that any issues that arise are identified quickly and addressed properly.

Yesterday, the Minister advised the Committee that she is now content to support the amendment, which, she has indicated, will, when taken with a range of other oversight and scrutiny arrangements, ensure that there is a robust consideration of how the offence is working in practice. I welcome the change in the Minister's position and ask the Assembly to support this Committee amendment.

Finally, I want to confirm that the Committee supports amendment No 19 brought forward by the Minister, which I covered in when I spoke in the debate on the group 1 amendments. I do not intend to revisit the issue.

Mr Deputy Speaker, that concludes my remarks as Chairperson of the Justice Committee. My colleague, Paul Frew, will elaborate on the amendments to give the DUP perspective on each of them, so I do not intend to labour the point. However, I will make a couple of remarks.

Operation Encompass was raised by Committee members extensively. The Chief Constable raised it with the Committee, and Linda Dillon raised it at nearly every meeting and pursued it relentlessly, with the Committee's support, so I am pleased that we can address the issue by way of amendment. Ultimately, the Committee decided that we needed to test whether the Speaker would rule it in or not. I was pleased that the Speaker ruled it admissible.

Ultimately, it is about a case in which a child at home witnesses an event or there is a dispute in the home to which the police are called. It makes sense that the police should have the ability to inform the school the next day, rather than a child coming in with no lunch, or without completed homework and the teacher, unwittingly, challenging the child for not having its homework done or coming in without lunch.

The Committee saw it as a common-sense approach that the police, where they decide to do it, should have the ability to pass that information on appropriately to the school authorities. Issues were raised about the general data protection regulation (GDPR) and information sharing. I am pleased that the amendment, which will be enhanced at Further Consideration Stage, will put that into practice. It is just good common sense and I am pleased that the Committee was able to identify that.

Independent oversight was an issue that my party wanted to see included, because we knew that the role of Domestic Abuse Commissioner was included in the legislation in Westminster, and we have received significant representations about it. However, we recognised that that was unlikely to be within the purposes of this Bill and would be part of wider legislation that would need to be taken forward. Critical to that was having a form of independent oversight. I am pleased that we are going to get that, because for this legislation to be effective it needs to have that level of scrutiny applied to it. Independent oversight can, subsequently, make recommendations, and from that may flow a domestic abuse commissioner. That may well still happen in due course. It is important that we provide that independent oversight.

In respect of the amendments tabled by Rachel Woods, my party is minded to support amendment No 26, which relates to the gathering of data by the PSNI. I was persuaded by the Minister's evidence on amendment No 25 with regard to collecting information. I am sympathetic to what it seeks to do. However, it is important that we are satisfied about the capability to provide that information. The Minister may well touch on that later. At this stage, my party is minded not to support amendment No 25 from Rachel Woods. If it can be addressed at Further Consideration Stage, we would be certainly open to that.

In respect of amendment No 22, which relates to resources, again, I was persuaded by the Department's position on whether it was necessary. Of course, I want appropriate resources to be provided to give effect to what we are trying to do. However, at this stage, my party is not convinced that amendment No 22 is necessary. Therefore, again, on this occasion, we are not minded to support it. We will support the other amendments.

Ms Dillon: I do not intend to repeat much of what the Chairperson has said. However, I would like to thank the Minister for not moving amendment No 15. That has been helpful to us this evening. As the Chairperson outlined, we are certainly open to working with the Minister on an amendment at Further Consideration Stage. Again, that would be helpful to us in making good legislation. As I outlined earlier, at the end of the day, that is what we want to do here.

I want to focus a little on amendment No 18. As the Chairperson said, I raised the issue of Operation Encompass repeatedly. I first heard of it at a meeting with the Safeguarding Board when I was a member of the Policing Board. I was not really sure what it was, but it sounded good. I asked the board to send me more information. I also asked whether we could have further conversations about what it was

and how it worked so that I could explore with the Policing Board the potential for how it could be delivered. I did so at every opportunity at the Policing Board, but I was told repeatedly that it could not be delivered because of issues around the General Data Protection Regulation (GDPR) and information sharing. The phrase that was used continually was that there was a "legislative gap". On numerous occasions, I asked what the legislative gap was so that we could, hopefully, address it. I never got an answer to that. Therefore, I took the opportunity, when the Chief Constable came to us, knowing that the Bill was coming forward, to ask him about Operation Encompass and what the legislative gap was so that we could, hopefully, incorporate that in the legislation.

I am delighted that the Committee gave its support to Operation Encompass. While it might seem a very small part of the Bill — in some ways, it is, and we were concerned that it would be found not to be within its scope because it also falls within the responsibility of the Education Minister — the fact that it was found to be within the scope of the Bill means that we will now be able to deliver that for children. We outlined earlier in the debate how important it is that we look after children who are impacted by domestic abuse. That is a really important element because, when a child witnesses or is a victim of a domestic abuse incident, and they go into school the next morning, they may well not have slept all night. They may not have been in their own home. As the Chair outlined, they may not have done their homework or have brought a lunch with them. Teachers will challenge them because that is what they do. When a young person at school has not done what is expected of them, on many occasions, teachers challenge them without knowing what that child has been through the night before. Earlier, we talked about adverse impacts. It would make an immeasurable difference to that child if someone in the school were to ask, "Are you OK?" or "Do you need lunch?", said, "Do not worry if you have not done your homework" or "So what if you do not have the correct uniform?", or asked, "Would you like to go to another room for half an hour?".

11.00 pm

Around the time that we were discussing that, I saw a quote on social media from a teacher. I do not often quote from social media, because I do not like it, to be honest, but this is a really good quote. The teacher said, "If you meet a child at the gate who is coming in late, you can make a difference to their life by, instead of shouting, 'Why are you late, Johnny? What kept you?', saying, 'Are you OK, Johnny? Is everything all right?'. You do not know what that child is going through or why they are late to school." I thought that that was very relevant. It certainly had an impact on me. I would love it if more teachers thought like that. I know that we have lots of brilliant teachers, but the truth is that, sometimes, they are under so much pressure trying to do what they have to do that they forget those things, and this might be a way of reminding them. I am sure that lots of teachers in our schools do not realise how many children in their classroom come from homes where there is domestic abuse occurring daily. I have no doubt about that. This could potentially make a massive difference to children's lives. At the end of the day, that is what we are about.

The PSNI has said that it wants to do it, and I welcome that. I also welcome the Education Minister's move to roll out the pilot project. Whilst there are limitations to it, and I accept that, hopefully, when it comes to the roll-out, it will help us in flagging up some of the issues, problems or stumbling blocks. That can only be a good thing. For me, Operation Encompass is an absolutely vital part of it. I welcome that the Minister intends to bring forward an amendment at Further Consideration Stage. Again, I believe that the Minister's amendment will further improve this amendment and the legislation. Again, that can only be a positive outcome.
I just want to say that I will support amendment No 19, which provides for a minor amendment to the wording.

I will now speak to amendment Nos 20, 21 and 24. I do not intend to go over the issues that the Chair has already highlighted. Nobody in the House can fail to know that data collection, training and reporting on anything, be it policy or legislation — it does not matter what it is — are vital, because resources follow information and statistics. If we do not have the statistics, we will not get the resources. We already know that from some of the groups and organisations that have highlighted the fact that there is a lack of resourcing directed towards them. Rachel Woods will speak to some of that later. She has raised, on numerous occasions, the fact that there are groups and organisations, particularly from the migrant population, that do not get adequate funding because we do not have the data and the statistics. It is important that we look to data collection. Again, the reporting feeds into all that. Hopefully, the reporting will answer some of the queries that Mr Allister raised about how many cases will be brought to court. We will know that. If people come to us and ask, "How good is your legislation? How effective is it? How well does it work?", we will not say, "We're not sure. We can't give you

statistics". We will be able to say, "This is how good it is; this is the report on how effective it is on the ground".

Lastly, I want to speak about training. Training is vital. The PSNI has said that it could take up to a year for it to implement the legislation. I know that some of my Committee colleagues challenged the Chief Constable on that and said that it needs to be quicker and that a year is too long. Maybe it is, or maybe it is not. I do not want quick training. I want good training, I want effective training and I want the right training. When those officers get the training that they need, I want them to able to implement the legislation in the way in which this House intended. We have scrutinised the Bill. We are debating it tonight. We are giving it every bit of attention that we possibly can to ensure that it will have the biggest impact on people's lives. We therefore need those who are going to deliver on it at the other end to do the same, and they can only do that with effective training.

I can certainly say that, when the Bill was put down in front of me at the beginning of the process, it looked like double Dutch.
I read through it and understood bits and pieces, but, truthfully, could I have spoken to it on that day and said that I fully understood everything that was in it, its implications on people's lives and the issues that were raised? No, I could not. However, I gained that through a very steep but good training and learning curve on the Committee.

We had a good mix on the Committee of people who had experience, and those of us who were new to the experience, to say the least. However, we all had life experience and experience of previous roles, my own on the Policing Board, as I outlined, and dealing with constituents. All those things added to the Bill because this is about real people and real life. It is not about something that is pie in the sky or does not affect people every day. The Bill will affect people every day, so we need to ensure that those who will be delivering it will get adequate training.

I would love to support Miss Woods's amendment No 25 to include section 75. It calls for everything that I just outlined that we need. We need the data and the statistics. Unfortunately, I know from experience on the Policing Board that it is a requirement that the Department and organisations may not be able to meet. Therefore, I am not able to support the amendment at this time but would like to have further conversations with the Minister and the Department on whether it could be included at Further Consideration Stage. I would like more detail on how it could be done because that is what it boils down to. I want to see it done; I just need to understand how it can be done.

Amendment No 26 is also from Rachel Woods. We will support it, and the Minister has said that she and her Department will support it. It calls for statistics to be broken down by council and policing district, and the PSNI has confirmed to the Minister that it can do that. That is important because it boils down to resources. Where will resources go? They will go to where you have data and information, so you need to be able to break that down. As elected representatives, to break that down to a constituency, council area or policing district gives us information on what we should be focusing on.

All those amendments are positive, and I support them. I say again that I welcome the Minister's indication that she will add to Operation Encompass. I hope that the PSNI and the education sector buy into that because it will make a real difference to children's lives. I know that that is what most teachers want to do; that is why they are there. They want not only to give those children an education but to see them come out of school as better and more resilient people — young people who are able to have a better life because of what they did for them.
Ms Hunter: I will speak in support of amendment No 18. I am not a member of the Justice Committee, but I thank its members and the Minister for their meaningful, valuable and insightful contributions to the debate.

I welcome the opportunity to speak on what is a deeply emotive and sensitive topic. Reading the legislation and hearing testimonies from survivors earlier this week has been eye-opening and, frankly, emotional. The detrimental impact that domestic abuse has on victims, families and children has been truly revealing.

There are many aspects of abuse: physical, sexual, mental, emotional, financial and, of course, psychological. Incidents of abuse can be engraved on the minds of victims. Despite how much time has passed, it can be difficult for victims to free themselves from the grasp of their abusers. No sentence sums that up better than: in the mind of the victim, trauma has no timeline. It stays with them.

Many people recovering from a violent domestic relationship can experience complex PTSD, which presents itself in emotional flashbacks. If we turn our eyes to the pandemic, it is horrifying to have read about increased rates of domestic

violence during lockdown. The ability to be monitored by an abusive partner around the clock is deeply disturbing. I thank Women's Aid, the NSPCC, Nexus NI, Barnardo's and all other community and voluntary organisations out there for their continued efforts to support victims, especially during this difficult and challenging time. I welcome the fact that our Minister, Minister Mallon, has worked closely with Minister Long on providing free transport for victims, which is a key and necessary support for victims right across the North.

While speaking today, I feel that it would be reckless of me to have the opportunity and not use it to address domestic abuse in teenage relationships. I welcome point 82 of the Committee for Justice's report on the Bill, which states:

> *"Schools and colleges may need to be involved as part of the co-ordinated response to provide education and awareness so that relevant professionals from this sector can understand the risks the young person may pose to other young people."*

I welcome amendment No 18 and the discussion on utilising regulations similar to Operation Encompass, the initiative that enhances communication between the police and schools where a child is at risk from domestic abuse. The amendment will help ensure that schools have more information to support the safeguarding of our children here in the North.

Discussing the amendments before us today further highlights the fact that we should enable our young people to acquire decision-making skills, in order for them to have a knowledge base and the skills to interpret what abuse actually is. I feel that it is both a moral obligation and a professional duty on our education institutions to educate our teenagers as they navigate their first relationships and to equip them with the knowledge that will help enable their growth and help them engage in healthy relationships. Having spoken with representatives from Women's Aid prior to today, I know that that organisation reiterates the message to young people that being a victim of domestic abuse is never their fault.

Abusive control is not always obvious. It can be manipulation, gaslighting or someone convincing you that you are not worthy of opportunities, that you are not smart enough and that nobody likes you. Your partner can be one person in a room of many or in front of their parents yet someone very different behind closed doors. Being humiliated and intimidated by your partner is not a natural part of the process. Being told what to wear, where you can go and whom you can or cannot see is not the norm. Let us be reminded that, although the steps taken today with this legislation are to be welcomed, we need a cross-departmental approach to tackle the issue in order to protect potential and hidden sufferers of all ages from domestic abuse.

Mr Blair: Before I begin, I declare an interest as a member of the Northern Ireland Policing Board, which oversees the Police Service of Northern Ireland and would therefore oversee some of the actions suggested in the group of amendments to which I speak.

I take an opportunity at the beginning, as one of the Members who did not have the chance to contribute earlier in the debate, to express my thanks to the Minister for bringing this Bill to the Assembly and to the departmental officials for assisting in doing that. The Minister has paid particular attention to the issue of domestic abuse, and she should be commended for following through on her pledge to endeavour to deliver on it through this Bill. In addition to her determination to deal with the issue, she has taken on board the incredibly destructive practice of coercive control. Indeed, she has been helpful on that issue in her responses to me and other Members who have asked questions in the Chamber. I also express my gratitude to members of the Committee for their scrutiny and for the detail that they have brought to the debate.

In my remarks, I will refer mainly to the amendments dealing with training and oversight. Training is undoubtedly fundamental to delivering appropriate outcomes on the offence, but amendment No 21 on training does not stipulate the quality or nature of that training. That could lead to the most basic level of training, with it perhaps being as little as online exercises, which, as I hope Members will agree, is not what we want to see. I acknowledge that the Chair indicated earlier that the Committee will look at it again. That is very welcome, because we know that the situation might well be that the practice of practical, in-the-field or inter-agency training biannually could be more effective than basic online training annually.

Additionally, the amendment suggests that the Department of Justice has the power to direct the Police Service of Northern Ireland on that training. As we know, that is not the case. The PSNI reports on such matters to the Northern Ireland Policing Board, whether in full board or

through its relevant committees, and it is that body that should work with the PSNI on training. Ministerial or departmental control of those issues is undeliverable and undesirable. Reference to the Department bearing responsibility for training, funding, delivery and reporting for other agencies —.

11.15 pm

Ms Dillon: Will the Member give way?

Mr Blair: Sorry, go ahead, Linda.

Ms Dillon: Apologies to the Member. Thank you for taking the intervention. We agree with you about who should be responsible for the training. That is why we have spoken to the Minister about an amendment at Further Consideration Stage. However, I am sure that the Member — as a previous member of the Policing Board — knows well that, sometimes, we find it difficult to tie these issues down because they are not there in legislation for us to hold them to account to. When we ask the PSNI about training, we can be given all sorts of reasons why that training cannot happen — that the training has been pushed back, that it will happen, and that it was done three years ago and they will try to do it again in two years. We have real challenges around that. We need to have something to hold them to account to. If this is not the right way to do it, as I said, the Minister will be bringing forward amendments at Further Consideration Stage.

Mr Deputy Speaker (Mr Beggs): I encourage Members who wish to make an intervention to use their microphone so that everyone can clearly hear it.

Mr Blair: I thank the Member for the intervention. I will not rehearse all the detail of the PSNI's operational independence under the control of the Chief Constable. However, I should point out that all of us in the House who are members of the Executive's parties have representatives on the Policing Board, and we can challenge our wishes on delivery through them.

I have covered the reference to the Department bearing responsibility for training, funding and delivery. There is precedent and established practice that agencies have to prepare for, train for and adapt to new and emerging legislation. There is also policing and criminal justice oversight responsibility through, for example, the Criminal Justice Inspection. That can highlight training need or additional training required, and that has been done previously.

The suggestion in amendment No 23 of an additional oversight role is something that could potentially be delivered through existing structures. That would avoid additional time and financial resource, and it requires further examination.

I am hopeful that the Minister and the Committee can look further at the details around the desirable levels of training and at the most effective methods of training, at later stages. That could include scoping the existing training capacity, which is something that the Deputy Chair of the Committee referred to a moment ago.

Speaking generally, I urge caution around amendments that require considerable IT system investment by the PSNI or other criminal justice agencies. We must be careful with the additional capital requirement on time frames for the planning, procurement and delivery of such systems and how that might adversely affect progress on the eagerly awaited aspects of the Bill.

Therefore, my position is that I hope for progress, at later stages, that will reflect the practicalities around the original requirements of amendment No 21. I am opposed to the departmental direct delivery theme of amendment No 22, which is for the reasons that were given previously around accountability and because we expect independent delivery by the agencies involved. I believe that the intention of amendment No 23 can be met through existing resources, and that should be further explored, along with other matters on which a commitment has been made to discuss them further. I hope that the Minister, the Justice Committee and Members of the House can reflect on the matters that I have raised. More than anything else in relation to this debate, I hope that neither our words nor our actions, as the Bill progresses, will divert attention from the original purpose of the Bill and the needs of the victims.

Mr Beattie: We are fast approaching the witching hour. I am not quite there yet, but it is on its way. I think about this time of sitting at home with a nice glass of an Isle of Jura 18-year-old single malt, with my slippers and pyjamas on *[Laughter.]* It is not a great thought, but that would be me.

Mr Frew: Will the Member give way?

Mr Beattie: Yes, of course.

Mr Frew: How can the Member ever go past Bushmills?

Mr Beattie: Yes, well.

I am not going to rehearse, but I want to feed into a couple of the amendments. Amendment No 18, which is the Operation Encompass piece, is a two-line amendment, but it is so incredibly important. Ms Dillon has been very articulate and steadfast in support of that. I just wanted to say that, because it is really important. The amendment has only two lines, and we hope that we can develop it at Further Consideration Stage.

Amendment No 20 is on data collection, which feeds in to pretty much everything. We do not know how things are progressing unless we gather the data to see how they are working. It certainly feeds in to Ms Woods's amendment No 14, which is about legal aid. It is incredibly important that a new clause is in there. Without doubt, I will support it.

Amendment No 21 is about training. I am absolutely sympathetic to the first part of it, which would put the duty for training on the Justice Department. We can look at and possibly change that, and I would certainly be happy enough to do that.

One thing that I will say about that proposed new clause is that the Minister came before the Justice Committee, and we talked it through. She took away her clause, so ours stood alone. That, to me, is good collaboration. That is exactly how we should do things. We should talk it through and then make a decision, and we can then change it at a later stage.

I commend the Minister for taking that approach. However, there are two things in that amendment that are incredibly important. The Chair already said this, and I said it at the time, and those two things are the words "annually" and "mandatory". We would have to provide training annually. How we would do that in order to create less pressure on the organisations is something that has to be thought through, but it has to be done annually and it must be mandatory for those people who deal with domestic abuse on a day-to-day basis.

However, the reality is that every organisation would need to be trained from the very top to the very bottom. So, in the police, it would need to be from the Chief Constable all the way down to the new recruit. They would need to have an understanding of how this works, and then, the second tier of training would be for those people who will end up as experts on the subject, so to speak, on domestic abuse. Again, we will support that, but I will be sympathetic to the Minister if she brings forward any amendments to that.

The last amendment that I want to feed in to is amendment No 23. That is another proposed new clause, which is on independent oversight. People said this before, and I will say it again: we had lots of people who wanted a domestic abuse commissioner. They will be incredibly disappointed that they will not get one, and I accept that. Some Members will know that I want a victims of crime commissioner, because domestic abuse fits into crime of all shapes and sizes. It bleeds into financial crime, denial of rights and of freedom of movement, false imprisonment, grievous bodily harm, attempted murder and, in extremes, it gets into murder. Domestic abuse is not a stand-alone thing; it just moves into and blurs with other offences. I believe that a victims of crime commissioner can cover in the long term the role that a domestic abuse commissioner would cover.

This proposed new clause covers the medium term. It covers the first seven years so that we can have oversight in order to make sure that it is working. That is because this is new legislation, and we need to make sure that it is doing exactly what it is designed to do. We need an independent person to look at it in order to make sure that it is doing what it is designed to do.

I will support amendment No 26. I cannot support amendment No 25, unfortunately.

Mr Frew: This is my opportunity to applaud Ms Linda Dillon, another member of the Justice Committee, for her work and determination. I am mindful that my Chief Whip is behind me, and he is always encouraging us to be rough and robust. I am going weak at the knees here on him, but I just want to say that Linda Dillon has done tremendous work pushing this issue right to the forefront of the Committee and into its mindset, because it is important. It is a very small amendment, but it is the little things that count when you are under the cosh and under pressure as a parent or a child. Teachers know their pupils very well; they are caring individuals who want the best for their pupils. I suspect that they can tell when something is awry or that something is up. What this does is assure them that what they are doing and saying is the right thing. I applaud Linda Dillon for her work and her perseverance on this, because it is right that we insert this in the Bill.

Ms Dillon: Will the Member take an intervention?

Mr Frew: Yes, I will.

Ms Dillon: Does the Member agree that, for this issue, as with all the other issues, training will be vital, because we want to ensure that information is shared in the appropriate way to protect everybody? We want to support and protect those children.

Mr Frew: Yes, absolutely. I will come to training in a wee minute.

For Operation Encompass, the puzzling thing for the Committee was that we identified that there was a problem and that there was a gap — the police, no less, were telling us that there was a gap — but we could not identify the cause of the gap, which was puzzling. Therefore there is absolutely no doubt that it needs to be in to give us a cast-iron guarantee.

Mrs Long: I thank the Member for giving way. I draw his attention to the fact that the Department wrote to members and set out what the gap in legislation was, but that it was our view that it was primarily an education issue. Subsequently, however, we continued to receive written questions asking what the gap was, after we had sent a letter describing it.
Mr Frew: There is no doubt, and I will admit to the House for the Hansard report, that I am still confused on the issue. On the one hand, we are told by the police that there is no provision and that they worry about information sharing; on the other hand, a live pilot scheme is ongoing. That added confusion to the round as we debated this in Committee. I am glad that the amendment will give the PSNI some reassurance. However, if this amendment does not do it, let us fix it at the next stage.

It is important to note that, because I will have to heap praise on the Minister too, the amendment that she brought forward is very thick and is very good reading. It deserves super merit, and I suspect that that is what we will be looking at in the Further Consideration Stage. I thank the Minister for her input and her engagement with the Committee on this. There is a real spirit of coordination and teamwork, and, at the end of this, we will have a very good piece of legislation, because it is the little things that matter.

When a child who has just witnessed a horrendous scene in the night, or even the hours, before school time, the teacher knows that that child may not come in or may be late, may not have their uniform on or have their homework done and that the child's behaviour may not be appropriate. You can understand all the reasons why that would be. We talk about joined-up government. In the real world, people need joined-up services.

Mrs Long: I thank the Member for giving way again. He said that he is not clear about what the gap was. The police already have the power to share information with educators where it relates to safeguarding. For example, where a child has not been fed or does not have a coat, those issues can already be reported to educators, and that information can be shared. They cannot do it for the purposes of well-being, for example, to support a child emotionally through those difficulties. That is where the gap in the law exists.

Where abuse does not lead to actual harm, which is the debate that we had earlier, there may be no vires for the police to share information with schools to allow them to do that. That is the distinction, if that makes it any clearer for Members.

11.30 pm

Mr Frew: I thank the Minister, because it does make it clearer. When you are going through all this in your head, you tend to miss things — I do anyway — so I thank the Minister for that clarification.

There is no doubt that it is a good thing that these services can engage and give as full a picture as possible to teachers and educators. Given the child's experience of adverse behaviour and everything else over the night before, the week before or the month before, getting into trouble in school can only cause them to spiral into even deeper depths. We need the educator to be informed so that they can give the child some support. That is what we need to do, because the child is at the centre of all this legislation. Does Miss Woods want to come in?

Miss Woods: I thank the Member for giving way. I was going to address this in my speech later, but the lack of well-being provision has been brought up. Provision for well-being is already on our statute book. The Children's Services Co-operation Act received Royal Assent in 2015. It was brought to the House by my predecessor, Steven Agnew. The stated aim of that Act is:

> *"to improve co-operation amongst Departments and Agencies and places a*

duty on Children's Authorities, as defined by the Act, to co-operate where appropriate as they deliver services aimed at improving" —

and this is crucial

— "the well-being of children and young people."

Mr Frew: I thank Miss Woods for that intervention. Again, it is very helpful.

Mrs Long: Will the Member give way?

Mr Frew: Yes, I will give way to the Minister.

Mrs Long: I want to clarify that I did not say that it was not possible for the agencies to cooperate. The issue is specific to information and data sharing — private information about families — and that is not, as has been suggested, covered.

Mr Frew: OK. Thank you, Minister. It is great fun being a conduit between two Members; it really is.

That is why Operation Encompass is so important, and that is why we had to put it into the Bill. I am glad that the Minister supports that, and we will no doubt work with her to strengthen it at the next stage.
We support the Minister on amendment No 19. Amendment No 20 is about guidance on data collection. We heard earlier from Mr Allister about his angst at this new offence. It is vital that data is collected and that we can use that data in good ways. It reassures all of us that we will be able to test this legislation to ensure that it is fit for purpose. However, there is absolutely no doubt about it: if the training is not fit for purpose, this legislation will not be fit for purpose either.

What do I mean by that? I have experience of this. I brought to the Assembly the child protection disclosure scheme. It was my amendment to, I think, the Justice (No. 2) Bill, or maybe the previous Justice Bill; I cannot remember. I brought that amendment, and the child protection disclosure scheme was passed by the House . It is fair to say that that legislation was ignored by the PSNI. It went nowhere. I kicked up, asked questions, met and fought with the police, and there was also a change of position in the PSNI. After that, two police officers, one male and one female — it is not fair to name the officers, one of whom has moved on — picked it up and ran with it. They relaunched the child protection disclosure scheme through which parents get to find out information about someone who could be a threat to their child. Why is the parent always the last to know? The police ignored that legislation. I am glad to say that it has been relaunched and reinvigorated and is being promoted and advertised on the internet.

Mr Deputy Speaker (Mr Beggs): Can I draw the Member back to the amendments that are before us at this late hour?

Mr Frew: That is why it is so important that there is training to ingrain the legislation into the mindset of the services that will use it. It is vital that the police, and others, get adequate training. Independent oversight is also important in ensuring that the legislation is being enacted and used, serving the public, serving and protecting the victims, and putting the perpetrators behind bars. That is why we need training and independent oversight.

I move now to the report on the operation of the Act. This is too important, cutting-edge and new for us to let it go into the ether when it leaves the House. We need to keep an eye on it, keep on the ball and ensure that the legislation is fit for purpose and works to serve the people. I would have doubts about that being the case if the training were not sufficient and routine. I get the Minister's point that the police do not train on any particular offence and that this could set a precedent. I say, "Why not?" If an offence is new and fresh, and if it is a new concept, we can see how the judicial system could struggle with it.

Mrs Long: Will the Member give way?

Mr Frew: Yes, I will give way to the Minister.

Mrs Long: To clarify, again, I said that the police do not train people annually with regard to any offence. I did not say that they did not train people with regard to new offences.

Mr Frew: I am happy to clarify that position and to correct myself. However on annual training, it is fair. Doug Beattie will have massive experience, and I have a wee bit, of the annual training that the Royal Irish go through to hone their skills, keep them fresh and keep them alert on the presence of the standard operating procedure and, as is the case here, the law. There is no reason why we cannot have a rigorous training routine. It does not necessarily have to be overwhelming. It can be an annual occurrence that keeps everybody on their toes and alert, and keeps things fresh in their mind. That is what we have been asking for. Training, along with the independent oversight, data

collection and the reporting on the operation of the Act, is vital. This is key legislation. It cannot, and should not, be ignored. We need to keep on top of it. I will leave it there.

Ms Dolan: I remember clearly the first time I was introduced to the term domestic abuse and what it meant. I was 16 years old, and Fermanagh Women's Aid had come into my school to give a presentation to our year group. What stood out to me from that presentation was hearing that domestic abuse was not just physical. That was about 14 years ago. To this day, that presentation remains one of the more valuable things that I learned in school. In 2018, I went on to partake in training on domestic and sexual violence awareness with Fermanagh Women's Aid. Given that, it has been a privilege to be a member of the Justice Committee and to be able to shape the Bill to ensure the protection of the thousands of victims who, through no fault of their own, are abused at the hands of their spouse, partner or family member.

On this, my first opportunity to speak on the Bill, I commend my fellow Committee members for their thorough scrutiny of it, the Minister and the Department of Justice for bringing it forward in a timely manner and all of the groups and organisations who provided written and oral evidence to help better inform us, and, of course, I give special thanks to the victims who provided written and oral evidence of their experience. It is unfortunate that legislation of this nature is required, but, from listening to those groups and the victims, there is no denying that it is absolutely necessary. Incidents of domestic violence are at an all-time high, but that is not a high of which we can be proud. As shocking and harrowing as the statistics are, in some cases, they are only the tip of the iceberg. As most of us know, it usually takes several incidents before the victim realises that they are being abused or builds up the courage to lift the phone. In some cases, that phone call or plea for help never happens.

'Is This Coercive Control?' was a special one-off documentary on BBC Three comprising a social experiment in which a group of young people aged between 18 and 30 came together to consider whether they truly understand what constitutes coercive control. Seventy per cent of people failed to see the signs of coercive control in that documentary. That highlights the education and training that is required around this behaviour. Therefore, I welcome amendment No 21, which would insert a clause and put a statutory duty on DOJ to ensure sufficient training of policing and criminal justice agencies, including PPS and Courts and Tribunals Service staff.

Throughout the Committee's considerations of the Bill, one of the most prominent recurring themes from organisations was the need for comprehensive training for anyone involved in gathering evidence and prosecuting and enforcing the new law. The success of the Bill will depend on the effectiveness of that training. It is essential that all first responders and criminal justice agencies fully understand what coercive control is and are able to recognise the signs of coercive and controlling abusive behaviour. Indeed, that was recognised by the PSNI in its written submission to the Committee. The PSNI recognised that officer training on the definition of the new offence and examples of the behaviour that it involves will be pivotal for the successful enforcement of the legislation, a view that was echoed by the Chief Constable. That also requires appropriate resourcing of and investment in training, and I fully expect the Minister to step up in that regard.

A great example of this training is Fermanagh Women's Aid's undertaking of an education programme targeted at those in the beauty industry, among other sectors, so that they are able to spot the signs and signpost if a client confides in them that they are a victim of domestic abuse. Similar to the training that I took part in in 2018, that is an invaluable exercise in trying to eradicate domestic abuse. As a society, we should all take some responsibility to educate ourselves. We need to know the difference between abusive and non-abusive relationships. We need to challenge assumptions about gender and power. We need to help young people to understand that abuse is a crime.

It has been mentioned — so, I apologise — that we had hoped to table an amendment proposing a statutory entitlement to 10 days' domestic violence paid leave for all workers. Domestic violence can affect employment, productivity and health and safety. Domestic violence often follows —

Mr Deputy Speaker (Mr Beggs): I remind the Member that we are debating the amendments in front of us. Those are the appropriate issues to comment on at this stage.

Ms Dolan: Yes, I am coming to a conclusion. There is a growing recognition that domestic abuse is a workplace issue. In the absence of workplace policies, colleagues and managers are not equipped to support victims and ensure that they are safe. Earlier today — yes, it is still

today — Sinn Féin TDs introduced legislation in the South that would provide a statutory entitlement to 10 days' paid leave for victims of domestic abuse, regardless of what sector they work in. We were informed that that is outside the scope of the Bill, and we accept that. The Minister for the Economy said that she would bring this forward in the future. I want to make sure that it is brought forward, because it is a vital issue and an absolute priority.

Mr Durkan: My colleague and the SDLP justice spokesperson, Sinéad Bradley, will set out the SDLP's position on each amendment, so I do not intend to take up too much of the House's time at this late, late hour. Suffice it to say, I support the Bill and those amendments that will help to tackle the scourge of domestic abuse. Lockdown has been a challenge for all of us. However, for many victims of domestic abuse who have been confined to their homes when home is not a safe place, lockdown has been extremely dangerous.

11.45 pm

I will focus my remarks on amendment Nos 21, 23 and 26. It was not that long ago — certainly within the lifetime of many of us here — that the prevailing attitude was that these were private matters, but there is, at last, a recognition that domestic abuse is a public concern and a realisation that it requires a strong public response. This group of amendments is crucial to ensuring, monitoring and measuring the effectiveness of that response. Making psychological abuse and coercive control an offence, as clause 1 of the Bill would, reflects how public understanding of domestic abuse has evolved. Just over four years ago in the Chamber, I proposed an amendment to a motion on domestic abuse, rape and sexual crime, in which I called on the then Minister of Justice to criminalise such patterns of abuse and coercive control that victims are subjected to by their abusers. The Minister, Claire Sugden, was most receptive. I am sure that she and many others in here and outside share my frustration that, due in no small part to a three-year political stand-off that left us with no Assembly, we are able to do that only now. Let us hope that that is all behind us. I do not know how many people follow debates in here at the best of times, let alone those taking place close to midnight, but anyone watching this tonight could not fail to be impressed, and perhaps a wee bit surprised, by the collegiate approach, and even camaraderie, that the parties have shown to legislating on this significant and sensitive issue. Well done. Let us have more of it.

Interestingly, during that debate four years ago, I referenced a pioneering storyline from the long-running radio soap 'The Archers' that highlighted the issue of coercive control in a gripping but sensitive manner. Four years on, all the major TV soaps have done coercive control storylines. They are more than titillating story arcs that grip viewers, however. Those stories save lives. There are people — women and men — who have been subjected to that type of abuse for years without even recognising themselves as the victim of anything. It may not be until they see what is happening to Yasmeen in 'Coronation Street' or Chantelle in 'EastEnders' that the penny drops. That is why it is important that we piggyback such vehicles to get out vital public information, messages of support and, crucially, offers of help to victims.

Sadly, however, domestic abuse is not confined to our airwaves and screens, nor does it manifest only through physical violence. Often, physical attacks occur only after victims have been cut off from support networks, emotionally abused and manipulated to the point at which they are more likely just to accept physical violence or are too afraid to leave. Many of us will know people who have been through that. More worryingly, many of us will know people who are going through it, but we do not even realise it. That underlines, as if it needed underlining, the importance of amendment No 21 and training. If agencies cannot spot abuse, what chance do they have of stopping it?

(Mr Speaker in the Chair)

While coercive control can pre-empt or reinforce physical abuse, it is a form of abuse in its own right, with lasting harm to victims. As others have done, I welcome the progress made, but I recognise the particular difficulties that other jurisdictions have seen in securing convictions for that type of abuse, which are not just the difficulties that we already face in securing convictions for physical abuse. There will be other evidential challenges that are particular to the type of behaviour that causes psychological harm. That is why amendment Nos 24 and 26 are so important. They will ensure that the data is there to monitor and understand how this translates from statute into practice.

Victims need to have confidence that their experiences will be recognised as abuse and to have confidence in the process. The opportunity that the Bill presents will be squandered if, first, cases are not brought where appropriate and, secondly, convictions

do not follow. Amendment No 23, which provides for independent oversight, is also important in that regard, particularly given the lack of a domestic abuse commissioner.

On another point that I will deal with quickly, I know that the Committee has considered the issue of parental alienation. I also know that La Dolce Vita Project in my constituency has been to the fore on that issue. Many of the cases that the Bill will be relevant to will be those that mean that children will be safer with supervised contact or with no contact at all with a parent. However, there are other cases in which abuse by one parent of another is not the issue, but children's relationships with one parent suffer as a result of a breakdown in the adult relationship. I would be grateful if, in her response, the Minister would confirm the aspects of the overlap between her Department and the Department of Health and, importantly, how the Departments can work together to address that difficult issue, which undoubtedly causes much hurt and harm.

Ms Dillon: Will the Member give way?

Mr Durkan: Certainly.

Ms Dillon: I thank the Member for highlighting the La Dolce Vita Project. As a Committee, we met its representatives during the process, and I have met them as an MLA. Some of their ideas about how we can deal with parental alienation do not fall in the legislative sphere, but they have some really good ideas about types of pilot projects and things like that that could be done. I think that they have a lot to offer, and I have suggested that they should come back to the Committee and discuss that specific issue, outside of the Bill, and that we would want to look at that as a wider issue. Those issues are not always dealt with through legislation, and I think that that is what the Member had alluded to.

Mr Durkan: I thank the Member for her intervention. I certainly recognise the complexity of the issue and the importance of how we can work together and Departments can work together to help to reduce the incidence of that form of abuse.

Amendment No 21, with its focus on training, is most positive and will be broadly welcomed by victims and many organisations that work in the sector. I put on record our gratitude to those hard-working and hard-pressed organisations that support victims, including Women's Aid, Victim Support, the Men's Action Network, the Men's Advisory Project, Nexus and the aforementioned La Dolce Vita Project. Those groups need more than warm words, and I think that Ms Dillon referred to that. They also need cold, hard, financial and practical support. We must do more to support them in their work in changing and, without doubt, in many cases, saving lives.

I will conclude by saying that I hope that the Bill sends a strong message to victims of domestic abuse that they have our full support and to perpetrators that there will be zero tolerance. Moreover, I hope that that message is followed through with results. I believe that the amendments that we will support will strengthen our efforts to do just that.

Mr Gildernew: I want to speak to the elements that the Health Committee looked at with this group of amendments. Again, I emphasise that the Health Committee is very much aware that this is largely a piece of work for the Justice Committee and one that the Health Committee has welcomed.

The Health Committee looked at the implementation and operation of the offence and welcomed debate on the need for additional training for front-line workers. The Committee welcomed discrete recognition in the Bill of the damage that can be done to children and young people by their seeing or hearing domestic abuse or by their being involved in abuse, such as when a child is used to contribute to emotional or psychological distress. That connects with the cross-cutting policy area of adverse childhood experiences.

Stakeholders flagged the issue of under-reporting and communication issues around domestic abuse incidents and the fact that the Protect Life 2 suicide prevention strategy acknowledges domestic abuse victims as an at-risk group. The Committee, therefore, recommended that statutory guidance and associated training be provided to front-line responders on the implementation of clauses 8 and 9, in particular. Again, the Committee has not formally considered the particular wording of the amendments that deal with training, but it would support the objective in principle, and I note that the Minister will not move amendment No 15.

If I may, a Cheann Comhairle, I will reflect on some of my experiences of this in order to explain in part why I am so pleased to be part of the debate. I was reflecting on Linda Dillon saying that, while some of us may not be experienced legislators, we have experience in all sorts of ways that are relevant to the debate. I want to share with Members an experience

that I had while I was training for my social work role.

I worked with a woman who, as I got to know her and she explained her story to me, set out in detail something that I found truly shocking but that I was further shocked to find out is not as uncommon as many of us would like to believe. This goes back to when the woman got married 25 or 30 years ago. She married her childhood sweetheart. She had known him for many years. In her words, "You could not meet a nicer fella", but that was until the day that they were married. As was the tradition at the time, they returned to the family home after the wedding. He raped her. That woman escaped out of the upstairs window of a two-storey house, ran naked to the police station and told them what had happened. She was wrapped in a jacket and put in a police car by a policeman and a policewoman and returned to the family home, whereupon they knocked the door, got the abuser out of his sleep and asked him whether he had raped her, which he, of course denied. Then, in front of her abuser, they asked her whether she was happy to remain and stay at the home. She told me — this has stayed with me since — that with her mouth she had to say, "Yes, I am happy to stay", but with her eyes she was trying to tell the policewoman to take her with her.

I raise that because I do not think that legislation makes the difference in a case like that. I know that we have achieved much and have much more to do, but I think that training makes the difference in the implementation of many of these types of legislation. I had the benefit of significant and valuable training in my social work role, as part of multidisciplinary teams, in the recognition of domestic abuse and coercive control. I was struck on several occasions by the fact that, around the table in that multi-professional setting, some of the most valuable peer-training experiences that I had were with members of the police, because they got it. They recognised the problem because they were trained in how to recognise it, how to spot it and how to engage with it in order to deal with it.

I wanted to share that in order to highlight the value of training. Legislation is not the complete answer; the training is the part that adds the real value.

Mr Lyttle: I welcome the opportunity to speak in the Consideration Stage of the Domestic Abuse and Family Proceedings Bill on behalf of the Alliance Party. The Alliance Party is clear on this matter: domestic abuse is a heinous crime. I welcome, therefore, the leadership that is being shown by the Alliance Party leader and Justice Minister, Naomi Long, to progress this important legislation, and I welcome the work that she is doing to deliver a safe and shared Northern Ireland for all. I also recognise the work of Department of Justice officials and the previous Justice Minister, the members of the Justice Committee and all respondents to the Committee Stage of the Bill.

The focus of the Northern Ireland Executive and the Assembly has necessarily been on the emergency response to COVID-19, but we must continue to progress key priorities such as tackling domestic violence, the impact of which we know has increased during social isolation, as perpetrators have exploited the emergency in order to commit domestic abuse.

Thankfully, this legislation, introduced by Justice Minister Long, sends a clear message to perpetrators of domestic violence and coercive control to say, "You will be brought to justice", and to say to victims, "You are not alone. We will support you". I pay tribute to the many organisations that work to support victims and survivors of domestic abuse in Northern Ireland.

As Alliance education spokesperson and chair of the Assembly all-party group on children and young people, I welcome the response in the legislation to the serious impact of domestic abuse on children. Seeing, hearing or being present during an incident of domestic abuse can profoundly affect a child's physical and mental health for life.

12.00 midnight

Group three contains important amendments in that regard. They include amendment No 18, which would give power to make regulations for the purpose of informing a school that a child saw, heard or was present during domestic abuse. That provision would enable police to share information with schools and to deliver approaches such as Operation Encompass, an approach that has been taken in other jurisdictions and is to be piloted in Northern Ireland. It is my understanding that the aim of Operation Encompass, as referred to by other Members, is for police and education information sharing to enable schools to offer immediate support to children and young people who experience domestic abuse. Information shared by police prior to the start of the school day, after officers have responded to a domestic abuse incident, can help schools to give appropriate and timely support to the child.

As we know, domestic abuse has been identified as an adverse childhood experience that can lead to physical and psychological harm to a child.

Ms Dillon: Will the Member take an intervention?

Mr Lyttle: I am happy to give way to the Member.

Ms Dillon: Will the Member, in his role as Chairperson of the Education Committee, keep an eye on that when it comes through and see whether it is working effectively in the manner in which it should? The Justice Committee would appreciate the Education Committee doing that because it would be more difficult for us to keep an eye on that end of things.

Mr Lyttle: Absolutely. I welcome that intervention. Committees must enhance their cooperation on a number of key public policy issues. I will give my commitment as Chair of the Education Committee to ensure that we keep that issue a key priority.

Research overwhelmingly identifies domestic abuse as a contributing factor to school drop out and exclusion, youth homelessness, and risk-taking behaviour. The Operation Encompass approach aims to mitigate that harm by enabling early intervention and immediate support for the child. Responsive support of that nature in the school setting should mean that children can be better safeguarded against the impact of such domestic abuse. Alliance will therefore support the passage of the amendment to Further Consideration Stage for further amendment at that stage.

Alliance will also support amendment Nos 19 and 20, which provide for guidance relating to the Bill's provisions. My party supports the provision of guidance on key aspects of the Bill, including what is deemed to be domestic abuse, abusive behaviour, the new domestic abuse offence, evidence gathering, sentencing and support services. Such guidance will assist those who investigate offences, those who pursue criminal proceedings, and community and voluntary sector partners.

Alliance will also support amendment No 24 on reporting, although I believe that it may need further consideration at the Bill's next stage.

My Alliance Party colleague John Blair MLA has spoken on the other amendments in the group. I will therefore bring my remarks to a close. We must work to ensure that the home is the safest place for everyone in the community. The legislation that has been brought forward by the Justice Minister is an important action to help us to achieve that aim.

Ms S Bradley: I note that we are four minutes past the witching hour that Mr Beattie referred to. However, I have no doubt that the Members who are in the House will, like me, be motivated by the impact that this work can have. It is very much worth our while being here. That will spur us on until whatever hour we need to be here.

I have the advantage that two colleagues have eloquently spoken ahead of me on group three. On account of that and given that the Chair, Deputy Chair and other members have expressed many of the views that were discussed at the Committee, I will aim to make my remarks as quickly as possible.

Amendment No 18 deals with Operation Encompass. Like many good ideas, it turns out to be a simple one. Like, I am sure, other Committee members, I was sent an email with a link to a video that showed us the origins of Operation Encompass. It was really interesting to watch. It showed a couple — he was a police officer, and she was a schoolteacher — coming together at the kitchen table to work out the missing link. It is so simple yet effective. The effect that it has on children's lives, as well as empowering teachers to do the best by a child on the day, should not be overlooked. I commend Ms Dillon for persisting that this needed to be in the Bill, but I recognise that it is just one part of what is required. We are reaching, through the Bill, some children who are involved in that process. This is not the wider piece that we should all do to find out how we reach all the children who may not be covered in the Bill. That simple idea should be rolled out further.

We will support amendment No 19, along with amendment No 20 on the guidance on data collection. The points about that have been well rehearsed on the Floor, so I will not go over them, other than to say that we had a conversation about not just the reason why we need the data but the value of that data as we move into later stages after the Act becomes operational.

Amendment No 21 is on training. I thank the Minister for not moving amendment No 15 yesterday. That helps us to start with a clean slate and to build to where this needs to go. I note that such collaborative work has happened at different junctures throughout the Bill. That has been helpful, because it has allowed

people to air a view or express a direction of travel. The amendment sets down the first piece that we can move on with.

On independent oversight, the conversation started with the possibility of a commissioner, but that had to be pared down, and, at times, a bit of realism had to be injected into what resource may or may not be available. However, nobody deviated from the fact that having independent oversight is critical, because, otherwise, how would we know, without that data and somebody somewhere watching, how the Bill has hit the ground and how it is functioning? I welcome the review seven years after commencement. We must set parameters in trying to be realistic about resource.

We will also support amendment No 24, which is about the report on the operation of the Act.

We will also support amendment No 26. It is best to include that data at the outset. If we are gathering data, it is a lot less expensive and labour-intensive to set up the format at the beginning, instead of having to revisit it because we missed out something. We may miss out things, and we may have to revisit them, but the fact that amendment No 26 brings in one of those items is to be welcomed.

In speaking against amendment No 25, the Minister made a compelling argument about operational capacity, which I accept, so, on that basis, we will not support amendment No 25.

Miss Woods: I want to touch on a few things before getting into amendments that I have tabled and others have referenced.

Operation Encompass, as others have stated, is a scheme that is in place in two thirds of police forces in England and Wales, and we need to have it here. I do not need to go into the detail of it, but support in the school environment means that children are better safeguarded against the short-, medium- and long-term effects of domestic abuse, and that is, of course, welcome. Whilst I had queries about the legislative gap, which I outlined, with regard to the Children's Services Co-operation Act 2015, I welcome the Committee amendment, if it does what is needed. If further changes or alterations are needed to make the clause as effective as possible, I look forward to those being made at Further Consideration Stage. I would support the provision being extended to cover other educational settings where children and young people attend such as colleges, preschool, nurseries and so on, if that is deemed to be required. If we need further regulations or, indeed, further amendments to the legislation to cover individual incidents rather than two or more, as set out in clauses 1 to 4, I would welcome those being included in the justice (miscellaneous provisions) Bill or at Further Consideration Stage.

Turning to training and resourcing, during Committee proceedings, a wide range of organisations highlighted the need for comprehensive training for anyone involved in gathering evidence, prosecuting and enforcing the new law, and they expressed the view that the legislation would be effective only if that takes place, and I completely agree. Legislation is only as good as its implementation, the ability to understand it, the resourcing of it and its enforcement. Legislation can be passed but have a limited impact if there is insufficient public awareness and understanding of how it works and what it means. Therefore, whilst we create an offence in the Bill, namely criminalising domestic abuse and coercive control, it is fundamental that the general public, the victims, our Police Service and our criminal justice agencies know about it and, crucially, that our judicial system knows about it.

The Department of Justice advised the Committee that it recognised the importance of training but did not consider a requirement for it in statute. It said that discussions were being held with the Judicial Studies Board to raise awareness, including what lessons could be learned from other jurisdictions. We also discussed the need for consistency in the use of any discretionary power to prohibit cross-examination in person. That was shared with the Judicial Studies Board, and I welcome that.

The Department said that the PSNI continually trains officers in regard to dealing with domestic abuse. As a result of the 2019 thematic inspection of the handling of domestic violence and abuse cases by CJINI, the PSNI is developing a domestic abuse training programme focusing on new officers and first responders.

We were advised that the PPS would deliver domestic abuse training to all lawyers to cover the new aspects of the legislation. It is intended that there will be specialist training, most likely provided by specialist organisations, to focus on the impact and effects on victims of coercive and controlling behaviour. The PPS, in its written and oral evidence to the Committee, said that it was considering establishing specialist domestic violence and abuse prosecutors to dovetail with the new legislation. I welcome that.

The PSNI, too, recognises that officer training on the definition of the new offence, with examples of the behaviour that it involves, will be pivotal to the successful enforcement of the legislation. The Chief Con, attending the Committee on 24 September 2020, outlined the training being developed to familiarise front-line officers with what coercive and controlling behaviour looks like. He said that the training would be online and classroom-based and would be rolled out from December. Particular roles would receive specialist training, where required.

Training of the PPS, PSNI and judiciary is crucial to the effective implementation of the legislation. That was fundamental to the effective rolling out and adoption of the Scottish legislation, the so-called gold standard.

Mr Givan outlined the Committee's view that, given its importance to the effective operation of the legislation, there should be a mandatory requirement in relation to training, and we agreed to table an amendment, which I welcome.

Similarly with the reporting amendment. The Department claimed that placing training on a statutory footing was not required but gave no reason other than to say that it would happen. Saying that it will happen is no guarantee that it will, whereas putting a commitment or a duty to provide training in statute provides something of a guarantee that it will. The question is whether or not it strengthens the Bill, and I believe that it does.

In a letter from the Minister to the Justice Committee on 1 November, the Minister indicated that she would not support the amendment and was going to bring forward her own amendment. She wrote:

> *"On the issue of training I cannot support the Committee amendment but would propose to bring forward an alternative amendment"*

— which we have heard —

> *"which would place the duty for training on the police and prosecution service rather than the Department. Responsibility for training and its effectiveness needs to rest with the organisations that have key responsibility in relation to criminal proceedings on the new domestic abuse offence, that is the PSNI, the Public Prosecution Service and the Northern Ireland Courts and Tribunal Service. There is also a need to ensure that provisions are targeted and proportionate in terms of their coverage and the extent to which organisations will be involved in the delivery and implementation of the new offence. Furthermore, while fully recognising the importance of training it is not for the Department to dictate to other independent entities as to their operational procedures and requirements."*

The Minister's letter to the Committee regarding mandatory training makes a crucial point, and one that I agree with:

> *"while fully recognising the importance of training it is not for the Department to dictate"*

I agree that it is not for the Department to dictate, but those entities, namely the Northern Ireland Courts and Tribunal Service and the PSNI, are funded entirely by the Department of Justice. Funding for the PPS is provided by the Northern Ireland Assembly.

All staff, other than the director and the deputy director, are members of the Northern Ireland Civil Service, funded by the Department of Finance. While I appreciate that we cannot dictate to the judiciary how they are trained, I urge training in the new offence to be implemented for each and every member. They did it in Scotland, and they can do it here. My point is that, although it is not for the Department to dictate to independent entities, which covers off the judiciary, but it does not cover off Assembly-funded agencies. I also have sympathy with the Department not being able to dictate the detail. That is, of course, not what we are saying.

12.15 am

Mr Givan: I appreciate the Member giving way. I have a lot of sympathy for what the Member has highlighted about judicial training. Clearly, an argument has been made — rightly so — about judicial independence, but that does not mean judicial isolation. Therefore, it is important that there is a clear understanding in the Bill. The evidence that we heard from a range of witnesses was that judges, in approaching these cases, need to handle them carefully. There have been occasions on which some of the commentary that has been heard from judicial office holders has been detrimental, and that needs to be borne in mind by everybody involved.

When we speak about how the judiciary operates, consistency in hearing cases is so

important. One witness in the informal evidence that we heard spoke about how, in her case, nine judges were involved in those family proceedings. That needs to be addressed as well.

Miss Woods: I thank the Member for his intervention, and I agree with him entirely. I point to the fact that, in Scotland, it took a year between the passage of the Bill and its implementation to train everyone, and I recognise the efforts that are already ongoing with, say, specialist domestic abuse courts already happening.

To go back to the matter of dictating the detail, we are not saying that in this Committee amendment. However, we are saying that it requires Departments to fund them properly, which is why I tabled amendment No 22. I do not believe that annual mandatory training makes for a tick-box exercise. That is done only when it is made to be that way. Let us take, for example, GDPR, a subject with which most Members here will be familiar. New legislation on that came into effect last year, and I received a lot of training on GDPR in a variety of jobs. That was all different, all required and all necessary. Only two weeks ago, I received additional training on it as a refresher, and I intend to continue to train myself on it and get information from relevant people. It is important and is part of my job. Perhaps I will have some questions, or perhaps something has changed. Perhaps I thought that I understood something differently. While that is a terrible analogy for domestic abuse and coercive control, it shows what may happen if people are not regularly trained on something that is so new and so different to what we had before on such a particular issue, where it may mean recognising harmful behaviour that meets the criteria when the very victim does not recognise it. That brings me back to what Mr Allister said. This requires in-depth knowledge, training, information and practice.

In my personal communications with the lead prosecutor in Scotland, whom I thank for her time over the past few months, and the head of a key stakeholder organisation in that jurisdiction, time and time again, it was reiterated that the successful implementation of the legislation in Scotland and the reason that the new offence is working well all hinged on the extensive training that was carried out. Similarly, in my communication with members of the criminal justice system, when I asked what the ideal outcome of the Bill would be, the key issue that was identified was getting convictions without delay, but the key ask was for training and resourcing.

The need for the amendment is clear. It is essential that people understand what coercive control is and are able to recognise and identify the signs of coercive and controlling abusive behaviour. Otherwise, what changes? The friendly amendment that I have proposed is to add in the word "resources" to Committee amendment No 21, which proposes a new clause on the training of policing and criminal justice agencies. When it comes to tackling a problem as complex and insidious as domestic abuse, passing a law can achieve only so much. Allocating sufficient funding is another way, so, by putting that amendment in the Bill, we avoid a scenario in which underfunding or a scarcity of resources prevents the law working effectively.

Mrs Long: Will the Member give way?

Miss Woods: I will.

Mrs Long: The Member is asking for resources to be provided by the Department of Justice to a number of agencies and not only that but that that money be ring-fenced for training. It is not possible under law for me to tell the Chief Constable how to spend money or organise training, nor is it possible for me to do that with the judiciary. I cannot compel the judiciary. It is independent of — not isolated from — my control as the Minister of Justice.

Furthermore, the PPS is a non-ministerial Department. It lies within the Department of Finance's remit, not the Department of Justice's. The PPS and the Director of Public Prosecutions are completely outwith any political control or interference and for very good reason. Will the Member therefore not concede that, although she is well intentioned, the reality is that she is asking me to spend departmental money in ways in which I cannot and to achieve results that I cannot compel?

Miss Woods: I thank the Minister for her intervention, but at no point did I say that resourcing would be ring-fenced for training. This is about the effective operation of the Act: something entirely different.

If the agencies tasked with rolling out a new offence, enforcing it —.

Mrs Long: Will the Member give way?

Miss Woods: I will.

Mrs Long: The effect is the same regardless of whether it is spent on training or on the effective

operation of the Act. It is, nevertheless, the same duty that is being placed on me for organisations over which I have no operational control. In fact, in the case of the PPS — Mr Speaker, I will be guided by you on the issue — I understand that, if we were to try to interfere with its operations, that would automatically lead to the triggering of a cross-community vote in the Chamber, because that would be encroaching on a non-departmental body on which I do not have the right to impose duties.

Mr Speaker: I do not know whether you were asking me directly or whether it was rhetorical, but it is not something that I would just make an announcement on in the middle of a debate. It is clear, however, that we cannot interfere with the PPS.

Miss Woods: I thank the Minister and the Speaker for their interventions. Mr Speaker, if you wanted to comment on that at a later stage, I would welcome that.

My point is that the finances are provided by the House. I am asking not for specific details of how those finances are designated but that agencies be properly resourced. If the agencies are not adequately resourced but are tasked with rolling out a new offence, enforcing it, supporting it, policing it, getting prosecutions and protecting victims, there will be gaps. It is people who fall through gaps. Of that, we are all too aware.

Mrs Long: Will the Member give way?

Miss Woods: I will.

Mrs Long: I apologise for asking the Member to give way again, but the amendment that she is pushing on resource would place on me a duty to ensure sufficient resources and training if it were to be made. I do not have the capacity to do that, because it would be as a result of a process that would have to go through the Department of Finance and the Executive. It is simply not the case that the Assembly allocates resources to anyone: the Executive and the Department of Finance allocate resources to those bodies.

Miss Woods: I thank the Minister for her intervention. As a relatively new MLA, I may not be familiar with the internal workings of how resources are allocated among Departments for specific issues, but it is my understanding that the Assembly passes the Budget and ultimately decides where resources go.

I go back to the amendment. People fall through cracks when there are some. Vulnerable people fall through cracks. That cannot be allowed to happen. Amendment No 22 would prevent that from being the case or, at least, allow it not to happen.

As we have heard in the debate on the Committee amendments, an overwhelming amount of evidence submitted to the Committee stressed the importance of training and resources in making sure that the law is implemented properly and protects victims. A majority of respondents to the Committee consultation mentioned resources, and, as I said on the Committee amendment, I spoke to key stakeholders in Scotland, where every police officer and judge has been trained in the new domestic abuse law, and they said the same.

In order to ensure that the Executive, future Executives and future Ministers commit to the effective operation of the Bill and to supporting victims, the amendment makes specific reference to the need for sufficient resources to be made available. It is not prescriptive as it does not state an amount or a percentage; it refers to "sufficient" resources — something that is reasonable and proportionate. I cannot stress enough the importance of adequately resourcing all agencies, bodies and organisations — statutory and voluntary — that are involved in the disposal of this new offence in tackling domestic abuse more broadly. It was put to us at the Committee many times. Let us take, for instance, Migrant Centre NI, which stated rightly that the Bill could be the best legislation that you can possibly get on the books, but, if there are insufficient resources for organisations, such as the PSNI, that support victims and for getting information to victims about who can support them, how they can access that support and what it looks like, and without a coordinated and holistic effort, the best legislation will all be for naught. That is reflected in so much of the evidence that I have heard, and that is why I believe that the amendment would strengthen the Bill.

Amendment Nos 20, 24, 25 and 26 are on data collection and reporting on the legislation. The importance of strengthening data collection regarding incidents of domestic abuse and violence, in general, and, more specifically, in relation to the implementation of the legislation was raised by a number of organisations. There is a need for data to track the journey of abuse investigations through the criminal justice system, including the number of initial reports; the number of referrals to the PPS; how many reach different stages of the court process and

how many reach prosecution; what the resulting remedy is; and how many involve repeat offenders, to enable an accurate assessment of the effectiveness of the system. I raised that, early on, as an issue for data collection and monitoring of the legislation from an operational side. Indeed, at the Committee deliberations, I explained the need for robust and detailed data collection.

The police collect statistics on certain offences and publish them in a certain way. That is not the same data that is collected by the PPS or the judiciary. For the Bill to be effective, there needs to be a broader data collection about those who are involved in the legislation. That is, for example, those who are A and B, those who have a child aggravator applied, and the circumstances around A and B. If the different parts of the criminal justice system are working to prosecute for an offence in the legislation but are not collecting or collating data in the same way, how can we report on it effectively? Conversations are going on in the Department, the PPS and the judiciary, and I welcome that, but, if we are working to see whether the Bill has been effective in getting prosecutions and the data does not add up across the three bodies that are actually charging the offence, how can we make sure that it is effective and doing what it needs to be doing if we are not collecting the same data and reporting on it in the same way? It also makes our job as Justice Committee members very difficult in the future.

For example, the police collect data on incidents and offences, but that is not necessarily the same data that is collected by the PPS. We need to look at it as a whole system, because it is one. If we cannot track the legislation and its effects — what happens to someone who comes into contact with the PSNI from first contact to ending up in the courts, to see how this has been for them; the time that it has taken; what has happened; how the court's business was managed and arranged; the number of cases and so on — how will we scrutinise its effectiveness?

Scotland has already reported on its Domestic Abuse (Scotland) Act 2018 and on the offence in terms of public prosecution, which is different — I appreciate that they are different systems. However, if we can show through annual statistics how effective the Bill has been in comparison across all the bodies that are working on it, that is something that we need to have; otherwise, we cannot measure it.

The Department advised the Committee that it recognises the importance of robust data and is reviewing this in relation to the offence. How to best secure this and what will be reported on is being considered in conjunction with partner agencies as part of the operationalisation of the new offence. However, the Department has indicated that it is unlikely to be possible to record the detail that some organisations outlined to the level of an individual victim.

I am glad that the Minister is in agreement with the Committee on amendment No 20 and the need for it. I welcome the fact that there will be a regular and ongoing liaison with partners, following the introduction of the offence, to ensure that as much information as possible is used to consider how the new provisions are operating.

I tabled amendment Nos 25 and 26. Again, both amendments are friendly to the Committee's. I will take amendment No 26 first. It adds that:

> *"The report should also include the number of offences recorded within each police district in Northern Ireland".*

It is self-explanatory; we need to know the number of offences within each police district, as recorded. It is my understanding that the Ministers are supportive of the amendment. I am glad that other Members stated their support for it and that it is possible for the PSNI to report on that after the legislation comes into force. That information already exists, which I welcome.

12.30 am

Amendment 25 has two parts. The first part would add data to be collected on reporting, specifying:

> *"the number of cases where ... the offence is aggravated by reasons as described in sections 8, 9, and 15."*

That is also self-explanatory. How will we know whether the aggravation is being used in the disposal of the offence? We need to know that the legislation in its entirety is being utilised. We need to know whether it is working and whether it needs to be amended.

The second part of the amendment requests "information on A and B"; that is, the alleged victim and perpetrator:

> *"as described in section 75 of the Northern Ireland Act 1998".*

That section, as we know, aims to change the practices of government and public authorities

so that the quality of opportunity and good relations are central to policymaking and service delivery. The:

> *"duties aim to encourage public authorities to address inequalities and demonstrate measurable positive impact on the lives of people experiencing inequalities. Its effective implementation should improve the quality of life for all of the people of Northern Ireland."*

Why is it needed here? That, again, is about the operation of the law after the Bill receives Royal Assent. We are saying that we need the data so that we can develop evidence-based policy and responses. We know that resource allocation and funding go hand in hand with proving data and numbers. We know that funding and resources should be granted based on need, in theory and in practice, but we also know that that does not always happen. However, what if we did not have the information to hand to know where the need was? What if the old way of collecting and publishing data and information was not sufficient enough to show the need? What if there were people who did not come forward, or, for example, did not know how to engage with services, let alone report to the criminal justice agencies and go through those processes? What if, for example, we got evidence like the submission that we heard from the Migrant Centre NI? That is a small community organisation that does not have enough budget allocated for the work that it does, in my opinion, but it does fantastic work. In its evidence session, it outlined:

> *"the need for the Department of Justice and for law and policymakers to reach out to uniquely vulnerable groups, whether they be, migrants, asylum seekers or refugees, LGBTQ groups ... and groups dealing with individuals who have disabilities."*

It stated that:

> *"We desperately need empirical research commissioned by government to learn about the prevalence, extent, nature and experiences of domestic abuse among those groups in particular. Consideration should be given to what procedures and mechanisms, including specialist domestic abuse services, alone or in combination with conventional law and procedures in a legal system, may"*

work:

> *"for them in particular, given the uniquely vulnerable positions that they are in."*

I am not being prescriptive about who or what agency collects the data or how it should be collected. It might be the PSNI or the PPS that collects it, but it might not. It could be the courts, or it could be done through multi-agency risk assessment conferences (MARAC) involving all the key statutory authorities. It could be done on a collaborative basis, and I will argue that it should be done in a victim-focused and sensitive way. I accept that there might need to be some tidying up at Further Consideration Stage of the second section of amendment 25. I would certainly welcome the help of the Departmental Solicitor's Office or the Office of Legislative Council to do so. I note the Chair and the Deputy Chair's comments and the comments of MLAs on the amendment, and I think that I was tempting fate earlier on ongoing support from Paul Frew. However, as the saying goes, "All good things must come to an end".

I will again make to you all the argument that we made in the debates on previous groups of amendments: if it is not in the Bill, there is no guarantee that it will be done. If the wording needs to be worked on to make it functional at Further Consideration Stage to get support from other parties, it can surely remain here via passing the amendment at Consideration Stage in order to allow it to be worked on at a later date. If it needs tidying up, let us do that, but that is the same argument that we successfully made in debates on previous groups of amendments tonight.

I want to pick up on amendment 19 before I bring my remarks to a close. The Department is working up guidance with stakeholders, which is crucial to the Bill and its outworkings, and we heard that very loudly and clearly from the PSNI. I know that the Committee does not have a role in drawing the guidance up, but I encourage the Minister and her Department to share it with the Committee for information as soon as possible. We must ensure that the guidance reflects the contents of the Bill and does not focus on one area at the expense of others and that it is a good road map that outlines the specifics needed for various agencies, especially the PSNI, to which the guidance will be crucial. I therefore welcome the Minister tabling the amendment in relation to guidance and that the guidance will be kept under review. Guidance could play a key role in making sure that there are no issues for statutory agencies collecting relevant data and information.

I have taken up enough time, Mr Speaker. I urge Members to support amendment Nos 22, 25 and 26 for the reasons outlined.

Mr Carroll: It has been long but important and essential debate. I rise to speak in favour of amendment Nos 21 and 22. It is clear beyond doubt that there have been failures in the handling of domestic abuse cases in the criminal justice system. Those failures in the criminal justice institutions have ended not only in a lack of prosecutions where domestic violence has taken place and in a lack of faith in the system to deal with domestic abuse generally, but they have caused unknown trauma for victims who have decided to speak up and report their abuse, only to be met with ill treatment, outdated presumptions, gender prejudices and emotionally damaging questions in courtrooms, to name but a few issues.

It is imperative that we recognise the issue and act to prevent it as far as possible. Victims of domestic abuse and violence have the right to treatment that does not retraumatise them or make them uncomfortable as they seek justice. The many societal roots of domestic abuse and gender presumptions are linked to the oppression of women. That must be dug up and done away with, but that will not happen at the hands of the Assembly, and it will not happen when the Bill is passed. However, it is in our power, today, to ensure that the bodies responsible for dealing with the victims of domestic abuse are trained to do so properly, as that would improve the experience of victims and should be a priority in the Bill. I agree with the robust terms laid out in amendment No 21 that such training should be annual and mandated. I endorse amendment No 22, tabled by Rachel Woods, which mandates the Department to provide resources for such training. There is an onus on the Department to ensure that that training takes place, and it is right that the Department would commit to fund it to ensure that it happens. This place has a poor record in providing for the victims of domestic abuse, and this would be a small step in the right direction.

I challenge those who would vote against resources being allocated to training in this area to listen to the voices of people who have had desperate experiences. Listen to such women's groups as Women's Aid, which has issued a plea today for us to ensure that the legislation is appropriately funded to do what it sets out to do.

Mrs Long: Will the Member give way?

Mr Carroll: I will.

Mrs Long: There is no question about the legislation being properly funded or training being provided. However, there is a significant issue as to who is responsible for that in law, and what responsibility they can have for dispersing, ring-fencing or directing expenditure in organisations that are operationally independent. The Patten report requires that policing be operationally independent from my Department and subject to the scrutiny of the Policing Board. Under the 1998 Act, and the devolution of policing and justice, the PPS was made a separate entity and non-ministerial department. I therefore have no vires over the PPS, and neither does the Assembly, other than in respect of funding from the Department of Finance.

The question, therefore, is not whether we intend to provide funding and training; it is how we structure that in the Bill. With respect, it is not good enough for Members to come to the House and say, "I'm not really sure, but let's put it in legislation and then we can fix it up later". We should put nothing in the Bill unless we have certainty that it is correct. In recent weeks, we have seen what happens when things are not correct in legislation. It is a highly risky way to proceed, and it affects victims and witnesses when we fail to do due diligence.

Mr Carroll: I thank the Minister for her intervention. What she has said may be true, but, with respect, she, as Justice Minister, should be supporting the amendment for mandated annual training, but, from her comments, she does not.
Finally, I urge the Minister to answer another call from women's groups and establish a commissioner for domestic abuse victims. That person could scrutinise the outworkings of the Bill to ensure that it lives up to its aim, highlight potential pitfalls in its operation and ensure that there is a properly funded strategy for women and girls that seeks to address the issues that have been swept under the carpet for decades and that urgently need to be addressed.

Ms Dillon: Will the Member give way?

Mr Carroll: I will give way, yes.

Ms Dillon: I am sorry for interrupting you in mid flow. I thank the Member for giving way. We explored this during our Committee scrutiny of the Bill. It is a conversation that we would certainly like to have with the Minister, and I hope that she will be open to that conversation.

You made a point earlier about the House not doing enough to address domestic abuse. I think that that is the case across the board. I do not think that anywhere can say, "We have done enough". We know from the statistics that no legislature has done enough, and that is a fair point to make. However, there is a wider issue in that the wider community does not do enough and does not recognise domestic abuse as a community problem. I have raised that repeatedly in the Committee. I attended a women's event at which there were approximately 140 to 150 women, and each table was asked to highlight the five top issues in their community for the PSNI. We know from the figures that one of the top issues for the PSNI in every community is domestic violence, but not one single table mentioned that even though the three speakers prior to that had spoken to the issue of domestic violence.

We have a duty to express that to our community so that it understands that this is a community problem. This is not a problem that is behind doors and is for others to worry about in their own homes. It is our problem, and, as a community, we have to look after those people.

Mr Carroll: I thank the Member for her intervention, and I certainly do not want to misrepresent her position. It is, unfortunately, an issue that is prevalent in communities, but communities have been trying to deal with this, and this Chamber and other Chambers have failed to introduce the right and appropriate legislation to provide the appropriate funding, training and resources to tackle it.

The Bill can only be a first step, because it is far from being all-encompassing. I will support the Bill in the full knowledge that more needs to be done, by the House in particular, to support all victims and protect them from domestic abuse. We will need to push hard for those changes in the future. Additionally, I lend my support to and speak in favour of the other amendments in group 3 as well supporting amendment Nos 21 and 22, as I said at the start.

Mrs Long: I appreciate the input of Members this evening. Members are aware that there are two amendments tabled on training: my amendment, which is amendment No 15, and the Justice Committee Chair's amendment, which is amendment No 21. I have already indicated to the House that, having further reflected on discussions with the Committee last week, I will not move my amendment.

I think that we are all in agreement on the need for and importance of training for those who are involved in the operationalisation — I am having the same problem as Rachel Woods — of the new offence. That will be key to ensuring that the offence works as intended and that it can be as effective as possible. I do, however, have a concern about the Committee's amendment and on whom the onus is placed to ensure that training is undertaken. I will want to come back to the House on that at Further Consideration Stage. The Committee's amendment would require me and my Department to ensure that sufficient mandatory training is made available to the police and criminal justice agencies on an annual basis. Neither I nor my Department can interfere in the operational independence of these organisations. It is not for the Department to dictate to other independent entities as to their operational procedures, requirements and priorities. Indeed, I would be stepping outside my ministerial powers considerably to do so. That could also set a precedent in relation to duties being imposed on other Ministers that are not within their responsibilities.

In addition, the amendment as currently drafted will likely invoke the need for a cross-community vote on the Bill at Final Stage. That is the legal advice that we have been given by our solicitor, Mr Speaker, and I hope that you will be able to provide guidance for us ahead of that vote, given that it involves another person interfering with the independence of the Director of Public Prosecutions.

I intend to table an amendment at Further Consideration Stage that would instead place a duty on the PSNI and the Public Prosecution Service to provide training to their personnel. That would also place the same duty on the Department of Justice in relation to staff in the Northern Ireland Courts and Tribunals Service, for whom we are responsible. I consider that the focus, for the purpose of this Bill, needs to be on those who are actively involved in the delivery and operation of the new domestic abuse offence or aggravated offences. It is important that our provisions cover organisations with key responsibility for criminal proceedings on these offences. This will also ensure that operational partners are equipped to investigate the new offence, bring forward prosecutions and facilitate convictions.

12.45 am

Responsibility for training and its effectiveness needs to rest with the operational bodies and should be determined on the basis of operational need. Provision also needs to be targeted and proportionate in terms of coverage and the extent to which organisations and particular staff will be involved in the delivery and implementation of the new offence.

While I remain somewhat concerned that the requirement in the Committee amendment for annual training could materially work against the purpose of the amendment and our shared objective, encouraging a tick-box exercise rather than something more appropriate, I am reassured to a degree by the discussion with the Committee that the intention is to have this training focused on those who are involved directly in domestic abuse cases. Members will wish to note that work is being progressed by both the PSNI and PPS, in conjunction with our voluntary and community sector service providers, as to the form that that training will take. This training will make use of operational guidance that will supplement the guidance that my Department is currently developing under clause 25, also in conjunction with voluntary and community sector partners.

Tied in with amendment No 18 is Rachel Woods's amendment No 22, which relates to the provision of resources to operationally independent entities. This raises similar but more serious issues as the Committee amendment on the duty imposed on my Department. I cannot say this often enough: I cannot dictate to operationally independent bodies how their budgets are distributed or ring-fenced internally. More importantly, this would entail significant and potentially open-ended financial demands on my Department. Let me restate that the Executive have made clear to me that there will be no additional funds for any changes that are made to the Bill. Even if funds were available, it is not within my gift to dictate how those would be used or whether they are ring-fenced for a particular purpose. Furthermore, the Public Prosecution Service is not funded by my Department. Rather, it is an independent entity, a non-ministerial department under the auspices of the Department of Finance. For that reason, I must oppose this amendment. I ask the House to support me in resisting it.

Before moving on to other issues relating to training, I wish to address the issue that Mark Durkan and other Members raised regarding training where it relates to interpretation of the scope of the Bill in respect of parental alienation. I am committed to doing all that I can to alleviate acrimony to improve outcomes for families. The introduction of policy on alienation would, however, be a matter for the Department of Health. I understand that that Department is already taking steps in that regard, with plans to consider guidelines for social services. I am, of course, happy to engage with Minister Swann to scope and support future actions in that regard. Officials are already working with colleagues in the Department of Health to consider how to better support relations between parents and between parents and children. Key to that work will be early intervention. Officials are considering actions that might be introduced to reduce acrimony and negative behaviours at an early stage to improve long-term outcomes for children and families. The provisions of the Bill may assist in cases where alienation is present by providing for circumstances where a child is present during abuse or is used to abuse the victim to be treated as an aggravated offence and for increased sentencing to apply.

The determination of proceedings is, rightly, a matter for the independent judiciary, but the legal framework governing private family law applications makes child welfare the paramount consideration. Court children's officers take account of the evidence and impact of parental alienation when advising the court, and the court will consider all evidence when determining what is in the best interests of the child. The guidance and training provided to the judiciary, however, is another matter on which I wish to elucidate further. As Members will be aware, the judiciary is independent. The issue of judicial independence, as separate from government, is sacrosanct. Judicial guidance and training is a matter for the Lord Chief Justice, not for the Minister of Justice, and is delivered through the Judicial Studies Board. Discussions are being held with the Judicial Studies Board on this, including considering the lessons to be learned from other jurisdictions. The issue of sentencing guidelines will be considered as part of the work being undertaken on the operationalisation of the Bill, and discussions are also being held with the Judicial Studies Board on this. So, the issue is not whether we intend to have adequate training provision but the bodies that have the due vires to be able to deliver it and where those ought to be funded from.

I support amendment No 18 and agree with the intent behind it. It makes provision that will enable information to be shared for the purpose of advising a school of a domestic abuse incident the night before. I withdrew my amendment on that issue following discussion with the Committee Chairs. Members will wish to note that an amendment will be tabled at Further Consideration Stage to further build on and enhance the Committee amendment by providing increased clarity and certainty about what the regulations will contain and ensuring that the provisions are as robust as possible. The expanded enabling powers will be more targeted; they will be explicit that the regulations can set out with and to whom

information can be shared; what is deemed to be a school or college; who is deemed to be a pupil or student of a school or college; what a domestic abuse incident is; circumstances in which information can be shared; unauthorised disclosure; and the associated offences and penalties. That will ensure that the enabling powers are as robust as possible and will provide greater clarity and certainty as to what can be done in the regulations, which will ensure that the necessary authority is provided. That is particularly important given that there will be a need to have offences and penalties associated with the provisions to which we need to refer and which would attract the Assembly's affirmative resolution process. It is important, therefore, that the necessary scope and authority are provided to take forward the detail of the regulations, which will more clearly set out what will be provided for in terms of who, what, why and when.

There is also the issue of vires to take forward some aspects of the regulations. Signposting is needed to enable colleges to be captured and to provide for offences and penalties that are associated with provisions. In the absence of that, there may be a question about whether it is within the Assembly's legislative competence, given that consideration is needed of any infringement of article 8 of the European Convention on Human Rights: the right to respect for private and family life. While there are ECHR considerations to take into account, they are not considered to pose difficulties in taking forward an Operation Encompass model. However, they require us to have due diligence around how that will be managed. That approach, as you know, is already in place in a number of areas across England and Wales. In taking forward the necessary regulations, my officials, in conjunction with their counterparts in Education and Economy, will ensure that the regulations are framed so that they are proportionate, have safeguards and are article 8 ECHR-compliant on the right to a private and family life. With respect to the assertion that the Children's Services Co-operation Act 2015 could have done that already, the PSNI and the Safeguarding Board for Northern Ireland took legal advice and were clear that the legislation did not provide the legal cover for data sharing of that kind. The Attorney General's office is also willing to advise us on the human rights and equality issues in that regard. In addition to that, the provisions will be in place for the unauthorised sharing of information, which provides additional safeguards and protections. I welcome the Committee amendment, and I ask the House for its support for it and for an amendment to be tabled at Further Consideration Stage to build on it.

Amendment No 20 has been tabled by the Chairperson of the Justice Committee. It provides that the Department of Justice:

> *"may issue guidance to ... relevant bodies about the sort of information which it seeks to obtain from them for the purpose of ... assessment by it of the operation of"*

Part 1. It also requires my Department to:

> *"have regard to information which it obtains from the relevant bodies in relation to the operation of [Part 1] when determining the steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of"*

legislation around the new offence. I consider that to be a useful addition to the Bill. Therefore, I support the amendment. At Further Consideration Stage, I intend to table some minor amendments to ensure that the correct legislative references to the organisations are listed in the provision.

I have had helpful discussions with the Justice Committee about independent oversight. I am reassured that that independent oversight function does not need to entail an entirely new entity; rather, it is a function that could be undertaken by, for example, Criminal Justice Inspection or a new victims of crime commissioner. It is critical that there is the necessary oversight and scrutiny of how the new offence operates. I am keen to ensure that we avoid, as far as is possible, duplication of effort in doing that. I am keen to make best use of all the resources that we have at our disposal while taking account of current and future oversight functions in the area. On taking forward an independent scrutiny function, it is important to note that Criminal Justice Inspection Northern Ireland already has a particular interest in domestic and sexual abuse and will continue to have that going forward. Its work programme is subject to consultation, and, as Minister, I can ask that it undertake specific investigations and reviews. The amendment will be bolstered by the role of the Justice Committee and the Assembly all-party group on domestic and sexual violence, as well as by the work that will be undertaken by my Department.

I turn briefly to the issue of a domestic abuse commissioner, because that has been raised in the debate. We were confident that it was outside the scope of the Bill, and that was confirmed by you, Mr Speaker. It was raised in the discussion about oversight, however, so it is important for people to understand the rationale

behind my approach. Given the common interest of the needs of victims and how they are supported, I believe that having a general victims of crime commissioner, with the ability to focus on victims with specific vulnerabilities, such as domestic and sexual abuse, is a more appropriate approach. An expert reference group is considering an approach to this.

In other jurisdictions, a key role for the commissioner is to ensure consistency of service provision. Locally, however, that is not an issue, given our size and structure, the extent of engagement with statutory and voluntary sector partners and the fact that many key organisations are unitary bodies. Having a domestic abuse commissioner on its own, as head of a stand-alone body, would lead to similar calls for other crime types, including sexual abuse and hate crime, among many others. Having a domestic abuse commissioner could lead to a duplication of effort, putting a drain on limited resources. The estimated cost of setting up a commissioner's office could be in the range of £1 million a year, money that, I believe, would be better directed towards front-line services. In that regard, the Committee amendment on data collection also requires my Department to have regard to information received in determining any steps that can be taken to ensure the effectiveness of the operation of the Act. Committee amendment No 23, which I support, taken together with a wide range of oversight and scrutiny arrangements, will ensure that there is robust consideration of how the offence works in practice.

In going forward, there may, however, be merit in considering whether the first report that is produced under the independent oversight arrangement be perhaps scheduled for no later than two years after the offence comes into operation, rather than on commencement of the Act, given that it will take time for the new offence to bed in and for numbers to be meaningful. I intend to seek the Committee's views on a potential amendment being tabled at Further Consideration Stage for that purpose.

Amendment No 19 was tabled following agreement with the Committee that provision be made requiring my Department to keep any issued guidance about domestic abuse under the clause under review and to revise that guidance as necessary in the light of review. I was content to bring forward that amendment, and we have already agreed that we will bring the guidance to the Committee and keep it informed of progress in that regard.

I have withdrawn an amendment that would have required my Department to prepare a report on the operation of the domestic abuse offence and associated aggravated offences. It was posed as an alternative to amendment No 24, tabled by the Chair of the Justice Committee, and there has been lengthy discussion already this evening about that. Having discussed the matter with the Committee Chair and the Committee in general, however, I think that an amendment can be tabled at Further Consideration Stage to give the Committee more time to consider the detail. While I agree with the Committee entirely on the need for information to be provided, the Committee amendment could benefit from minor drafting changes to the legislative terminology used, which will be provided in the amendment that will be tabled at Further Consideration Stage. It will refine amendment No 24, the substance of which I support, with regard to proceedings terminology and stylistic drafting approach.

Rachel Woods tabled two amendments — amendment Nos 25 and 26 — to the Committee's amendment No 24. Amendment No 25 would require the report on the operation of the Act to provide information on aggravated offences. I consider that that could be captured in the amendment that will be tabled at Further Consideration Stage. The second paragraph of that amendment, however, deals with section 75 information on victims and offenders. I am concerned, first and foremost, about how a victim or offender would feel about being asked for that sensitive information and, indeed, about the merit of collecting that data and what it is intended to show. Indeed, there is a risk that it could undermine confidence in the justice system if it were to appear to victims that they were in some way being racially or otherwise profiled. Furthermore, I understand that a number of operational partners cannot deliver on that without undertaking a complete overhaul of their IT systems across the justice system, the ramifications of which would be significant.

As with other amendments, I remind the House that in imposing additional requirements, not all of which materially benefit victims, fewer resources will be available for measures that are designed to help them substantially. Organisations are, however, looking at their reporting on section 75 and how that can be improved, as a separate piece of work.

1.00 am

Contrary to what was asserted by Miss Woods, it is also not the case that we can restrict further this particular item at Further Consideration

Stage. It is an expansive clause, Mr Speaker, and as you will be well aware, it is possible only to add further obligations to those agreed at Consideration Stage, not to reduce them at Further Consideration Stage. Therefore, I cannot support amendment No 25, and I ask the House to reject that amendment.

Amendment No 26, also tabled by Rachel Woods, would again amend the Committee's new clause. I am content with the intent of the amendment, which would identify the number of offences recorded within each police district in Northern Ireland. I, therefore, support amendment No 26.

That concludes, as this stage, my comments on this group of amendments.

Mr Speaker: Thank you. Before I call the Chairperson of the Committee for Justice, I want to address the question about if or when a cross-community vote would be required. The Minister and other Members will know that the Bill has a journey to go yet, with Further Consideration Stage and then Final Stage. It is at Final Stage that that question would arise for me, based on the appropriate legal advice, on the entirety of the Bill as it sits at Final Stage. It does not arise this evening.

Mr Givan: Thank you Mr Speaker. First, let me thank all the Members for their contributions to the debate on the group 3 amendments and, in particular, those who spoke in support of the Committee amendments. Group 3, unsurprisingly, has attracted a lot of attention from Members because these are largely the result of the Committee's deliberations, having heard evidence, in ensuring that the implementation and operation of this offence is as effective as it possibly can be. I thank Members for that.

Some Members took the opportunity to address the wider Bill, which is understandable. I know that there is a lot of interest well beyond the Justice Committee. Members have sought to take the opportunity to provide wider commentary around the totality of what is being put through today. I certainly welcome those interventions.

Mr O'Dowd: Will the Member give way?

Mr Givan: I will give way.

Mr O'Dowd: I am not sure that it is understandable at 1.00 am that Members decide to make speeches about the wider scale of the Bill. Please do not encourage them to do so during the fourth series of amendments that are coming before us. *[Laughter.]*

Mr Givan: The Member will be glad to know — I am sure that everyone will be glad to know — that I anticipate group 4 being relatively straightforward, but there is still a while to go. It is important that Members make this contribution. I take the comment in the spirit in which it is meant, but I know that the Member will also appreciate that we are dealing with vital legislation. It is testament to the huge volume of work that the Committee considered that it is taking this time for the Assembly to debate this issue.

Mr Durkan was right when, in his comments during the debate on this group, he highlighted the collegiate approach that the Committee has taken. Indeed, he said that some people looking on will be quite surprised at the way in which relationships in the Committee have developed in the way that we have been collegiate. It is through that collegiate approach that these amendments are happening today.

Often the work of Committees goes unnoticed. I understand that the media will focus in on other debates that Members engage in and, at times, that is self-inflicted. However, this has largely gone under the radar in terms of the extensive volume of work that we have carried out and the forensic nature with which members of the Committee have carried that out.

Turning to these amendments, I want to again thank the Minister for her decision not to move her amendment No 15 and for her support for the Committee amendments. As was indicated earlier, the Committee is happy to consider any proposed amendments for Further Consideration Stage that build on and improve the amendments that we tabled today, assuming that they are made.

Linda Dillon, in a powerful contribution, highlighted the difference that a teacher can make at the school gate. It is true about having that ability to identify with a child and, rather than chastening, asking, "Are you OK?". That, ultimately, is what this amendment was about. That was touched on again by Cara Hunter in her contribution. She spoke more widely about the need to educate young people about what a healthy relationship is. That is so true, because people talk about a generational cycle that needs to be broken. Sadly, far too many children are being brought up in homes where this seems to be the norm, and then another cycle is created. Therefore, it is right to say that other aspects of society have a vital role to play in helping to educate those young people.

Paul Frew, rightly, praised Linda Dillon for the work that she has done. He also praised the Minister on the detail of the Further Consideration Stage, but I want to be very clear. Had it not been for the Committee's pushing this amendment —. At every stage, the Department made it clear to the Committee that it did not believe this to be within the scope of the Bill. The Committee held the view that that was a decision not for the Department but for the Speaker. That is why the Committee pursued the amendment. It was only at the point at which the Speaker ruled that amendment to be admissible that the Department then came forward with it.

Mrs Long: I thank the Member for giving way. He will appreciate that there were two issues with this. The first is that it mainly pertains to sharing information with the Education Department. At that point in time, we had not seen this as a vehicle to enable us to do that, because we had not engaged the Education Minister on the specifics. However, we had also taken legal advice because, as the Member will appreciate, we do not lobby the Speaker on what his decisions might be. The legal advice that was available to us at the time is what we shared with the Committee, which was that it would not be within scope. Now that we have proven that it is within scope, because the Committee has tested it, I welcome that because, as we assured the Deputy Chairperson during discussions, it was always our intention to move on this issue.

Mr Givan: I thank the Minister for that. She has made that point before. However, it does not change the material fact that the Committee pursued the amendment, and it was at that point that the Department brought forward its further amendment. The issue goes right back to the start of this. It was during Committee Stage, when amendments were being discussed — and this one was discussed at length — that the Committee would have appreciated much more engagement from the Department, rather than holding to its position that, in its opinion, the amendment would not be deemed to be within scope. The Committee always knew that that would be a decision for the Speaker. Therefore, I hope that the lesson will be learned by the Department to engage at the Committee Stage. Notwithstanding that, I welcome the subsequent amendment that will come at Further Consideration Stage. However, there is a learning process there that I am sure that the Minister will reflect upon when it comes to future Bills that come though the Committee.

In respect of amendment No 20 around guidance on data collection, again, Members touched on the importance of having the information. Mr Beattie talked about how that was vital. Mr Frew stated clearly that it was to ensure that the legislation is effective. Linda Dillon talked about how it is the resources that follow the information. Therefore, if we do not have the right data being produced, that will have knock-on implications. I welcome Members' commentary in respect of those areas. Sinéad Bradley and Rachel Woods also spoke on those issues.

A number of Members made comments on amendment No 21 in respect of training and the importance of it. I will just pick up on some of those contributions. In particular, I want to highlight Colm Gildernew's contribution to this one, because it really did hit home the importance of getting the right training. He gave the example of a couple being married and, on that day, the wife being raped. When the police brought her back, her words were saying one thing while her eyes were saying another. That was a powerful contribution. It really goes to the heart of why training is fundamental to the Bill's effectiveness. Many Members touched upon that: we can have as much good legislation as we want written down on paper, but, unless all the criminal justice agencies are properly trained, it will not actually be effective or do the job that we want it to do. I welcome those contributions. I know that Mr Blair took a contrary view on the requirement, because he was concerned that that type of training, the annual necessity for it and so on would put an undue burden on those organisations, but I think that, in my earlier contribution in opening this debate, I addressed how important that training is.

Mr Lyttle: I thank the Member for giving way. Obviously, there has been unanimous support for information sharing between police and schools through the Operation Encompass approach that is provided for by the Bill. To help lead the ongoing efforts of the Education Committee, can the Member advise us whether the Justice Committee has consulted teaching and non-teaching staff with regard to the resources and training that they will need in order to implement the relevant provisions that are proposed in the Bill?

Mr Givan: Can the Member clarify specifically in which area he feels that there needs to be training for the educational establishment?

Mr Lyttle: The proposal is that schools and educational settings will play a role in

responding to children's experiences of domestic abuse. Has the Committee consulted educational settings on that provision?

Mr Givan: Amendment No 21 relates to the criminal justice aspect of it. For the Member's benefit, the training will be specifically for the Police Service of Northern Ireland, the Public Prosecution Service and the Courts and Tribunals Service. That is what it relates to. I assure the Member that that aspect and the amendment that we are speaking to do not touch upon the Education side of it. I hope that that provides reassurance to the Member.

Other Members made commentary around this. Mr Beattie made a key point that the fundamental difference between the Committee amendment and the Minister's amendment was based on two key aspects: "mandatory" and "annual". The Department has resisted those aspects, so I was pleased by other Members' contributions in respect of that. Mark Durkan also welcomed this group of amendments. He spoke about how vital training is, stating that, if agencies are not trained to spot psychological abuse and coercive control, they cannot spot it. He spoke about the importance of it. Jemma Dolan made an important contribution and highlighted the role that Fermanagh Women's Aid has in providing training. It is not just statutory bodies that have a key role to play in this. It is right that Jemma highlighted the role of Women's Aid when it comes to providing that type of training.

I now turn to amendment No 23, which deals with independent oversight. A number of Members again spoke to that aspect. Doug Beattie asked how it would be delivered in the long term. That is certainly a debate that needs to be had. He was right to highlight the fact that the Committee has gone forward with the approach that it is taking because of the short to medium term. In the future, if there is to be a domestic abuse commissioner or a commissioner for victims of crime, all of that will need to be given proper consideration. What we cannot do in the short term is not have the independent oversight that those organisations have asked for. Again, that was touched upon by other Members, including Mr Durkan and Gerry Carroll.

Amendment No 24, which deals with the reporting requirements on the Department, was touched upon by a number of Members. Linda Dillon highlighted her support for the aim, but also indicated the difficulty in collecting information around amendment No 25. She was supportive of amendment No 26. Rachel Woods has articulated very clearly her arguments in respect of all of this around amendment Nos 25 and 26. I have outlined some of the issues that we need to consider in respect of that. We will take forward some of those at Further Consideration Stage. If amendment No 24 can be reflected in and around section 75 and so on, I will be more than happy to support that, but we need to engage further with the Minister on that.

I thank Members for their contributions on this important group of amendments that have been tabled by the Committee. I commend the Committee amendments to the House and ask for your support in respect of them.

1.15 am

Mr Speaker: Before we start the voting, there are some complications in this, so just bear with us if we have to consult to make sure that we get this right.

Amendment No 18 agreed to.

Amendment No 19 made: In page 13, line 34, leave out from "may" to end of line 35 and insert -

"must—

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

(b) revise any guidance issued under this section if it considers revision to be necessary in light of review."— *[Mrs Long (The Minister of Justice).]*

Clause 25, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 20 made: After clause 25 insert

"**Guidance on data collection**

25A.—(1) The Department of Justice —

(a) may issue guidance to the relevant bodies about the sort of information which it seeks to obtain from them for the purpose of the assessment by it of the operation of this Part, and

(b) must have regard to information which it obtains from the relevant bodies in relation to the operation of this Part when determining the

steps (if any) that could be taken by it for the purpose of ensuring the effectiveness of the operation of this Part.

(2) The relevant bodies are —

(a) Police Service of Northern Ireland,

(b) Public Prosecution Service Northern Ireland,

(c) the Northern Ireland Courts and Tribunals Service, and

(d) such additional bodies as the Department considers appropriate.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

New clause ordered to stand part of the Bill.

New Clause

Amendment No 21 proposed: After clause 25 insert

"**Training**

25A.—(1) It shall be the duty of the Department to ensure that sufficient training of policing and criminal justice agencies, including but not limited to —
(a) Police Service of Northern Ireland,

(b) Public Prosecution Service Northern Ireland, and

(c) the Northern Ireland Courts and Tribunals Service, and

is made available to allow for the effective operation of this Act.

(2) Training must be provided annually.

(3) Training is mandatory for all those involved in the disposal of domestic abuse cases in policing and criminal justice agencies, including but not limited to the agencies listed in subsection (1).

(4) Having identified the relevant staff in subsection (3) at the beginning of an annual reporting period, the Department must publish the uptake of training by each relevant organisation at the end of each year.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

Mr Speaker: As amendment No 22 is an amendment to amendment No 21, we need to dispose of amendment No 22 before returning to amendment No 21.

Amendment No 22 proposed: As an amendment to Amendment No 21, in clause 25A(1) after "sufficient" insert the words "resources and".— *[Miss Woods.]*

Amendment No 22, as an amendment to amendment No 21, negatived.

Amendment No 21 agreed to.

New clause ordered to stand part of the Bill.

New Clause

Amendment No 23 made: After clause 25 insert

"**Independent oversight**

25A.—(1) The Department of Justice must not later than 1 year after the commencement of this Act appoint an independent person to —

(a) contribute to the development of the guidance under section 25, and

(b) review, report and make recommendations in relation to the operation of Part 1.
(2) The person must produce a report annually on the activities in subsection (1), starting not later than 2 years after the commencement of this Act.

(3) The Department must —

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.

(4) The Department may by regulations set out the date, not less than 7 years after commencement, when the independent person may cease the duties in subsections (1) and (2).

(5) Starting on the date when the independent person ceases duties, the Department must publish a report on subsection (1)(b) every 3 years thereafter.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

New clause ordered to stand part of the Bill.

New Clause

Amendment No 24 proposed: After clause 25 insert

"**Report on the operation of this Act**

25A.—(1) The Department of Justice must prepare a report on the operation of —

(a) an offence under section 1(1), and

(b) an offence that is aggravated as described in sections 8, 9 and 15.

(2) The report must set out, in relation to those sorts of offences —

(a) the number of cases for which criminal proceedings are undertaken,

(b) the number of convictions in criminal proceedings,

(c) the average length of time —

(i) from service of the complaint or indictment,

(ii) to finding or verdict as to guilt (including plea of guilty),

(d) information about the experience of witnesses (including witnesses who are children) at court,

(e) such additional information as the Department of Justice considers appropriate.

(3) The report must, in relation to those sorts of offences, include distinct statistics for each of them.

(4) For the purpose of the report, the Department of Justice must seek information on how court business is arranged so as to ensure the efficient disposal of cases involving those sorts of offences.

(5) The report must also include —

(a) activities and associated timespans for delivering the guidance in section 25 and any plans for review,

(b) strategies to communicate the provisions of Part 1 to the public and to victims in particular, and

(c) any additional activities which support the operation of the Act.

(6) The Department must prepare a report under this section —

(a) not more than 2 years after commencement, and

(b) thereafter, at intervals of not more than 3 years.

(7) The Department must —

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

Mr Speaker: As amendment Nos 25 and 26 are amendments to amendment No 24, we need to dispose of amendments Nos 25 and 26 before returning to amendment No 24.

Amendment No 25 proposed: As an amendment to Amendment No 24, in subsection (2)(b), at end insert —

"(ba) the number of cases where it has been –

(i) specified that the offence is aggravated by reasons as described in sections 8, 9, and 15.

(ii) proved that the offence is so aggravated,

(bb) information on A and B as described in Section 75 of the Northern Ireland Act 1998,".— *[Miss Woods.]*

Amendment No 25, as an amendment to amendment No 24, negatived.

Amendment No 26, as an amendment to amendment No 24, made: Subsection (2), at end insert—

"(2A) The report should also include the number of offences recorded within each police district in Northern Ireland,"— *[Miss Woods.]*

Amendment No 24, as amended, made: After clause 25 insert

"**Report on the operation of this Act**

25A.—(1) The Department of Justice must prepare a report on the operation of —

(a) an offence under section 1(1), and

(b) an offence that is aggravated as described in sections 8, 9 and 15.

(2) The report must set out, in relation to those sorts of offences —

(a) the number of cases for which criminal proceedings are undertaken,

(b) the number of convictions in criminal proceedings,

(c) the average length of time —

(i) from service of the complaint or indictment,

(ii) to finding or verdict as to guilt (including plea of guilty),

(d) information about the experience of witnesses (including witnesses who are children) at court,

(e) such additional information as the Department of Justice considers appropriate.

(2A) The report should also include the number of offences recorded within each police district in Northern Ireland,

(3) The report must, in relation to those sorts of offences, include distinct statistics for each of them.

(4) For the purpose of the report, the Department of Justice must seek information on how court business is arranged so as to ensure the efficient disposal of cases involving those sorts of offences.

(5) The report must also include —

(a) activities and associated timespans for delivering the guidance in section 25 and any plans for review,

(b) strategies to communicate the provisions of Part 1 to the public and to victims in particular, and

(c) any additional activities which support the operation of the Act.

(6) The Department must prepare a report under this section —

(a) not more than 2 years after commencement, and

(b) thereafter, at intervals of not more than 3 years.

(7) The Department must —

(a) lay the report before the Northern Ireland Assembly, and

(b) arrange for it to be published.".— *[Mr Givan (The Chairperson of the Committee for Justice).]*

New clause ordered to stand part of the Bill.

Mr Speaker: I propose, by leave of the Assembly, to suspend the sitting until 1.30 am. I commend Members for their contributions so far. I will say a few more words when we complete the last session.

The sitting was suspended at 1.21 am and resumed at 1.31 am.

Debate resumed.

Mr Speaker: We now come to the fourth group of amendments for debate. With amendment No 27, it will be convenient to debate amendment Nos 28 to 34. I call the Minister of Justice to move amendment No 27 and to address the other amendments in the group.

New Clause

Mrs Long: I beg to move amendment No 27: Before clause 26 insert the following new clause:

"**Factors relevant to residence and contact orders**

A26. In the Children (Northern Ireland) Order 1995, in Article 12A (residence and contact orders and domestic violence) —

(a) in paragraph (1), after 'in favour of' insert " —

(a) any person, the court shall have regard to any conviction of the person for a domestic abuse offence involving the child,

(b) ",

(b) after paragraph (1) insert —

'(1A) For the purposes of paragraph (1)(a), a domestic abuse offence involving the child is —

(a) an offence under section 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 if —

(i) the offence is aggravated as provided for in section 9 of that Act, and

(ii) the aggravation of the offence relates to the child, or

(b) an offence of any kind (apart from one under section 1 of that Act) if —

(i) the offence is aggravated as provided for in section 15 of that Act, and

(ii) the child is not the person against whom the offence was committed but the aggravation of the offence relates to the child.',

(c) in paragraph (2), for 'paragraph (1)' substitute 'paragraph (1)(b)',

(d) in paragraph (3), after 'Article 3' insert '(and in that paragraph neither sub-paragraph limits the effect of the other sub-paragraph).".

The following amendments stood on the Marshalled List:

No 28: In clause 26, page 16, line 3, leave out "'provision' means a statutory provision or any other" and insert "'corresponding provision' means a corresponding statutory provision or any other corresponding".— *[Mrs Long (The Minister of Justice).]*

No 29: In clause 26, page 17, line 5, leave out "(2)" and insert "3(2)".— *[Mrs Long (The Minister of Justice).]*

No 30: In clause 26, page 18, line 3, leave out "family".— *[Mrs Long (The Minister of Justice).]*

No 31: In clause 26, page 18, line 6, leave out "family".— *[Mrs Long (The Minister of Justice).]*

No 32: After clause 26 insert the following new clause:

"**Special measures directions in family proceedings**

26A.—(1) In the Family Law (Northern Ireland) Order 1993, after Article 11J (as inserted by this Act) insert —

'*Special measures directions in family proceedings*

Special measures in family proceedings: victims of abusive behaviour

11K.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person ("P") where —

(a) P is a party to or witness in family proceedings,

(b) P is, or is at risk of being, subjected to abusive behaviour by a person who is—

(i) a party to the proceedings,

(ii) a relative of a party to the proceedings (other than P), or

(iii) a witness in the proceedings, and

(c) P and that person are personally connected.
(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to) —

(a) the availability of the special measures in question, and

(b) any views expressed by P.

(4) The following apply for the purposes of this Article as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 (to give meanings to certain expressions) —

(a) section 2 (as read with section 3(2)) of that Act,

(b) sections 4 and 5 of that Act.

(5) In this Article —

'family proceedings' means —

(a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules),

(b) proceedings in a court of summary jurisdiction when exercising its jurisdiction under one or more of the following —

(i) the Domestic Proceedings (Northern Ireland) Order 1980,

(ii) Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,

(iii) the Children (Northern Ireland) Order 1995,

(iv) the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

(v) Schedule 16 to the Civil Partnership Act 2004,

'relative' has the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

'rules of court' includes —
(a) rules of court under Article 12, and

(b) magistrates' courts rules,

as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

'special measures' means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

'special measures direction' means a direction by the court granting special measures.

Power to alter definition of family proceedings

11L.—(1) The Department of Justice may by regulations amend Article 11K so as to alter the definition of 'family proceedings' in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.'."— *[Mrs Long (The Minister of Justice).]*

No 33: After clause 26 insert the following new clause:

"**Prohibition of cross-examination in person in civil proceedings generally**

26B. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7 insert —

'*Prohibition of cross-examination in person in civil proceedings*

Prohibition of cross-examination in person: introductory

7A.—(1) For the purposes of Articles 7B to 7F—

'civil proceedings' means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993), in —

(a) the High Court, or

(b) a county court,

exercising its civil jurisdiction,
'witness', in relation to any proceedings, includes a party to the proceedings.

(2) The Department of Justice may by regulations amend this Article so as to alter the definition of 'civil proceedings' in paragraph (1).

Direction for prohibition of cross-examination in person

7B.—(1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if it appears to the court that —

(a) the quality condition or the significant distress condition is met, and

(b) it would not be contrary to the interests of justice to give the direction.

(2) The 'quality condition' is met if the quality of evidence given by the witness on cross-examination —

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this Article.

(3) The 'significant distress condition' is met if —

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this Article may be made by the court —

(a) on an application made by a party to the proceedings, or

(b) of the court's own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things) —

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,

(d) any conviction or caution (of any kind) of which the court is aware for an offence committed by the party in relation to the witness,

(e) any conviction or caution (of any kind) of which the court is aware for an offence committed by the witness in relation to the party,

(f) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,

(g) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,

(h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,

(i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,

(j) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose, "coherence' refers to a witness's ability in giving evidence to give answers which—

(a) address the questions put to the witness, and

(b) can be understood, both individually and collectively.

Directions under Article 7B: supplementary

7C.—(1) A direction under Article 7B has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under Article 7B before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either —

(a) on an application made by a party to the proceedings, or

(b) of the court's own motion.

(3) The court may revoke a direction under Article 7B on an application made by a party to the proceedings only if there has been a material change of circumstances since—

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for —

(a) giving a direction under Article 7B,

(b) refusing an application for a direction under Article 7B,

(c) revoking a direction under Article 7B,

(d) refusing an application for the revocation of a direction under Article 7B.

Alternatives to cross-examination in person

7D.—(1) This Article applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of Article 7B.

(2) The court must consider whether (ignoring this Article) there is a satisfactory alternative means —

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must —
(a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Paragraph (5) applies if, by the end of the period specified under paragraph (3)(b), either —

(a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross- examining the witness, or

(b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under paragraph (6) is not responsible to the party except in so far as acting in the interests of the party by virtue of this Article.

(8) For the purposes of this Article —

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,

(b) 'qualified legal representative' means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 7D(6)

7E.—(1) The Department of Justice must pay such sums as the Department may determine in respect of —

(a) fees or costs properly incurred by a qualified legal representative appointed under Article 7D(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) Regulations made by the Department of Justice may provide for sums payable under paragraph (1) —

(a) to be such amounts as are specified in the regulations,

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

(ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 7D(6)

7F.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 7D(6) in connection with any civil

proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 7D(7).

(2) A qualified legal representative appointed under Article 7D(6) must have regard to any guidance issued under this Article.

(3) The Department of Justice may from time to time revise any guidance issued under this Article.

(4) The Department of Justice must publish —

(a) any guidance issued under this Article, and

(b) any revisions of guidance issued under this Article.

Regulations under Articles 7A to 7E

7G.—(1) Any power of the Department of Justice to make regulations under Articles 7A to 7E includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 7A(2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Articles 7B to 7E are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).'.".— *[Mrs Long (The Minister of Justice).]*

No 34: After clause 26 insert the following new clause:

"**Special measures directions in civil proceedings generally**

26C. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7G (as inserted by this Act) insert —

'*Special measures directions in civil proceedings*

Special measures in civil proceedings: victims of specified offences

7H.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person ("P") where —

(a) P is a party to or witness in civil proceedings, and

(b) P is the victim, or alleged victim, of a specified offence.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion —

(a) whether —

(i) the quality of P's evidence, or

(ii) where P is a party to the proceedings, P's participation in the proceedings,

is likely to be diminished for reasons arising because P is the victim or alleged victim, and

(b) if so, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2)(b) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to) —
(a) the availability of the special measures in question, and

(b) any views expressed by P.

(4) For the purposes of this Article —

(a) P is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence,

(b) P is the alleged victim of a specified offence if another person has been charged with the offence.

(5) In this Article —

"caution" means —

(a) in the case of Northern Ireland —

(i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or

(ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted,

(b) in the case of England and Wales —

(i) a conditional caution given under section 22 of the Criminal Justice Act 2003,

(ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or

(iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,

(c) in the case of Scotland, anything corresponding to a caution falling within sub-paragraph (b) (however described) which is given to a person in respect of an offence under the law of Scotland,

"civil proceedings" means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993) in —

(a) the High Court, or

(b) a county court,

exercising its civil jurisdiction,

"conviction" means —

(a) wherever occurring in Northern Ireland, Scotland, or England and Wales—

(i) a conviction before a court, or

(ii) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,

(b) wherever occurring within or outside the United Kingdom, a conviction in service disciplinary proceedings,

"rules of court" includes county court rules as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

"service disciplinary proceedings" means —

(a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act),

(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,

"special measures" means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

"special measures direction" means a direction by the court granting special measures,

"specified offence" means an offence which is specified, or of a description specified, in regulations made by the Department of Justice.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this Article to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally —

(a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,

(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(7) For the purposes of this Article —

"offence" includes an offence under a law that is no longer in force,

"corresponding provision" means a corresponding statutory provision or any other corresponding legislative provision (and includes an earlier provision or a provision applying in any part of the United Kingdom).

Power to alter definition of civil proceedings

7I.—(1) The Department of Justice may by regulations amend Article 7H so as to alter the definition of "civil proceedings" in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Article 7H(5) are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft and approved by a resolution of the Assembly).'.".— *[Mrs Long (The Minister of Justice).]*

Mrs Long: The amendments in the group all relate to family and civil proceedings. Amendment No 27 is a new clause that would amend the Children (Northern Ireland) Order 1995. It requires a court hearing an application for a residence or contact order to consider any conviction of the applicant for the new domestic abuse offence or another offence where the child aggravator has been applied, because the offence involves a child.

At present, under the 1995 order, a court hearing an application for contact or residence must have regard to any harm or risk of harm to a child through seeing or hearing ill treatment of another person where the party applying for the order has had a non-molestation order made against them or the court is considering making one.

An anomaly would arise if a court is required to consider such harm to the child where the applicant is subject to a non-molestation order but not where they have been convicted for a domestic abuse offence. As the Department of Finance is responsible for substantive private family law, I sought the views of Minister Murphy on the proposed amendment, and he has indicated his agreement.

I move on to prohibition of cross-examination in person in family proceedings. Amendment Nos 28, 29, 30 and 31 will make minor and technical amendments to clause 26 of the Bill, which makes provision for prohibition of cross-examination in person in family proceedings.

Amendment No 28 makes a small technical correction to a definition provision in new article 11B to be inserted in the Family Law (Northern Ireland) Order 1993. Amendment No 29 corrects a small error in clause 26 that occurred when the Bill was being processed prior to introduction. Amendment Nos 30 and 31 relate to the matters to which a court must have regard under new article 11E to be inserted in the 1993 order when considering whether to exercise its discretionary power to make a direction prohibiting cross-examination in person in family proceedings. Under the provision made in clause 26, a court is required, among other things, to have regard to any behaviour by the party to the witness, or vice versa, for which the court is aware that a finding of fact has been made in the proceedings or any other family proceedings. The amendments mean that the court would also be required to consider any findings of fact made in criminal or civil proceedings.

Amendment No 32 is another new clause and would require court rules to make specific provision for special measures for victims of domestic abuse giving evidence at family proceedings. The Bill already makes provision for victims of domestic abuse giving evidence in criminal proceedings to be automatically eligible for consideration for special measures.

For family proceedings, court rules make provision for a court to allow a witness to give evidence by video link, and other special measures can be considered on a case-by-case basis. The need, however, for specific legislative provision for special measures for victims of domestic abuse giving evidence in family proceedings was one of the key issues raised in evidence to the Justice Committee.

I listened to the views, and the proposed amendment would require rules of court to make provision enabling a court to make a special measures direction in family proceedings in relation to a party or witness who is the victim of, or at risk of, domestic abuse, where the court considers that a direction should be made.

Amendment No 33 would enable a court, hearing civil proceedings, to prohibit cross-examination in person in certain circumstances. I have made reference to clause 26, which makes provision on the prohibition of cross-examination in person in family proceedings. The proposed amendment will give the court, hearing civil proceedings, a discretionary power to prohibit cross-examination in person where that is likely to diminish the quality of the witness's evidence or would cause significant distress to the witness. That corresponds to the discretionary power that the family courts will have in cases where an automatic prohibition does not apply. Also mirroring the clause on family proceedings, a court will have the power to appoint a legal representative funded by the Department to carry out the cross-examination instead, and the Department may issue guidance on that role.

Amendment No 34, which is the last in the group, is another new clause and would require

court rules to make specific provision on special measures for victims or alleged victims of certain offences giving evidence in civil proceedings. Similar to the position in respect of court rules for family proceedings, court rules for civil proceedings include provision for the court to allow a witness to give evidence by video link and other measures, as may be considered on a case-by-case basis. However, as I noted earlier in respect of the amendment in relation to special measures and family proceedings, the need for more specific legislative provision on special measures for victims was raised in evidence to the Justice Committee, and I have listened to those views. The proposed amendment will require court rules to make provision enabling a court hearing civil proceedings to make a special measures direction in relation to a party or witness who is a victim, or an alleged victim, of specified offences, where this is likely to diminish the quality of their evidence or their participation in the proceedings and the court considers that a direction should be made.

While the number of civil cases involving victims where this is likely to impact on the quality of their evidence or participation in the proceedings is likely to be relatively small compared with family proceedings, it is, nevertheless, appropriate to take this legislative opportunity to ensure that, even if one such case arises, the victim has appropriate protection.

That concludes, at this stage, my comments on this group of amendments.

Mr Givan: On behalf of the Justice Committee, I welcome amendment Nos 27, 32, 33 and 34, which will strengthen the protection provided to victims of domestic abuse and a system ensuring that the justice system is not exploited by perpetrators as a means to continue the abuse and to control their victims, as well as enabling victims to be supported to give their best evidence. I do not intend, Mr Speaker — you will be glad to hear — to rehearse what the amendments do, as the Minister has already set that out very clearly and in some detail, but I do want to briefly cover some points.

Amendment Nos 32 and 34 are about special measures directions in family and civil proceedings. Although clause 22 enables complainants of the domestic abuse offence and aggravated offences to automatically be eligible for consideration of special measures, such as the use of live links and screens, when giving evidence is welcome, the need for special measures in family and civil proceedings was highlighted as a gap that should be addressed in the Bill to the Committee by a range of organisations, including the Women's Aid Federation, Victim Support NI and the Bar of Northern Ireland. Women's Aid stated that access to special measures in the family court is so poor that survivors of domestic abuse are being attacked, abused, harassed and left too frightened to effectively advocate for the ongoing safety of their children. Victim Support indicated that this issue needs to be dealt with in the interests of victim well-being. The Bar advised the Committee that judges and legal practitioners are already trying to address this issue as much as possible by improvising with the facilities available in the family courts and that it was unfortunate that the Bill did not include proposals for special measures in those courts.

The Committee referred the evidence that it received to the Department and asked if it was intending to address the gap that had been highlighted. The Department advised that it was considering amending the Bill to require court rules to enable a court hearing of family proceedings or civil proceedings to make specific provision for special measures for victims of domestic abuse and other certain offences. The Committee welcomed the intention of the Department to table amendments that would ensure parity in the court system with regard to special measures and is pleased to support amendment Nos 32 and 34, which were tabled by the Minister today. However, the Committee urges the Minister to ensure that special measures, when granted in any court, are available for witnesses, as measures that were assured but that were not available on the day of the case were raised with the Committee. That is not acceptable.

Turning now to amendment No 33, the evidence that was received by the Committee clearly outlined that the cross-examination of the complainant by the defendant is a key reason why many complainants disengage from court proceedings. That has allowed the continued control and abuse of victims, diminished their ability to give evidence and caused trauma and distress. The Men's Advisory Project believes that domestic violence perpetrators being able to cross-examine their victim poses a direct threat to the victim's safety, access to justice and public confidence in the justice system.

In the Bar's evidence, it highlighted that there has a been a growing concern among family barristers for some time that some litigants have chosen to act as personal litigants because they realise that they can exploit their

article 6 rights in the court system and continue to act in a controlling and manipulative manner against their former partner when representing themselves. The Minister's decision to table amendment No 33 to provide for court hearing civil proceedings to have a discretionary power to prohibit cross-examination in person in certain circumstances is, therefore, a welcome addition to the Bill and complements the prohibition on cross-examination in person in family proceedings provided by clause 26.

The Department advised the Committee that amendment Nos 28, 29, 30 and 31 are necessary in order to correct a small error that occurred when the Bill was being processed, prior to introduction, and provided the text of the amendments for the Committee's information. The Department also advised the Committee of its intention, with the agreement of the Minister of Finance, to amend article 12A of the Children (Northern Ireland) Order 1995 so that a court that is considering an application for a contact or residence order will be specifically required to have regard to the conviction of the party applying for the order of the new domestic abuse offence or another offence where the child aggravator has been applied. As the Minister outlined, that will address any potential inconsistency in family proceedings. The Committee agreed that it is content to support all those amendments. The amendments in this group will receive our support.

Finally, Mr Speaker, I will speak in a personal capacity, and you will be glad to hear that this is the last time that I will be speaking today, albeit the debate started yesterday and led into today. We are now some 10-plus hours into the debate on this stage. I put on record again my appreciation to all those whom I thanked earlier. The Minister has continued to debate robustly on her position. I welcome that. We should never be afraid of robust challenge coming from the Committee to the Minister and vice versa. This has been a demonstration of the Assembly working effectively. It is in the name: the legislative Assembly. That is what we have been doing over the past 10 hours, and it will probably be 11 hours by the time we conclude. The people of Northern Ireland expect us to do that, and, when we do, we should do it with the forensic level of detail that we applied to the Committee Stage and throughout the debate. I thank all Members who have taken part in the debate in the past 11 hours.

Ms Dillon: The House will be delighted to hear that this will be the last time that I will speak tonight. I do not intend to repeat many of the remarks that the Chair made. However, I want to point out that, even though a lot of the discussion has been on the new domestic abuse offence and criminal proceedings, it is equally important that we address the family and civil proceedings. That was borne out by the many witnesses who came before us. Well done to the Minister and her Department for taking that on board and for tabling the amendments. To be clear, we will support all the amendments, which are amendment Nos 27 to 34.

1.45 am

It is a good and important piece of work. It has been highlighted time and time again that what is happening in these cases in criminal courts needs to be reflected in family and civil proceedings, and that domestic abuse that has been proven in a criminal court has to be part of the family and civil proceedings and has to form part of what comes out of that. It only makes sense that a judge should know if somebody who wants access to children has been convicted of the domestic abuse of his or her family. The abuse is not just of your partner but of your family. Everybody is impacted, and we have already outlined that sufficiently today. John Gillen's 2017 review of family justice concluded that it is absolutely essential that steps are taken to address these inconsistent positions in criminal and family law, and, again, I thank the Minister for addressing that through these amendments.

I do not intend to speak any further, because both the Minister and the Chair of the Committee have outlined what the amendments will do, but they are really, really important. Like every other amendment and every clause that we have debated and discussed during this process, these amendments will have an impact on people's lives. We need to be cognisant of that. This is about protecting people, looking after people and, as has already been outlined, delivering for people.

My final words tonight are just to say that, although we have joked about the lateness of the hour, we have talked about how important this is and therefore how we do not mind being here this late. I know that, when I go home tonight, I will go home to a warm, safe home. I will go home to my child, who was minded by her daddy, with whom she was very safe, and I did not have to worry about her being cared for or looked after. I know that, when she gets up in the morning, she gets up in a home with a mummy and daddy who love her very much. Many people will not have that experience tonight, and that is why we are here, why we are doing what we are doing and why we will

continue to do what we do. We have a responsibility to look after those people.

I am also cognisant of the fact that I only speak for myself. As we highlighted during this debate, none of us knows who is going through this, and it affects every single aspect of our life. There is no way on this earth that there are not people in political life who are impacted by this. There are people in every single sphere of life, and I would like to acknowledge that, in solidarity with all those out there who are suffering this. I say this to the perpetrators: think, reach out and get help, because you may well have been a victim once yourself, and you should get help, because you are putting your family through what you once went through yourself.

Ms S Bradley: I rise on behalf of the SDLP to support the final group of amendments. They may be the final group, but certainly not the least, because amongst them are the critical tools that can make the Bill work. Many stakeholders who appeared at Committee and who we spoke to as individual MLAs have been asking for these changes, and I want to thank the Department and the Minister for recognising the suite of legislative change that needed to happen beyond the Bill itself to make the Bill effective in that way. I certainly feel that these amendments do that. I note that amendment Nos 28, 29, 30 and 31 are minor technical amendments, but amendment No 32 is on the special measures in family proceedings, and amendment No 33 looks at prohibiting cross-examination in civil proceedings under certain circumstances. These are the tools that will assist people in giving evidence, and that is a critical component of any legislation.

I will not rehearse what has already been said. Although we have thanked the Ministers, the Departments, the staff and the Clerks — rightly so — I will close by thanking the Assembly staff who have stayed to facilitate us here this evening.

Ms Bradshaw: I am not going to read my speech out. I just want to say that we will support the amendments. I acknowledge the work of Justice Gillen on his two reviews, the impact of which is very much felt in the Bill, and the wider body of work that has been undertaken by the Justice and Health Departments. Mr Speaker, thank you very much to you and the staff for your help tonight.

Mr Frew: I will be brief because of the late hour. These are very important amendments, and this is a very important part of the Bill. This is a world that not a lot of people see until they are in the middle of it and it has a massive impact on their life. It is scary. Going through any court process is scary. All the baggage and all the domestic violence and family issues here mean that this has an even greater impact. I welcome these amendments.

I will talk about amendment No 27. I asked questions on this, and officials reached out. Through the Minister, I pay tribute to and applaud the officials for reaching out to explain some of these amendments to me because they are quite technical at times. It is important that the court shall have regard for this offence. I have no sympathy for anyone conducting this behaviour and then trying to gain access to a child. This should reassure and give succour and comfort to Women's Aid and all the support groups out that assist people going through the court process. However, the flip side that I have not mentioned until now is the issue of parental alienation. Some dispute that it is real, but I believe that it is. I see it. I know and have talked to people who have experienced it. Even while we have been having this debate — Doug also raised it — we are getting emails from men who, having not seen their children in years, are in despair. Lockdown has inflicted even greater misery on those people.

Ms Bradshaw: Will the Member give way?

Mr Frew: Yes, I will give way.

Ms Bradshaw: Will you acknowledge that women are also victims of that?

Mr Frew: Of course they are, but men seem to believe that they are always ignored in this regard. It may be because we have so many support groups out there. It may be that, sometimes, our language around this issue is loose; I am as guilty as anyone. Most of the people whom I have engaged with on the issue of parental alienation over the last couple of years have been men who do not have any convictions for domestic violence and have not committed domestic violence. I have no sympathy for those who have. A lot of men have not conducted themselves in that way, and they grievously miss their children. They need to be part of their children's lives. They need to raise their child and be given time with that child. This is so soul-destroying for a man or for any person. I am talking about men because they have talked to me and told me of their experiences. It is heart-wrenching; it really is. They deserve to have their experiences told. They deserve to have it placed on the record in

Hansard that we hear them and will do everything that we can.

We have been given assurances by the Minister and the Department that parental alienation is riddled throughout this Bill, in the same way as coercive control is throughout the Bill. That has to be the case to give those people comfort, to reassure us and to enable us to monitor it through reporting, the collection of data and independent scrutiny. We will look out for and be mindful of that. We need to correct this problem for everyone involved, men and women, because it is very grievous. It is not only about the victim; it is about the child. The child is missing out on a parent, and that is not right. When a parent is prepared to give loving attention, it should not be the case that they just cannot get access to their child. That needs to be addressed.

I support this. It is the Domestic Abuse and Family Proceedings Bill. The second part of that is a very important aspect, and we should support it. I thank everyone who took part in the debate. I thank everybody who has stuck around. I thank the Minister, who has had to spend all of that time in the Chamber; we can nip out for a time and take breaks, but she cannot. I praise her. I also praise the Chairperson of the Committee for his diligence and work in guiding the Committee through all of the work. I am proud to acknowledge the work of the Justice Committee and the Assembly tonight. We should be proud of it. It is something that we need to see more of with regard to legislation. I welcome that. I am here to do business; I am here, no matter what the hour, to pass legislation that will make a difference to people's lives. I thank and commend every single one of you. I also commend the Department's officials. We give them a hard time at times. Sometimes, it is deserved. We will always be robust. It is nothing personal. Thank you for the work that you guys do in the Department. Without you, the Bill would not have been produced, we would not have been able to scrutinise it and we would not have law at the other end.

Dr Archibald: I will speak briefly, as Chair of the Economy Committee, about an issue that has been raised by the Chair of the Justice Committee and my party colleague Jemma Dolan. It attaches particularly to amendment No 32, which is a proposed new clause. It is an issue that is not specifically referenced in the Bill and is additional to the amendment, but this seemed to be the most logical place at which to speak about it. The Economy Committee is aware of the Justice Committee's report on the Bill; it suggests consideration of 10 days' special paid leave for victims of domestic abuse. That provision is supported by not only the Economy Committee but the Health and Justice Committees and a number of key stakeholder groups, not least the Irish Congress of Trade Unions.

The Committee appreciates that that is a matter for the Economy Minister to take forward, but we believe that it is important that the issue is raised as part of today's proceedings. The Committee has written to the Economy Minister to highlight the Committee members' support for the provision.

I will add some brief remarks in my capacity as Sinn Féin economy spokesperson on the same theme. I felt that it was important to contribute to the debate because it is very important legislation, as Members have outlined. This Bill and others that are being brought forward are bringing much-needed reform to support victims of abuse, harassment and sexual crime. Last year — my party colleague Jemma Dolan referenced this earlier — Fermanagh Women's Aid briefed our Assembly team. I thought that it I was informed on that issue — I, like many other Members, have signposted and supported victims of abuse — but that briefing, particularly the aspects of it in relation to coercive control, really had an impact on me.

Domestic abuse is a particularly insidious crime. It affects all aspects of a victim's life, including their working life. A victim may have to try to put on a brave face and do a day's work because there is no provision for leave. It may be the case that co-workers or managers suspect that a colleague is a victim of abuse but are unsure of how to support them. I think that we all probably recognise and support the need for special leave for victims of abuse. Such provision would enable victims to take the necessary time off work to seek support, find accommodation or attend court proceedings, as has been outlined in some of the amendments in this group. It would also address unpredictable absenteeism and reduced productivity for employers. Earlier today — yesterday now — my party colleagues Mary Lou McDonald and Louise O'Reilly introduced legislation in the Dáil to make similar provision for 10 days' annual special leave for victims of domestic abuse. It is important that victims, whether or not they choose to access that leave, know that it is there.

That brings me to my final point. It may seem obvious, but, in addition to the provision of special leave, there needs to be workplace policy and guidance. Managers need to have guidance on how to recognise the signs of

domestic abuse and how to respond to a staff member's disclosure and support workers who face those circumstances. As I indicated, I raised those issues, including through the Economy Committee, and I am hopeful that the Economy Minister will take speedy action to make provision to support victims of domestic abuse.

2.00 am

Mrs Long: I do not want to prolong the debate unnecessarily. As Members indicated, the proposed amendments will enhance the Bill in order to protect victims of domestic abuse and their children who are involved in family proceedings. They will also offer protection to victims of offences who are involved in other civil proceedings. The proposed amendment to the Children Order recognises the effect that domestic abuse can have on children by requiring a court, when considering applications for residence or contact orders, to consider any convictions of applicants for domestic abuse offences, where the child aggravator has been applied by reason of the offence involving the child. That will ensure that the court will take that into account when deciding the application in the best interests of the child.

I have listened to the views of the many organisations that, in giving evidence to the Justice Committee, said that there should be specific legislative provision for special measures to be available to victims of domestic abuse and other offences in family and civil proceedings. The proposed amendments will ensure that special measures are available to victims across each of the jurisdictions. I recognise that many victims of domestic abuse will be involved in family proceedings with the perpetrator and that that can be a stressful and traumatic experience. Together with the provision in clause 26 to protect victims of domestic abuse from being cross-examined by perpetrators in person, the proposed amendments will ensure that a wide range of protections is available to support them to give their best possible evidence and to participate effectively in family proceedings as well as supporting other victims to give evidence in civil proceedings.

I specifically want to address the availability of alternative measures, which was raised by the Chairman of the Committee. I understand that virtually all courtrooms have videoconferencing facilities, which greatly extend the capability to live link directly to courtrooms. That would enable witnesses to give evidence from a wide range of locations, including from outside court buildings. That capacity has been enhanced not only as a direct response to COVID but in our development of remote witness centres, which we hope to introduce in a graduated way across the different courts. For all those reasons, I believe that there will be enhanced availability of videoconferencing in the courts.

In conclusion, Mr Speaker — I am sure that you are as pleased as everyone else to hear those words — I thank my officials, the Committee and its officials, your good offices and the Assembly staff for their facilitation of the proceedings today and yesterday. This is our job, and it is important that we do it. However, I want to focus mostly on those for whom it is not their job but who have driven my prioritising the Bill as the first legislation that I brought to the House. Paul Frew can rest assured that he will have plenty of opportunities to legislate in this term. I give him that commitment.

Mr Frew: Hear, hear.

Mrs Long: I thank our third-sector partners, such as Women's Aid, the Men's Advisory Project, LBGTQ sector representatives and all others from the third sector who fed into the Bill and improved and honed what it is capable of doing. Above all, I thank the victims who met me and the Committee and shared their often traumatic experiences so that we could collectively make the Bill the best that it can be. It was for them that I brought the legislation, and it is with them that I wish to finish my remarks.

Amendment No 27 agreed to.

New clause ordered to stand part of the Bill.

Clause 26 (Prohibition of cross-examination in person)

Amendment No 28 made: In page 16, line 3, leave out "'provision' means a statutory provision or any other" and insert "'corresponding provision' means a corresponding statutory provision or any other corresponding".— *[Mrs Long (The Minister of Justice).]*

Amendment No 29 made: In page 17, line 5, leave out "(2)" and insert "3(2)".— *[Mrs Long (The Minister of Justice).]*

Amendment No 30 made: In page 18, line 3, leave out "family".— *[Mrs Long (The Minister of Justice).]*

Amendment No 31 made: In page 18, line 6, leave out "family".— *[Mrs Long (The Minister of Justice).]*

Clause 26, as amended, ordered to stand part of the Bill.

New Clause

Amendment No 32 made: After clause 26 insert

"**Special measures directions in family proceedings**

26A.—(1) In the Family Law (Northern Ireland) Order 1993, after Article 11J (as inserted by this Act) insert —

'*Special measures directions in family proceedings*

Special measures in family proceedings: victims of abusive behaviour

11K.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person ("P") where —

(a) P is a party to or witness in family proceedings,

(b) P is, or is at risk of being, subjected to abusive behaviour by a person who is—

(i) a party to the proceedings,

(ii) a relative of a party to the proceedings (other than P), or

(iii) a witness in the proceedings, and

(c) P and that person are personally connected.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to) —

(a) the availability of the special measures in question, and

(b) any views expressed by P.

(4) The following apply for the purposes of this Article as they apply for the purposes of Chapter 1 of Part 1 of the Domestic Abuse and Family Proceedings Act (Northern Ireland) 2020 (to give meanings to certain expressions) —

(a) section 2 (as read with section 3(2)) of that Act,

(b) sections 4 and 5 of that Act.

(5) In this Article —

'family proceedings' means —

(a) proceedings which are family proceedings for the purposes of Article 12 (family proceedings rules),

(b) proceedings in a court of summary jurisdiction when exercising its jurisdiction under one or more of the following —

(i) the Domestic Proceedings (Northern Ireland) Order 1980,

(ii) Article 31B of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989,

(iii) the Children (Northern Ireland) Order 1995,

(iv) the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

(v) Schedule 16 to the Civil Partnership Act 2004,

'relative' has the meaning given by Article 2(2) of the Family Homes and Domestic Violence (Northern Ireland) Order 1998,

'rules of court' includes —

(a) rules of court under Article 12, and

(b) magistrates' courts rules,

as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

'special measures' means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

'special measures direction' means a direction by the court granting special measures.

Power to alter definition of family proceedings

11L.—(1) The Department of Justice may by regulations amend Article 11K so as to alter the definition of 'family proceedings' in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.'."*.— [Mrs Long (The Minister of Justice).]*

New clause ordered to stand part of the Bill.

New Clause

Amendment No 33 made: After clause 26 insert

"**Prohibition of cross-examination in person in civil proceedings generally**

26B. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7 insert —

Of '*Prohibition of cross-examination in person in civil proceedings*

Prohibition of cross-examination in person: introductory

7A.—(1) For the purposes of Articles 7B to 7F—

'civil proceedings' means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993), in —

(a) the High Court, or

(b) a county court,

exercising its civil jurisdiction,

'witness', in relation to any proceedings, includes a party to the proceedings.

(2) The Department of Justice may by regulations amend this Article so as to alter the definition of 'civil proceedings' in paragraph (1).

Direction for prohibition of cross-examination in person

7B.—(1) In civil proceedings, the court may give a direction prohibiting a party to the proceedings from cross-examining (or continuing to cross-examine) a witness in person if it appears to the court that —

(a) the quality condition or the significant distress condition is met, and

(b) it would not be contrary to the interests of justice to give the direction.

(2) The 'quality condition' is met if the quality of evidence given by the witness on cross-examination —

(a) is likely to be diminished if the cross-examination (or continued cross-examination) is conducted by the party in person, and

(b) would be likely to be improved if a direction were given under this Article.

(3) The 'significant distress condition' is met if —

(a) the cross-examination (or continued cross-examination) of the witness by the party in person would be likely to cause significant distress to the witness or the party, and

(b) that distress is likely to be more significant than would be the case if the witness were cross-examined other than by the party in person.

(4) A direction under this Article may be made by the court —

(a) on an application made by a party to the proceedings, or

(b) of the court’s own motion.

(5) In determining whether the quality condition or the significant distress condition is met in the case of a witness or party, the court must have regard to (among other things) —

(a) any views expressed by the witness as to whether or not the witness is content to be cross-examined by the party in person,

(b) any views expressed by the party as to whether or not the party is content to cross-examine the witness in person,

(c) the nature of the questions likely to be asked, having regard to the issues in the proceedings,

(d) any conviction or caution (of any kind) of which the court is aware for an offence committed by the party in relation to the witness,

(e) any conviction or caution (of any kind) of which the court is aware for an offence committed by the witness in relation to the party,

(f) any behaviour by the party in relation to the witness in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,

(g) any behaviour by the witness in relation to the party in respect of which the court is aware that a finding of fact has been made in the proceedings or any other proceedings,

(h) any behaviour by the party at any stage of the proceedings, both generally and in relation to the witness,

(i) any behaviour by the witness at any stage of the proceedings, both generally and in relation to the party,

(j) any relationship (of whatever nature) between the witness and the party.

(6) Any reference in this Article to the quality of a witness's evidence is to its quality in terms of completeness, coherence and accuracy.

(7) For this purpose, "coherence' refers to a witness's ability in giving evidence to give answers which—

(a) address the questions put to the witness, and

(b) can be understood, both individually and collectively.

Directions under Article 7B: supplementary

7C.—(1) A direction under Article 7B has binding effect from the time it is made until the witness in relation to whom it applies is discharged.

(2) But the court may revoke a direction under Article 7B before the witness is discharged, if it appears to the court to be in the interests of justice to do so, either —

(a) on an application made by a party to the proceedings, or

(b) of the court's own motion.

(3) The court may revoke a direction under Article 7B on an application made by a party to the proceedings only if there has been a material change of circumstances since—

(a) the direction was given, or

(b) if a previous application has been made by a party to the proceedings, the application (or the last application) was determined.

(4) The court must state its reasons for —

(a) giving a direction under Article 7B,

(b) refusing an application for a direction under Article 7B,

(c) revoking a direction under Article 7B,

(d) refusing an application for the revocation of a direction under Article 7B.

Alternatives to cross-examination in person

7D.—(1) This Article applies where a party to civil proceedings is prevented from cross-examining a witness in person by virtue of Article 7B.

(2) The court must consider whether (ignoring this Article) there is a satisfactory alternative means —

(a) for the witness to be cross-examined in the proceedings, or

(b) of obtaining evidence that the witness might have given under cross-examination in the proceedings.

(3) If the court decides that there is not, the court must —

(a) invite the party to the proceedings to arrange for a qualified legal representative to act for the party for the purpose of cross-examining the witness, and

(b) require the party to the proceedings to notify the court, by the end of a period specified by the court, of whether a qualified legal representative is to act for the party for that purpose.

(4) Paragraph (5) applies if, by the end of the period specified under paragraph (3)(b), either —

(a) the party has notified the court that no qualified legal representative is to act for the party for the purpose of cross- examining the witness, or

(b) no notification has been received by the court and it appears to the court that no qualified legal representative is to act for the party for the purpose of cross-examining the witness.

(5) The court must consider whether it is necessary in the interests of justice for the witness to be cross-examined by a qualified legal representative appointed by the court to represent the interests of the party.

(6) If the court decides that it is, the court must appoint a qualified legal representative (chosen by the court) to cross-examine the witness in the interests of the party.

(7) A qualified legal representative appointed by the court under paragraph (6) is not responsible to the party except in so far as acting in the interests of the party by virtue of this Article.

(8) For the purposes of this Article —

(a) a reference to cross-examination includes a reference to continuing to conduct cross-examination,

(b) 'qualified legal representative' means a legal representative who has a right of audience in relation to the proceedings before the court.

Costs of legal representatives appointed under Article 7D(6)

7E.—(1) The Department of Justice must pay such sums as the Department may determine in respect of —

(a) fees or costs properly incurred by a qualified legal representative appointed under Article 7D(6), and

(b) expenses properly incurred in providing such a person with evidence or other material in connection with the appointment.

(2) Regulations made by the Department of Justice may provide for sums payable under paragraph (1) —

(a) to be such amounts as are specified in the regulations,

(b) to be calculated in accordance with—

(i) a rate or scale specified in the regulations, or

(ii) other provision made by or under the regulations.

Guidance for legal representatives appointed under Article 7D(6)

7F.—(1) The Department of Justice may issue guidance in connection with the role which a qualified legal representative appointed under Article 7D(6) in connection with any civil proceedings is to play in the proceedings, including (among other things) guidance about the effect of Article 7D(7).

(2) A qualified legal representative appointed under Article 7D(6) must have regard to any guidance issued under this Article.

(3) The Department of Justice may from time to time revise any guidance issued under this Article.

(4) The Department of Justice must publish —

(a) any guidance issued under this Article, and

(b) any revisions of guidance issued under this Article.

Regulations under Articles 7A to 7E

7G.—(1) Any power of the Department of Justice to make regulations under Articles 7A to 7E includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

(2) Regulations that contain (with or without other provisions) provision under Article 7A(2) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Articles 7B to 7E are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft before and approved by a resolution of the Assembly).'.".— *[Mrs Long (The Minister of Justice).]*

New clause ordered to stand part of the Bill.

New Clause

Amendment No 34 made: After clause 26 insert

"**Special measures directions in civil proceedings generally**

26C. In the Civil Evidence (Northern Ireland) Order 1997, after Article 7G (as inserted by this Act) insert —

'*Special measures directions in civil proceedings*

Special measures in civil proceedings: victims of specified offences

7H.—(1) Rules of court must make provision enabling the court to make a special measures direction in relation to a person ("P") where —

(a) P is a party to or witness in civil proceedings, and

(b) P is the victim, or alleged victim, of a specified offence.

(2) Rules under paragraph (1) must provide for the court to consider, on the application of a party or of the court's own motion —

(a) whether —

(i) the quality of P's evidence, or

(ii) where P is a party to the proceedings, P's participation in the proceedings,

is likely to be diminished for reasons arising because P is the victim or alleged victim, and

(b) if so, whether a special measures direction (or more than one direction) should be made.

(3) Provision in rules by virtue of paragraph (2)(b) may include provision about what factors the court is to take into account when considering whether a special measures direction should be made, in particular (but not limited to) —

(a) the availability of the special measures in question, and

(b) any views expressed by P.

(4) For the purposes of this Article —

(a) P is the victim of a specified offence if another person has been convicted of, or given a caution for, the offence,

(b) P is the alleged victim of a specified offence if another person has been charged with the offence.

(5) In this Article —

"caution" means —

(a) in the case of Northern Ireland —

(i) a conditional caution given under section 71 of the Justice Act (Northern Ireland) 2011, or

(ii) any other caution given to a person in Northern Ireland in respect of an offence which, at the time the caution is given, the person has admitted,
(b) in the case of England and Wales —

(i) a conditional caution given under section 22 of the Criminal Justice Act 2003,

(ii) a youth conditional caution given under section 66A of the Crime and Disorder Act 1998, or

(iii) any other caution given to a person in England and Wales in respect of an offence which, at the time the caution is given, the person has admitted,

(c) in the case of Scotland, anything corresponding to a caution falling within sub-paragraph (b) (however described) which is given to a person in respect of an offence under the law of Scotland,

"civil proceedings" means proceedings (other than proceedings which are family proceedings for the purposes of Article 12 of the Family Law (Northern Ireland) Order 1993) in —

(a) the High Court, or

(b) a county court,

exercising its civil jurisdiction,

"conviction" means —

(a) wherever occurring in Northern Ireland, Scotland, or England and Wales—

(i) a conviction before a court, or

(ii) a finding in any criminal proceedings (including a finding linked with a finding of insanity) that the person concerned has committed an offence or done the act or made the omission charged,

(b) wherever occurring within or outside the United Kingdom, a conviction in service disciplinary proceedings,

"rules of court" includes county court rules as well as rules of court as defined in section 21(4) of the Interpretation Act (Northern Ireland) 1954,

"service disciplinary proceedings" means —

(a) any proceedings (whether or not before a court) in respect of a service offence within the meaning of the Armed Forces Act 2006 (except proceedings before a civilian court within the meaning of that Act),

(b) any proceedings under the Army Act 1955, the Air Force Act 1955, or the Naval Discipline Act 1957 (whether before a court-martial or before any other court or person authorised under any of those Acts to award a punishment in respect of an offence),

(c) any proceedings before a Standing Civilian Court established under the Armed Forces Act 1976,

"special measures" means such measures specified by rules of court for the purpose of assisting a person to give evidence or participate in proceedings,

"special measures direction" means a direction by the court granting special measures,

"specified offence" means an offence which is specified, or of a description specified, in regulations made by the Department of Justice.

(6) The following provisions (which deem a conviction of a person discharged not to be a conviction) do not apply for the purposes of this Article to a conviction of a person for an offence in respect of which an order has been made discharging the person absolutely or conditionally —

(a) Article 6 of the Criminal Justice (Northern Ireland) Order 1996 or any corresponding provision,

(b) section 187 of the Armed Forces Act 2006 or any corresponding provision.

(7) For the purposes of this Article —

"offence" includes an offence under a law that is no longer in force,

"corresponding provision" means a corresponding statutory provision or any other corresponding legislative provision (and includes an earlier provision or a provision applying in any part of the United Kingdom).

Power to alter definition of civil proceedings

7I.—(1) The Department of Justice may by regulations amend Article 7H so as to alter the definition of "civil proceedings" in paragraph (5) of that Article.

(2) Regulations that contain (with or without other provisions) provision under paragraph (1) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

(3) Regulations that contain provision under Article 7H(5) are subject to negative resolution (except where they are required by paragraph (2) to be laid in draft and approved by a resolution of the Assembly).'.".— *[Mrs Long (The Minister of Justice).]*

New clause ordered to stand part of the Bill.

Clause 27 ordered to stand part of the Bill.

Clause 28 ordered to stand part of the Bill.

Long title agreed to.

Mr Speaker: Members, that concludes the Consideration Stage of the Domestic Abuse and Family Proceedings Bill. The Bill stands referred to the Speaker.

I wish to add a couple of remarks of high commendation to everyone who has participated in the debate so far to take the Bill to where it is at the moment. Today alone we

have had 10 and a half hours of debate. The debate has shown, in some cases, some significant differences in how Members want to proceed with elements of the Bill, but, even given those differences, there has been clear unanimity and agreement on the need to do something radical to tackle the ongoing scourge of domestic abuse. I thank all who contributed, even those one or two who perhaps took the scenic route to get to their final destination in the debate. As I said, it is a job well done. I will not do anything other than echo the comments of all the Members this evening.

On that note, you will be glad to hear that the next item in the Order Paper is the Adjournment. In the light of the late hour, Ms Paula Bradshaw has agreed not to speak to her Adjournment topic of post-primary education in South Belfast. I think that the Members would have supported you for a while *[Laughter.]* The Whips have agreed that the topic can be rescheduled to a future date. The Minister of Education is also content to postpone his response. I think that he is tucked up in bed at this stage *[Laughter.]*

Adjourned at 2.09 am.

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