



# Official Report (Hansard)

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# Contents

## Assembly Business

Public Petition: 40 mph Speed Zone on the A48 for the Cotton Community ..... 1

## Ministerial Statement

North/South Ministerial Council: Agriculture ..... 2

## Executive Committee Business

Harbours (Grants and Loans Limit) Bill: Further Consideration Stage ..... 9

## Private Members' Business

Functioning of Government (Miscellaneous Provisions) Bill: Further Consideration Stage ..... 9

## Oral Answers to Questions

Communities ..... 28

## Private Members' Business

Functioning of Government (Miscellaneous Provisions) Bill: Further Consideration Stage  
(Continued) ..... 37

# Assembly Members

Aiken, Steve (South Antrim)  
Allen, Andy (East Belfast)  
Allister, Jim (North Antrim)  
Anderson, Ms Martina (Foyle)  
Archibald, Dr Caoimhe (East Londonderry)  
Armstrong, Ms Kellie (Strangford)  
Bailey, Ms Clare (South Belfast)  
Barton, Mrs Rosemary (Fermanagh and South Tyrone)  
Beattie, Doug (Upper Bann)  
Beggs, Roy (East Antrim)  
Blair, John (South Antrim)  
Boylan, Cathal (Newry and Armagh)  
Bradley, Maurice (East Londonderry)  
Bradley, Ms Paula (North Belfast)  
Bradley, Ms Sinéad (South Down)  
Bradshaw, Ms Paula (South Belfast)  
Brogan, Ms Nicola (West Tyrone)  
Buchanan, Keith (Mid Ulster)  
Buchanan, Thomas (West Tyrone)  
Buckley, Jonathan (Upper Bann)  
Bunting, Ms Joanne (East Belfast)  
Butler, Robbie (Lagan Valley)  
Cameron, Mrs Pam (South Antrim)  
Carroll, Gerry (West Belfast)  
Catney, Pat (Lagan Valley)  
Chambers, Alan (North Down)  
Clarke, Trevor (South Antrim)  
Dickson, Stewart (East Antrim)  
Dillon, Ms Linda (Mid Ulster)  
Dodds, Mrs Diane (Upper Bann)  
Dolan, Ms Jemma (Fermanagh and South Tyrone)  
Dunne, Gordon (North Down)  
Durkan, Mark (Foyle)  
Easton, Alex (North Down)  
Ennis, Ms Sinéad (South Down)  
Flynn, Ms Órlaithí (West Belfast)  
Foster, Mrs Arlene (Fermanagh and South Tyrone)  
Frew, Paul (North Antrim)  
Gildernew, Colm (Fermanagh and South Tyrone)  
Givan, Paul (Lagan Valley)  
Hargey, Ms Deirdre (South Belfast)  
Harvey, Harry (Strangford)  
Hilditch, David (East Antrim)  
Humphrey, William (North Belfast)  
Hunter, Ms Cara (East Londonderry)  
Irwin, William (Newry and Armagh)  
Kearney, Declan (South Antrim)  
Kelly, Mrs Dolores (Upper Bann)  
Kelly, Gerry (North Belfast)  
Kimmins, Ms Liz (Newry and Armagh)  
Long, Mrs Naomi (East Belfast)  
Lunn, Trevor (Lagan Valley)  
Lynch, Seán (Fermanagh and South Tyrone)  
Lyons, Gordon (East Antrim)  
Lyttle, Chris (East Belfast)  
McAleer, Declan (West Tyrone)  
McCann, Fra (West Belfast)  
McCrossan, Daniel (West Tyrone)  
McGlone, Patsy (Mid Ulster)  
McGrath, Colin (South Down)  
McGuigan, Philip (North Antrim)  
McHugh, Maolíosá (West Tyrone)  
McIlveen, Miss Michelle (Strangford)  
McLaughlin, Ms Sinead (Foyle)  
McNulty, Justin (Newry and Armagh)  
Mallon, Ms Nichola (North Belfast)  
Maskey, Alex (Speaker)  
Middleton, Gary (Foyle)  
Muir, Andrew (North Down)  
Mullan, Ms Karen (Foyle)  
Murphy, Conor (Newry and Armagh)  
Nesbitt, Mike (Strangford)  
Newton, Robin (East Belfast)  
Ní Chuilín, Ms Carál (North Belfast)  
O'Dowd, John (Upper Bann)  
O'Neill, Mrs Michelle (Mid Ulster)  
O'Toole, Matthew (South Belfast)  
Poots, Edwin (Lagan Valley)  
Robinson, George (East Londonderry)  
Rogan, Ms Emma (South Down)  
Sheehan, Pat (West Belfast)  
Sheerin, Ms Emma (Mid Ulster)  
Stalford, Christopher (South Belfast)  
Stewart, John (East Antrim)  
Storey, Mervyn (North Antrim)  
Sugden, Ms Claire (East Londonderry)  
Swann, Robin (North Antrim)  
Weir, Peter (Strangford)  
Wells, Jim (South Down)  
Woods, Miss Rachel (North Down)

# Northern Ireland Assembly

Tuesday 19 January 2021

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

*Members observed two minutes' silence.*

## Assembly Business

### Public Petition: 40 mph Speed Zone on the A48 for the Cotton Community

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

**Mr Easton:** Mr Speaker, thank you for allowing me to present this petition to the Assembly. It is not the biggest petition in the world, and it has only 100 names, but, as I briefly speak, the reason why I am presenting it will maybe become clear.

The petition is to ask the Infrastructure Minister to have the speed limit on the A48 Cotton Road reduced from 60 mph to 40 mph. That is an extremely busy road and is the main thoroughfare between Donaghadee and Bangor, Newtownards and, indeed, Belfast. There are 334 people who live in the rural community of the Cotton, which is also a townland. We visited over 100 houses when we were calling round before the lockdown. Many harrowing stories were recounted of near misses with cars that were trying to get out from Bailie Terrace on to the Cotton Road. Indeed, residents recall that accidents that happened were never reported because they did not believe that Transport NI would ever do anything to reduce the speed limit.

Since I was elected in 2003, I have been trying to get traffic-calming measures put outside the Cotton and the speed limit reduced. Unfortunately, since then and before my time, residents have never been able to get the speed limit reduced, despite this being a rural community.

I pay tribute to Councillor Janice MacArthur and Alderman Bill Keery, who spoke to the residents and helped with the petition.

Work was meant to have been done on the Cotton Road coming out of Bailie Terrace — there is a hill there that blocks the sight lines and makes it extremely dangerous — but, unfortunately, Transport NI cancelled that work some time ago. There is also the old Cotton Primary School, and I received correspondence from the Education Minister recently to say that his Department would look to use that for special needs pupils. It is imperative that something is done on the A48 to protect those who may attend that school in the future.

We have many villages in North Down, such as Groomsport, Millisle, Conlig and Crawfordsburn. All the main roads that go through those villages have reduced speed limits, and I expect the Cotton Road to be the same. I do not want to have to come back to the Assembly after someone has been killed. There was a serious incident in which a young lady was knocked down and seriously hurt in October. I pass on the Assembly's best wishes to her for a full recovery.

In conclusion, Mr Speaker, thank you for allowing me to present the petition to the Assembly. It will now be passed on to the Infrastructure Minister. Hopefully, something will be done to reduce the speed limit on the A48 Cotton Road.

**Mr Speaker:** As the Member knows, I would normally invite him to bring his petition to the Table and present it. However, in light of social distancing, I ask the Member to remain in his place, and I will make arrangements for him to submit the petition to my office. I thank the Member for bringing the petition to the attention of the Assembly. Once the petition is received, I will forward it to the Minister for Infrastructure and send a copy to the Committee.

## Ministerial Statement

### North/South Ministerial Council: Agriculture

**Mr Speaker:** I have received notice from the Minister of Agriculture, Environment and Rural Affairs that he 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 been relaxed. Members still have to make sure that their name is on the speaking list if they wish to be called, but they can do that by rising in their place as well as by notifying the Business Office or the Speaker's Table directly. I remind Members to be concise in asking their questions. I also remind Members that, in accordance with long-established procedure, points of order are not normally taken during the statement or the question period that follows.

**Mr Poots (The Minister of Agriculture, Environment and Rural Affairs):** With your permission, Mr Speaker, I wish to make a statement in compliance with section 52 of the Northern Ireland Act 1998 regarding the twenty-seventh North/South Ministerial Council (NSMC) agriculture meeting, which was held in the NSMC joint secretariat offices in Armagh by videoconference on Wednesday 18 November 2020. Nichola Mallon MLA, the Minister for Infrastructure, and I represented the Northern Ireland Executive at the meeting. The Irish Government were represented by Mr Charlie McConalogue TD, the Minister for Agriculture, Food and the Marine, and Heather Humphreys TD, the Minister for Rural and Community Development. I chaired the meeting. The statement has been agreed with Minister Mallon, and I make it on behalf of both of us. It was a very positive meeting, and a lot of progress was made. I will now take each paper in the order in which it was discussed.

The NSMC noted the collaborative approach to further studies of COVID-19 risk in meat-processing plants, the current position on the ongoing difficulties being experienced in agricultural markets and the associated measures introduced to address those difficulties. Ministers noted the continuing close contacts between officials from the Department of Agriculture, Environment and Rural Affairs (DAERA), the Department of Agriculture, Food and the Marine (DAFM) and the Department of Rural and Community Development (DRCD) on

a range of issues associated with the pandemic.

The Council noted the work being carried out to prepare for the end of the transition period and agreed to investigate further the potential for cooperation to address specific challenges that may arise in the sector relating to the UK's withdrawal from the EU.

Ministers noted that DAERA, DAFM, and DRCD will hold a workshop in early 2021 to review the work programme in the agriculture sector and that an update paper will be brought to the next agriculture sectoral meeting.

On the common agricultural policy, the NSMC noted that DAERA intends to launch its future agricultural policy framework for Northern Ireland in the coming months. It also noted the simplifications that DAERA intends to make to the rules that govern direct payments for the 2021 scheme year and the longer-term approach to support payments that is being considered by DAERA. The Council also noted the future plans that are being developed by DAFM for the agri-food sector under the latest CAP proposals. Ministers noted the close contacts between DAERA and DAFM officials on areas of mutual interest in the agri-food sector, in particular on significant environmental issues as they relate to the implementation of future agriculture policy.

On animal health, the Council welcomed the continuing work and progress achieved on the delivery of the all-island animal health and welfare strategy action plan since the previous NSMC agriculture sectoral meeting. Ministers encouraged officials from both jurisdictions to seek ways in which to maximise existing cooperation on animal health and welfare and looked forward to the continuation of practical and effective cooperation on animal health and welfare and disease control in both jurisdictions so that the health and welfare of livestock is maintained at the highest level.

The NSMC noted the progress that has been made on the review of the all-Ireland Chalara control strategy by DAFM and DAERA officials in response to ongoing scientific and surveillance evidence and on the research programme being undertaken to develop a population of Irish planting stock tolerant to Chalara ash dieback disease. Ministers noted DAFM and DAERA's ongoing commitment to continuing to work towards the shared objective of achieving and maintaining good plant health status on the island. Ministers welcomed the continued cross-border cooperation in dealing with tree and plant health and in the shared

approach to regulation, as evidenced through a common approach to oak processionary moth risk management. Ministers also welcomed the joint approach to the continued sharing of science and diagnostic capability and to the regulation of the use of pesticides.

The Council welcomed the continuing cooperation between both Administrations and the ongoing work to improve farm safety. Ministers welcomed the issuing of a joint North/South press release on increasing awareness of farm safety across both jurisdictions, the sharing of information on the On Feirm Ground programme and on the EU-funded cooperation in science and technology (COST) action programme on farm safety, the sharing of the Northern Ireland Farm Safety Partnership's fourth action plan and the sharing of commissioned farm safety research results.

The NSMC noted the ongoing work in both jurisdictions to develop rural policy and the strong commitment to further enhancing the sharing of information and best practice on rural development policy. Ministers noted the good progress made in both jurisdictions on implementing the LEADER element of the rural development programme under the areas of cooperation and the excellent progress being made towards the development of a co-produced rural development support package for inclusion in the new PEACE PLUS cross-border programme, which will contribute to a more prosperous and stable society in Northern Ireland and the border region of Ireland.

The Council welcomed the ongoing good collaboration between DAERA and DAFM aimed at maximising the drawdown of EU funding under Horizon 2020 and the €102 million in funding that has been secured to date by successful applicants in both jurisdictions for the agriculture, forestry, food and marine sectors and the bio-economy. Ministers noted the progress that has been made in funding projects in both jurisdictions under the DAFM national competitive call and the agriculture research themes under the US-Ireland R&D Partnership programme.

Finally, the Council agreed to hold the next agriculture sectoral meeting in early 2021. I welcome the re-establishment of formal NSMC meetings and look forward to working with my counterparts in the South.

**Mr McAleer (The Chairperson of the Committee for Agriculture, Environment and Rural Affairs):** I thank the Minister for his statement. It states that he intends to launch his:

*"Future Agricultural Policy Framework ... in the coming months."*

He will be aware that the South of Ireland is consulting on its national strategic plan for the common agricultural policy, with a confirmed €10.5 billion budget along with more than €1 billion from the Brexit adjustment reserve. As a consequence of Brexit, we are no longer in the common agricultural policy and have the financial uncertainty of having possibly no funding beyond this Westminster mandate and no progress having been made on the UK shared prosperity fund. As a consequence of that, is the Minister concerned that our farmers and rural communities in the North could be at a serious competitive disadvantage compared with our counterparts in the South?

**10.45 am**

**Mr Poots:** We have a commitment on the issues around Brexit and funding until the end of this mandate. No Government can make a commitment for a future Government; it will always lie with that particular Government. The EU runs seven-year cycles, and there is no commitment beyond the seven years in that respect either. Therefore, we should not be talking up the fact that there is no commitment beyond this mandate. We have a commitment for this mandate, and I believe that there will be substantial support for agriculture and the environment beyond the mandate of this Parliament. I do not believe that there is any profit in navel-gazing on this issue and seeking to create a straw man to suggest that this is something that may happen in the future. There is no evidence that that will be the case.

**Mr Irwin:** In relation to animal health, TB in Northern Ireland is one of the big issues and is very costly to the taxpayer. The Minister is aware that, in the Republic of Ireland, levels of TB are much lower than in Northern Ireland. Will he tell us what the Republic of Ireland is doing differently to Northern Ireland to give it lower levels of the disease?

**Mr Poots:** We met officials from the veterinary division of the Department of Agriculture, Food and the Marine. Essentially, they took a decision some time ago that they would deal with the wildlife transmitters of TB and, consequently, they saw a significant drop-off in TB in Ireland. Wildlife is a significant contributor here in Northern Ireland. All the evidence points to that, including the work that was done on the test and vaccinate or remove (TVR) project. The TB that is identified in the wildlife in

particular areas is directly associated with the bovine population in those areas.

We have different strains of TB, but it is identifiable in particular areas that those strains of TB are associated with the wildlife and the bovine population. It goes without any real scientific argument that that is the case, and, therefore, we have looked at that in the development of the TB strategy. We will be moving forward on that strategy soon. We are just waiting on the completion of the business case, and that should be done by early March. We want to move ahead with the strategy. I could have done it now, but the consultation has to be done when the business case comes out. Therefore, we are holding back for the business case, but there will be no holding back thereafter in getting it out to the public.

**Mr McGlone:** I thank the Minister for his statement. I am sure that he will join with the rest of us in welcoming Minister McConalogue's announcement today that he will open extra ports in the rest of the country for access to fisheries, particularly at Greencastle, Rathmullen, Burtonport, Ros a Mhíl and Howth. That is a useful bit of progress, and I am sure that he will thank the Minister for that.

What kind of scoping exercise has been done, particularly with the agri-food sector, to establish that free movement of goods and services, North and South, that is so crucial in the agri-food sector continues to go ahead unimpeded and without any difficulties?

**Mr Poots:** I raised in a letter to Minister McConalogue the issue of ports for landing. It was impacting on Northern Ireland vessels fishing in the Atlantic Ocean, so I welcome his announcement. It could have gone a bit further, but I welcome the change as far as it goes. I still intend to meet Minister McConalogue about that issue and about Dublin port in particular. We are seeking to have better access for hauliers who use Dublin port as a land bridge between Northern Ireland and Great Britain.

The issue of unimpeded access between Ireland and Northern Ireland for food and livestock is something that continues. That is the case because we remain part of the single market. Our problems do not lie there; they lie where over half our trade exists, between Great Britain and Northern Ireland. We would appreciate any assistance that we can get to resolve those issues. Those are not just issues for us. They are issues for Ireland, and they will grow when it comes to many of the key foods on their shelves. Some people may think that trifles and gravy are not important elements of a

meal. They are only two elements, but there will be challenges with getting hundreds of products on our shelves post-1 April if some common sense is not applied beyond that point.

**Mrs Barton:** I thank the Minister for his statement. He will be aware that there are huge problems with plant and health pesticides, and I know that he had talks about that with his counterpart in the Republic of Ireland. What further cooperation can there be to resolve the issue of plants coming into Northern Ireland? As the Minister will know, there is a huge problem with parsley seeds that we plant in our gardens and with potato seeds.

**Mr Poots:** There are clearly more significant problems getting many seeds into Northern Ireland than previously. Many of our nurseries are complaining. My local Christmas tree farm complained that it was ready for planting but cannot get supplies. Those issues need to be resolved, as they have a significant impact. Our high-quality potato seed in particular mainly comes from Scotland, as do other grain seeds.

As we move towards March, April and the springtime when farmers plant their product, they will need product to plant. Therefore, it is essential that those issues be resolved. We have been raising those matters for months now with the UK Government. Obviously, they had a lot of other things going on with Brexit, but those issues need to be resolved. I have been an absolute pain and have contacted UK Ministers and written to them, but I make no apology for that because we need to raise the issues on behalf of the people of Northern Ireland over and over again where those problems are being highlighted.

**Mr Blair:** I thank the Minister for his statement and answers. I welcome the work of the all-island animal health and welfare strategy action plan, which officials, North and South, are working together on to maximise cooperation on animal health and welfare. Which stakeholder groups has the Minister's Department engaged with here in Northern Ireland on the action plan?

**Mr Poots:** We engage with all stakeholders. People are in regular contact with the Department on those important issues, whether in writing or verbally. We seek to engage with key stakeholders. My door is always open to stakeholders. Obviously, things are slightly different now, but the virtual platform is something that we use extensively to continue that engagement.

**Mr M Bradley:** I thank the Minister for his statement. Will he give us an update on the state of the avian flu outbreak in Northern Ireland and how it is affecting trade?

**Mr Poots:** Avian flu is very worrying. Just as it is very difficult to stop the spread of COVID-19, it is very difficult to stop the spread of avian influenza. The situation and circumstances are different, but the consequences for the poultry sector are huge. We need the cooperation of poultry farmers and suppliers to poultry farmers in everything that they do to take all possible steps to stop the spread of avian influenza. Poultry is a massive part of the Northern Ireland economy. Over £1 billion is traded by one poultry company alone, and there are a number of other companies. We need to ensure that we can continue to support this industry through good practice, and my Veterinary Service is doing that. Currently, we have two outbreaks of avian influenza. We will do our utmost to ensure that it remains at two, but we need full cooperation to do that.

**Mr McGuigan:** Minister, there have been a number of references to and questions about paragraphs 10 and 11 of your statement, which are about cooperation on animal health, and I will follow on from Mr Bradley's question on avian flu. You have talked about the different strategy for TB in the South and about cooperation in the North between farmers and suppliers when dealing with avian flu. Can you give an update on your Department's joint efforts with the AFM Minister in the South to tackle avian flu and TB?

**Mr Poots:** The Department in the South has always made it clear that we are not getting it right on TB, and it believes that we need to change our approach. We need to look at that, and I trust that the Assembly will look at it in a reasoned and sensible way when the proposals are brought forward.

There is significant cooperation between the two veterinary divisions on avian flu and, indeed, on other animal disease problems because we know that these things do not recognise borders. Therefore, sensible cooperation will help us to win the inevitable battle. It is important that we win that battle because it affects both economies very significantly.

**Mr Harvey:** Thank you for your statement, Minister. A protein crop support scheme was recently introduced in Northern Ireland. What can we learn from the protein support scheme

in the Irish Republic? What environmental benefits can these crops bring?

**Mr Poots:** The Republic has had a scheme for a period, and the Department looked at that before introducing the Northern Ireland pilot. Protein crops offer a number of advantages, particularly in an area like Strangford, where extensive cereal growing takes place, as they enable farmers to introduce a new crop for rotation purposes.

Mrs Barton raised the issue of pesticides in her question. Clearly, if crops are rotated, the use of pesticides can be reduced because there is less disease recurrence in the crops through the simple practice of rotation. Many protein crops are excellent for breaking up soil and providing a degree of renewal. They also draw nitrogen from the atmosphere and will reduce the proteins that we have to import. We can never replace the proteins that we import with our own cereals, given the level of proteins that we require. Nonetheless, we can reduce the number that we import, and that reduces pressure on materials coming from South America and areas where people are removing trees to create more farms. If we do it at home, it can be done in a more environmentally friendly way.

**Mr Lynch:** Minister, paragraph 4 mentions COVID in meat plants. Given the number of outbreaks in meat plants and how crucial those plants are to the supply of food, does the Minister support the call from the Meat Exporters Association to prioritise plant workers on the list for receiving the vaccine?

**Mr Poots:** Not only do I agree with the Member but I have raised it at the Executive with the Minister of Health. At this time, his view is that vaccinations should be carried out as the Joint Committee on Vaccination and Immunisation (JCVI) recommends.

The food sector has been identified as an essential service, and, personally, I believe that we should seek to introduce the people who work in that sector, in cold, wet conditions that are suitable for the spread of the virus — we have had a number of outbreaks in plants despite best endeavours — into the scheme somewhat earlier than is currently the case. I will continue to press the case that staff in food factories get the COVID vaccine earlier. I do not believe that they should just be included with the rest of the over-50s, or whatever.

**11.00 am**

I accept that we need to get some of the population, particularly the vulnerable and over-80s, vaccinated first. However, beyond that, I believe that there is an opportunity to introduce it to people who are in more vulnerable situations because of where they work. That would include workers in the food sector. By the way, I would also include teachers and police officers in that.

**Mr Catney:** I thank the Minister for coming today. I was not here yesterday. I trust that his health is getting better. Not to put his blood pressure up, but I wish him a speedy recovery for what comes in for him.

I see that the Council noted the work that had been carried out to prepare for the end of the transition period and agreed to further investigations of the potential for cooperation to address specific challenges. I noticed that, in the news, the Minister talked about food shortages. What is the Department doing to look at new supply lines so that that nonsense does not happen?

**Mr Poots:** I suppose that it is for supermarkets and retailers to identify where their supply lines come from. There are strong supply lines that currently come from Great Britain to not just Northern Ireland but Ireland. Barriers, consequently, lead to problems for both Northern Ireland and Ireland. It is important that we ensure that we do not have barriers, particularly in an internal market. Therefore, work needs to continue at both a UK Government and European Union level to ensure that the barriers that are being proposed do not happen. Their consequences are significant.

With regard to cross-border trade, one of the issues that came up over and over again, after the Brexit decision was made by the people of the United Kingdom, was that of milk and the fact that we produce more milk than we process and the Republic of Ireland processes more milk than it produces. Consequently, milk is mixed, and once it is mixed, it cannot be unmixed. That is a significant problem. What we are pressing for, and what we wish our Irish colleagues to assist us to press for, therefore, is that Northern Ireland be part of the free trade arrangements that exist within the European Union and European Union sales to third countries where those free trade arrangements are in place. It seems somewhat odd that we have been kept in the single market but are then disadvantaged by not being part of the free trade arrangements within that single market. There is common ground between us and the Irish Republic because their processors need those opportunities to sell to the Middle East,

Far East and other places where those free trade agreements exist.

**Mr Nesbitt:** I thank the Minister for his remarks so far. When the UK's withdrawal from the EU was discussed, was mention made of travelling with pets? It seems that one can now take a pet to Dublin and back unfettered, but that is not the case if one visits another capital city of the United Kingdom, where paperwork and a rabies jab will be needed — for the pet, obviously; not for oneself.

**Mr Poots:** I might be looking forward to other vaccines, but I do not think that I need one for rabies just yet, thankfully. In any event, the Member is correct. However, it was always the case that we could travel to Ireland. The introduction of the rabies and tapeworm policy, which is coming from the European Union — let us be frank about it — is something that just has no benefit. There is no benefit to it for anybody. There is no benefit to the single market or European Union, but there is disadvantage.

First, there is disadvantage to the animals, because they have to get a rabies vaccine that they do not need. The British Isles, which contain the United Kingdom and the Republic of Ireland, are free of rabies and tapeworm, so medical interventions are being imposed on animals that do not require them. Secondly, the implications for guide dogs are significant for people who require those assistance dogs. There are also the issues with training guide dogs.

In all that, we need common sense to prevail. I trust that people in the European Union in particular, who have been pressing for some of those things, recognise the damage that they are doing to Northern Ireland. They like to hype up their support for the peace process in Northern Ireland, so why hurt us now? Why does the EU want to damage Northern Ireland? Why does it want to damage the economy? Why does it want to put up the price of food in Northern Ireland as a consequence of introducing barriers? That is not necessary and does not help the single market. We need to get a bit of common sense and reality back here.

**Mr Givan:** I thank the Minister for his statement and his ongoing work to mitigate the unmitigated disaster that is the Northern Ireland protocol. What evidence is there of the Irish Government taking a more constructive approach and starting to put the interests of people of Northern Ireland first, rather than seeking to isolate Northern Ireland as a

punishment and pursuing their ideology of the reunification of the island, and joining you in trying to convince people like the Prime Minister and the Secretary of State, who are downplaying the problems of the protocol, not least today, by blaming the empty shelves on COVID? When will the Irish Government join the Assembly and seek to mitigate the disaster that is the protocol, along with the protocol deniers in the House: Alliance, SDLP and Sinn Féin?

**Mr Poots:** Brandon Lewis is clearly going about like the emperor with no clothes; however, it is not a small boy who is pointing it out but the entire crowd. He really needs to reflect on that. It is not a good policy to go about saying something that is blatantly not the case. We know what the problems are and where they emanate from, and we know that those issues need to be dealt with.

I have had a request in for about two weeks now to meet my counterparts in the Republic of Ireland, because there are significant issues of concern. However, I have to admit that I am getting better cooperation in getting meetings with the UK Ministers than I am with Ministers in the Republic of Ireland. They may be busy, but everybody is busy, and these are significant issues. The port of Dublin is a huge issue; there are huge problems there. In some instances, hauliers are waiting there for days in very poor conditions, without good sanitary conditions or anything else. It is grossly unfair. Perishable goods are being lost as a consequence of those delays, and, from what I gather, a number of vehicles that would normally transit through Dublin are now coming through Belfast and Larne. They include vehicles that have the Republic of Ireland as their destination. We need cooperation in working those things out to the benefit of everyone.

**Ms Sheerin:** Minister, thanks for your statement. In paragraphs 19 and 20, you refer to an update on EU funding. Others in the House referred to the issues that Brexit has caused fishermen across the country. In my constituency of Mid Ulster, we have the Lough Neagh fishing cooperative. That is a fishing community with real fears about Brexit that it has been communicating for some time. Last summer, I met you about a package of support for Lough Neagh fishing operators. On 11 September, you responded to a question for written answer that I submitted to tell me that a package worth £250 million was being worked on using the European Maritime and Fisheries Fund (EMFF). In the Chamber, on 3 November, you told me again that that was soon to be delivered, and, on 12 November, you said that it

would now be valued at £336,000. Was that package of support for the Lough Neagh fishing operators discussed at the NSMC?

**Mr Poots:** No, it was not. That was a good angle to use to get that in; I will give you that. It is my intention to ensure that that funding goes to the fishermen. Officials are working on and refining it.

I would have preferred that the funding went out before Christmas, but it did not. However, I am still committed to doing that.

**Mr Boylan:** I thank the Minister for his statement, which refers to EU funding. I appreciate that the Horizon 2020 programmes have run out, along with the support programmes and the moneys. Was there a broader discussion about how we will replace that money and extend or protect those programmes to ensure that we do not delve into other pockets of money that are being used by communities and universities? It is important to find out where we will be with supports and funding for those groups.

**Mr Poots:** There are commitments that a number of those funds will be taken up directly by the UK Government. There are funds that we can continue to tap into such as PEACE funding and so forth. We can continue to tap into European funding and will do so in cooperation with our colleagues in the Republic of Ireland.

**Mr Chambers:** The Minister will be aware of the disappointing withdrawal of prominent mail order horticultural plant and seed suppliers based in England in delivering their products to Northern Ireland because of what they see as draconian regulations that have been caused by the protocol. Does he believe that this is a temporary situation, and is there anything that his Department can do in the meantime to help to restore this valuable service to gardeners and ensure that garden centres will be in a position to maintain imported stock levels?

**Mr Poots:** Gardening is an important activity for many people's mental health. At this time of the year, people get their seeds and have them well started for planting in the spring. It is hugely unfortunate that this circumstance has arisen. We have raised the issue regularly with ministerial colleagues in the United Kingdom Government. Do I believe that it can be resolved? Yes, I do. Whether it will be resolved is a different matter entirely, but we need to keep working on these things. There is the commercial side, as our farmers plant in March

and April, and that is absolutely critical. If farmers do not plant, they do not harvest, so it is very important that planting continues. The issue is, therefore, a significant priority for the Department.

**Mr Allister:** Yesterday, the Economy Minister told the House that 20% of Northern Ireland's agri-food traverses to GB through Dublin Port. She called on the Dublin Government to step up and take responsibility for the chaos at Dublin. That caused some Members who are key proponents of the rigorous implementation of the protocol to think that those comments were worthy of laughter. Is it a laughing matter? Does the Minister think that the Dublin Government are doing what they need to do to sort out that chaos?

**Mr Poots:** If you take the 20% and the £5 billion in the processing sector, £1 billion of trade is affected. If you take the 100,000 people who are employed in the agri-food sector, 20,000 people's employment is affected. I suspect that people in the sector will not be laughing as a consequence of the problems at Dublin Port. Dublin Port is incredibly important, particularly for just-in-time goods and for goods traversing to the south of England. It is incredibly important that we, as a country that sells a large volume of food and relies on the food and food-processing sector for so many jobs, ensure that we keep all routes open to export our goods. The Dublin Government need to step up and work with us to ensure that that transit can happen.

**11.15 am**

**Ms Bailey:** Minister, your statement refers to close cooperation:

*"on significant environmental issues, as they relate to the implementation of future agriculture policy."*

We know already that, under current policy, Northern Ireland fails to meet its obligations under the habitats directive. I am starting to hear reports of animal waste now being moved across the border in what are suspected to be attempts to continue to circumnavigate those obligations in a few cases. What coordination is happening to ensure that we meet our obligations under the habitats directive across the island?

**Mr Poots:** The Member referred to animal waste moving across the border, and that is an entirely legitimate act. I would refer to it as animal nutrients, because it can provide

nutrients for the soil. If we have an excess of nutrients, and the Republic of Ireland does not have enough, it is entirely reasonable to export those nutrients to the Republic of Ireland.

Ultimately, as we move forward, I would like to see us having a much more efficient way of doing that. That will involve significant investment in anaerobic digestion, slurry separation and pelletising phosphates, as well as a need to produce nitrogen in liquid form, which can then be exported not just to the Republic of Ireland but right across the world. That could help us ensure that we meet our environmental obligations and continue to grow the agri-food sector in Northern Ireland, because it is a job creator.

I hope that the Green Party will recognise the benefits of the agri-food sector in putting food on people's tables and a roof over people's heads, because, in doing that, it is a very important sector.

**Mr Speaker:** That concludes questions on the statement. I ask Members to take their ease for a moment or two before we move on to the next item in the Order Paper.

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

## Executive Committee Business

### Harbours (Grants and Loans Limit) Bill: Further Consideration Stage

**Mr Deputy Speaker (Mr Beggs):** I call the Minister for Infrastructure, Ms Nichola Mallon, to move the Bill.

*Moved. — [Ms Mallon (The Minister for Infrastructure).]*

**Mr Deputy Speaker (Mr Beggs):** No amendments have been tabled to the Bill at this stage. There is therefore no opportunity to discuss the Harbours (Grants and Loans Limit) Bill today. Members will, of course, be able to have a full debate at Final Stage.

The Further Consideration Stage of the Harbours (Grants and Loans Limit) Bill is therefore concluded. The Bill stands referred to the Speaker.

I ask Members to take their ease for a few moments until the Minister takes his place for the next item of business.

## Private Members' Business

### Functioning of Government (Miscellaneous Provisions) Bill: Further Consideration Stage

**Mr Deputy Speaker (Mr Beggs):** I call on Mr Jim Allister to move the Further Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill.

*Moved. — [Mr Allister.]*

**Mr Deputy Speaker (Mr Beggs):** Members will have a copy of the Marshalled List of amendments detailing the order for consideration. The amendments have been grouped for debate in my provisional grouping of amendments selected list. There are two groups of amendments, and we will debate the amendments in each group in turn. The first debate will be on amendment Nos 1 to 17, 48 to 53 and 56, which deal with the appointment and management of special advisers and an amendment to the long title. The second debate will be on amendment Nos 18 to 47, 54 and 55, which deal with administrative reform and accountability.

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

We now come to the first group of amendments for debate. With amendment No 1, it will be convenient to debate amendment Nos 2 to 17, 48 to 53 and 56. Members should note that amendment No 50 is consequential to amendment Nos 15 and 49.

#### **Clause 1 (Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013)**

**Mr Murphy (The Minister of Finance):** I beg to move amendment No 1: In clause 1, page 1, line 5, leave out "amend subsection 3 to read 'Within" and insert -

*"for subsection (3) substitute—*

*'(3) Within".*

*The following amendments stood on the Marshalled List:*

No 2: In page 1, line 7, leave out "under" and insert "mentioned in".— [Mr Murphy (The Minister of Finance).]

No 3: In page 1, line 12, after "Service" insert -

*", as that code applies to special advisers,".*— [Mr Murphy (The Minister of Finance).]

No 4: In page 1, line 15, at end insert -

*"(3C) For the purposes of subsection (3A), the following are not Ministerial interference—*

*(a) the carrying-out of a role given to a Minister by the disciplinary code mentioned in that subsection;*

*(b) the termination of a special adviser's appointment by the appointing Minister outside of, or before the conclusion of, any process or procedure under that code."*— [Mr Murphy (The Minister of Finance).]

No 5: In page 1, line 16, leave out subsection (4).— [Mr Murphy (The Minister of Finance).]

No 6: In page 1, line 18, leave out "After subsection (3)(b)," and insert -

*"In section 8(3) (contents of code for appointments), after paragraph (b)".*— [Mr Murphy (The Minister of Finance).]

No 7: In page 2, line 1, leave out from "above" to "(Grade 5)" on line 2 and insert -

*"at a level higher than the highest level under the published pay scale applicable to an Assistant Secretary (Grade 5) in the Northern Ireland Civil Service".*— [Mr Murphy (The Minister of Finance).]

No 8: In page 2, line 2, at end insert -

*"(5A) In section 8, after subsection (5) insert—*

*'(6) If, at any time after a special adviser is appointed (and whether or not the appointment has taken effect), a senior officer in the Department of Finance is satisfied that a person exercising functions in respect of the appointment did not have regard to the code, the Department of Finance must as soon as reasonably practicable after that time give the special adviser notice terminating the*

*appointment with effect from the giving of the notice, but this—*

*(a) does not apply if the appointment otherwise terminates before the notice is given, and*

*(b) is without prejudice to the person's rights (if any) to payment in lieu of notice.*

*(7) In subsection (6) 'senior officer' has the meaning given by Article 2(3) of the Departments (Northern Ireland) Order 1999."*— [Mr Murphy (The Minister of Finance).]

No 9: In page 2, line 4, leave out "the duly appointed" and insert -

*"a person duly appointed as a".*— [Mr Murphy (The Minister of Finance).]

No 10: In page 2, line 5, after first "the" insert "Minister's".— [Mr Murphy (The Minister of Finance).]

No 11: In page 2, line 6, leave out "post" and insert -

*"person's post as a special adviser".*— [Mr Murphy (The Minister of Finance).]

No 12: In page 2, line 6, leave out "a permanent secretary" and insert -

*"the permanent secretary to a Northern Ireland department".*— [Mr Murphy (The Minister of Finance).]

No 13: In page 2, leave out lines 10 to 13 and insert -

*"(2) A special adviser—*

*(a) in carrying out the functions of their post, is not to be supervised or directed by,*

*(b) is not to report on their carrying-out of the functions of their post to, and*

*(c) is not answerable for their carrying-out of the functions of their post to,*

*any person other than their appointing Minister, save as permitted by subsection (3) or (4) or section 7(3) or required by section 7(3A).*

*(3) A special adviser's appointing Minister may authorise the special adviser, to such extent as the appointing Minister specifies, to be directed*

by or report to a junior Minister in the same department as the appointing Minister.

(4) Where a special adviser is a member of a profession or organisation, subsection (2) does not stop them being answerable to the profession or organisation for acts done in carrying out the functions of their post if they would be similarly answerable—

(a) for corresponding acts done in carrying out the duties of an employment otherwise than as a special adviser, or

(b) for corresponding acts done otherwise than in the course of an employment.”.— [Mr Murphy (The Minister of Finance).]

No 14: In clause 2, page 2, line 16, at the beginning insert -

“(1) In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—

(a) in paragraph (3) omit sub-paragraph (d) (and the ‘or’ preceding it); and

(b) in paragraph (4) omit the words after ‘paragraph (2)(b)’.

(2) In consequence of subsection (1),”.— [Mr Murphy (The Minister of Finance).]

No 15: In clause 3, page 2, line 20, at the beginning insert -

“In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—

(a) in paragraph (2), omit sub-paragraph (c) (and the ‘or’ preceding it);

(b) omit paragraph (4A); and

(c) in paragraph (5), omit ‘or (c)’.

(1A) In consequence of subsection (1),”.— [Mr Murphy (The Minister of Finance).]

No 16: In clause 4, page 2, line 28, leave out “on 31 March 2021” and insert -

“at the end of the period of three months, beginning with the day on which this Act receives Royal Assent”.— [Mr Allister.]

No 17: In clause 4, page 2, line 30, leave out from “on” to “2021” on line 31 and insert -

“at the end of the period of three months, beginning with the day on which this Act receives Royal Assent”.— [Mr Allister.]

No 48: In clause 14, page 5, line 26, at the beginning insert -

“(A1) Section 1(3) comes into operation at the end of the period of 6 months beginning with the end of the day on which this Act receives Royal Assent.”.— [Mr Murphy (The Minister of Finance).]

No 49: In clause 14, page 5, line 26, leave out subsection (1).— [Mr Allister.]

No 50: In clause 14, page 5, line 26, after “3(1)” insert “and (1A)”.— [Mr Murphy (The Minister of Finance).]

No 51: In clause 14, page 5, line 28, leave out “other”.— [Mr Allister.]

No 52: In clause 15, page 5, leave out lines 34 and 35.— [Mr Murphy (The Minister of Finance).]

No 53: In clause 15, page 5, line 36, leave out “the Minister” and insert “Minister”.— [Mr Murphy (The Minister of Finance).]

No 56: In the long title, leave out from “and Article 3” to “section 17” and insert -

“, repeal the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007, repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016, amend sections 17 and 27”.— [Mr Allister.]

I am very grateful for the opportunity to open the debate. I have tabled a number of amendments. Some of these amendments address flaws in the original drafting, whereas others seek to mitigate the negative consequences of the clauses of the Bill, whether those consequences were intended or unintended. However, in opening, I underline that, by tabling these amendments, I am not endorsing the Bill. I still believe that this legislation largely deals with administrative matters that should be contained in codes and guidance. However, if there is any risk that the Bill will reach the statute book, it is important that it does not remain in its flawed state and that the damage that it may cause to the

effective functioning of government is limited. I have a responsibility to ensure that Ministers, special advisers and other civil servants are not fettered in their ability to serve the community and perform their functions effectively.

The first group of amendments is concerned with the role of special advisers, and I will address each of the amendments in turn.

Amendment No 1 is a technical amendment to clause 1(2) to insert the usual wording for a textual substitution. Amendment No 2 is a textual correction to clause 1(2) to reflect the fact that section 7(2)(b) of the Civil Service (Special Advisers) Act 2013 mentions certain powers but does not confer them. Amendment No 3 is intended to ensure clarity in clause 1(3) so that, where the Northern Ireland Civil Service disciplinary code has rules for special advisers that are different from the rules for other civil servants, it is the former, and not the latter, that must be applied to special advisers. The current drafting of the Bill leaves that ambiguous. Although it would be perfectly sensible to interpret the clause in that way, we are looking at primary legislation, so we need absolute clarity.

Amendment No 4 follows from the earlier provisions in clause 1(3), which prevent the interference of a Minister in the disciplinary process as it applies to special advisers. The amendment sets out that the ban on ministerial interference does not prevent the proper involvement of the Minister in a defined role under the disciplinary code. The Minister is the appointing authority for the special adviser, and, as such, has responsibility for discipline. That responsibility cannot be removed or delegated in its entirety to an official, so the Minister must have a role.

The amendment also makes it clear that the ban on interference must still allow the immediate dismissal of a special adviser by the Minister. It has been my concern that, by applying Civil Service disciplinary procedures to the discipline of a special adviser, the Bill might remove the discretionary power of the Minister, as the appointing authority, to end the appointment forthwith. That power may rarely, if ever, be needed, but there may be an occasion where the relationship breaks down entirely, and, in those circumstances, there must be the option to end the appointment immediately.

Amendment No 5 removes clause 1(4) to pave the way for amendment No 8, which I will deal with in turn. Amendment No 6 is a technical amendment to clause 1(5) to make it clear that the inserted text is to go into section 8(3)(b).

Amendment No 7 is a small textual amendment to clause 1(6) to reflect the fact that grade 5s have a pay band rather than a single pay rate. Amendment No 8 would insert a new clause intended to address some difficulties with clause 1(4). That clause, as it appears in the Bill, would render the appointment of a special adviser of no effect if the appointing authority does not adhere to the code for appointment as set out in the Civil Service (Special Advisers) Act 2013.

Retrospectively invalidating an appointment in that way would raise difficult issues about the recovery of pay and would, in turn, leave the employer open to legal challenge in respect of remuneration for work done. Instead, the amendment provides for immediate, rather than retrospective, termination, without prejudice to the right to payment in lieu of notice where summary dismissal cannot be justified. The amendment also makes it clear that the responsibility would lie with the Department of Finance for terminating employment and that that termination would take place only if a senior officer of the Department is satisfied that the criteria are met.

Clause 1(4), as it appears in the Bill at present, would terminate the appointment because the appointing authority had failed to adhere to the code. However, the 2013 Act does not require the appointing authority to adhere to the code; the statutory duty is to "have regard to the code", so that amendment has been made to the text.

Amendment Nos 9 to 12 make small textual changes to clause 1(6) to reflect the fact that there are multiple Ministers and special advisers in the Executive Office. They also seek to put the emphasis on the duties of each individual special adviser's post rather than on duties of the kind that may be undertaken by special advisers and may or may not also be undertaken by other civil servants. Amendment No 12 further ensures that the Bill does not inadvertently catch Whitehall Departments that operate within the jurisdiction, such as the NIO, and thereby render the Bill outside the vires of the Assembly.

Amendment No 13 is an attempt to address some of the potentially problematic consequences of the current drafting of clause 1(6). At present, clause 1(6) states:

*"No special adviser ... shall be supervised by, directed by, answerable to, or report to any person other than the Minister".*

It takes no account of the fact that special advisers may, quite properly, be accountable to another person. In particular, at clause 8(4)(a), the amendment would allow a professional organisation, for example, or membership of an organisation or church, to discipline a special adviser for something that they do as a special adviser if that special adviser cannot be disciplined for doing the same thing if employed in a different role or in the course of their private life. Amendment No 13 also removes the provision that a special adviser must not:

*"be supervised by, directed by, answerable to, or report to any person other than the"*

appointing Minister, either directly or indirectly. That clause is unworkable. First, it does not make it explicit where the duty lies to prevent such a thing happening; whether on the Minister, the special adviser or some other person. Secondly, it is unclear what it means to indirectly report to another person. That could be interpreted to mean that special advisers cannot liaise with their party, which is a crucial part of their job.

I doubt that the courts would thank us for spending their time and resources on adjudicating on such questions.

### 11.30 am

The amendment to clause 8(3)(a) also addresses how the services of a special adviser could be made available to junior Ministers in the Executive Office. This is consistent with the Bill's provision to remove the power of junior Ministers to appoint a special adviser of their own. The Bill sponsor has made it clear that the removal of that power was primarily aimed at limiting the number of special advisers in the Executive Office to six in total. This amendment does not change that.

Amendment Nos 14 and 15 address problems with the drafting of clauses 2 and 3. As originally drafted, these clauses repealed the legislation that amended the Civil Service Commissioners (Northern Ireland) Order 1999. They did not, however, repeal the amendments to the 1999 Order itself. Rather than leaving a question mark over whether the powers had actually been repealed, I have tabled these amendments to ensure that the Bill sponsor's intention is delivered.

Amendment No 48 extends the commencement of clause 1(3) to allow time for the review and revision of the Northern Ireland Civil Service handbook to enable it to be applied sensibly to

special advisers. I am allowing six months, given the need to engage with the Civil Service unions through the Central Whitley Council.

Amendment No 50 is consequential to the proposed amendment in clause 3. Amendment No 52 removes the unnecessary definition of the Executive in clause 15. Amendment No 53 adds to the drafting in clause 15.

I hope for a sensible debate on the proposed amendments. Whether or not we can agree on the need for legislation, I hope that we can agree that the making of any legislation in this place is orderly.

**Dr Aiken (The Chairperson of the Committee for Finance):** Thank you very much indeed, Minister, for moving your amendments. The Committee for Finance considered written and oral evidence from a range of organisations and individuals, including the Bill sponsor, the Minister of Finance, the permanent secretary of the Department of Finance and officials from the Department's strategic policy and reform division.

Again, I thank all Committee members for their input and engagement during Committee Stage. I also offer my thanks, on behalf of the Committee, to the Bill sponsor, Mr Jim Allister QC, for bringing amendments to the Bill to address a number of concerns raised during Committee Stage by members, witnesses and other stakeholders. I welcome the fact that most of the amendments supported by the Committee passed Consideration Stage. Amendment Nos 16 and 17 to clause 4 should address concerns raised by some members at Committee Stage and, in doing so, resolve any issues that would otherwise arise should the legislation not achieve Royal Assent before 31 March.

In addition to the Minister and permanent secretary providing oral evidence to the Committee, Department of Finance officials attended on two occasions. The Department also provided responses to Committee questions on a number of occasions. Throughout this evidence, they referred to, reiterated and reinforced at every opportunity the view of the Minister that codes efficiently address the relevant issues and that legislation was not necessary. The Department criticised the drafting of a number of clauses, yet, when the Committee sought assistance from the Department to help to improve the drafting, the responses received were less than helpful. They included statements such as:

*"The drafting of the Bill is a matter for the Member.*

*The improvement of the drafting is a matter for the Member.*

*The provision is unnecessary."*

The Department said that clause 6, on records of meetings:

*"appears to be unnecessarily specific ... It is not appropriate to legislate in this area."*

Now, however, at the final opportunity, the Department has changed its approach and no longer considers the drafting of the Bill to be:

*"a matter for the Member".*

I welcome the Department's efforts to improve the drafting of the Bill, which will, if agreed, improve the wording and ensure that the legislation passed by the House achieves its intended aims. The Department could, however, have provided this support much earlier, as it was requested of it during Committee Stage. As for the suggestion that clause 6 is unnecessarily specific as originally drafted, the clause contains fewer than four lines of text. The amendment to clause 6 tabled by the Minister contains an entire page of text. It includes six subsections and is very specific in its intentions. Whether or not they support the legislation, Departments, Ministers and all Members have a duty and responsibility to ensure that the legislation passed by the House is clear, coherent and effective. The best way to achieve that is through supportive and meaningful engagement at an early stage and throughout the legislative process. That concludes my remarks.

**Mr Frew:** I have thoroughly enjoyed the process and journey to this stage of the Bill because I enjoy my Committee work. I enjoy building up relationships with other members from other parties. It is the one chance that you really get to build up relationships with those people, outside party politics, because you have a common goal and a common job to do, and you should, as a necessity, apply all your professional will to that.

I welcome legislation coming to the House so that we can all debate it and make sure that it is the best that it can be. What I see in the Bill is, simply, reform. What I see in the Bill, irrespective of who introduced it, who the author is and who moved it, is reform. I ask myself this simple question: is the reform necessary? I

answer: absolutely. Is this the right approach and the right way to go? I answer: yes, absolutely. I do not see why other Members criticise Members for bringing forward a private Member's Bill. In fact, I want to encourage Members to bring forward what is in their head, their ideas and their interests, and I see want to see those in blue Bills. Then let the Committee scrutinise and let the Assembly decide what should and should not go forward.

In that context, I must say that I am disappointed by the attitude of some parties and Members of the House. Whilst it is entirely appropriate for the Minister to reserve the right not to endorse the Bill, it is not appropriate to dampen down any Member who wishes to introduce private legislation. It is not appropriate for a party not to engage in a decision-making journey and process that could well lead to legislation. Whilst I accept that any Member may reserve the right, and I will protect the right, not to endorse any direction of travel via legislation, it is incumbent on us all to engage in that process to make sure that legislation is fit for purpose and that it is exactly what we need it to be when it goes out the other side.

Whilst I acknowledge the Minister and the Department's will to lay down amendments now, that process could have been started a lot sooner, even by his political party in the Committee that scrutinised the Bill. All the amendments that the Minister has brought forward could have been discussed during the earlier stages of scrutiny that the Finance Committee endeavoured to provide throughout this process. It is disappointing that the Department and the Minister have come, at this late hour, with these amendments for us to discuss today, albeit that I welcome them. This needed to happen. The Minister needed to table these amendments so that we can have a good, thorough debate and the Department can stamp its thoughts on the process. That is the way that it should be. It could have been done earlier; it could have been done by that political party earlier.

I must say that I was disappointed when Sinn Féin members turned their face away from the Bill. They did not want to know it; they did not want to engage, and that was deeply disappointing. This is reform. Why are we as MLAs here if not to reform? What are we here for if not to reform the practices and processes that we encounter daily in order to make those easier and better? Why are we here, if not to transform the lives of our people? The lives of our people —.

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

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

**Mr McGuigan:** Does the Member agree that it is ironic that we are listening to a five-minute lecture about the appropriate behaviour of Ministers and political parties given that this whole topic has come about because of the inappropriate behaviour of Ministers and Members of political parties on the opposite Benches?

**Mr Frew:** The Member makes an intervention, but he neglects to look at his own party and his side of the House with regards to bad behaviour. That is not acceptable. That is the attitude that we have seen from Sinn Féin throughout this process. It is not acceptable, it is not good and it is not conducive to good law. I ask the Member to consider his ways and to engage fully in reform.

Why do we need this reform? It is not even because of the RHI inquiry or any other inquiry. Reform is a good thing. Reform is something that we should think about on a daily basis when we ask this: what can we do better? The Bill goes some way, although it is a small way and a small step to doing that.

**Mr Deputy Speaker (Mr Beggs):** I encourage Members to return to the specific amendments.

**Mr Frew:** Yes, I will, Mr Deputy Speaker. When I look at the amendments and the amendments from the Finance Minister, I recall that reform should be led by the Executive, but here we have a Minister being forced to bring reform through a private Member's Bill. That is not good enough. I want to see reform coming out of this Executive and this Finance Minister. Of course, we live in challenging times for health and the economy, but those challenging times should not be an excuse not to reform. They should be the catalyst for and the reason why we need reform. We cannot simply keep doing what we are doing over and over again. It will fail our people, and it is failing our people.

Most of the Minister's amendments are stylistic and tidy up wording. That is to be commended, but I have a concern about and a question mark over some. Amendment No 5, which is to clause 1, says:

*"Leave out subsection (4)",*

and it is to do with the appointments process.

That leads me on to amendment No 8. Whilst I understand and welcome that most of the Minister's amendments are about putting the

meat on the bones and putting in the detail so that Ministers, spads, the Civil Service and everyone else, for that matter, know exactly where they stand, I have a concern with amendment No 8. This might be for the first time, although I do not know, but the amendment gives a "senior officer" in the Department of Finance the power to, if you like, make null and void the appointment of a spad because of an issue to do with the code of appointment. It is important to say that it is the code of appointment and not the code of conduct, but I cannot help but think that a spad, whomever they might be and no matter what party they are from, could well be made redundant not because of their sins but because of an appointment process that may have been flawed. That is the first thing that I will say about amendment No 8.

If we are giving a special or a new power to, as amendment No 8 says:

*"a senior officer in the Department of Finance",*

who is that senior officer? Is it the permanent secretary or someone else? If that amendment gives them the power to terminate an appointment, what capacity do they have to investigate that action? What powers will the Department of Finance and that senior officer have in investigating and in the disciplinary element of that action? How will they satisfy themselves that a person did not have regard for the code?

Although I welcome the amendments, that troubles me. There are still queries in my head around some of those things. That was amendment No 8.

#### **11.45 am**

Amendment No 13 is noteworthy because it tidies up and gives more detail on the role of a spad in the Executive Office. While I agree that junior Ministers do not need a spad, there may be times when they need assistance, guidance or advice. It may well be appropriate for the appointing Minister to task a spad or spads to assist, advise or help a junior Minister. That adds flexibility to the Bill, and there is merit in that. I have no problem with that; it adds welcome clarity and flexibility.

On amendment Nos 16 and 17, I understand what is happening. We are running out of time in the legislative process, so they make common sense. I give the Bill sponsor

amendment Nos 16 and 17. I support them and think that they make common sense.

Amendment No 48 allows a period of six months, beginning on the end of the day on which the Bill receives Royal Assent. I suppose that, if it is OK for the Bill sponsor to adopt a time period in the Bill as opposed to an arbitrary date, we should allow the Department flexibility with regard to its duties and responsibilities. However, the six-month period may be an issue and may need clarification. Why is it six months? Why is it required? If the Bill receives Royal Assent in March, April or maybe even May, what does that mean for the process coming up to the end of a term? I worry about that and the need for six months when it is clear what is being asked of the Department and what its duties are.

Most of the amendments are non-contentious. They tidy up wording and make the Bill read better, which I support. I support that engagement by the Department and the Minister. We have come a long way from the Civil Service telling us in Committee that the Bill could not be amended and was not good enough to be amended. Now we see amendments, and about time too. I welcome the engagement by the Minister and the Department and hope that we can all support a Bill that will bring good and decent reform, which is only the start, not the finish. We await the reform Bills that, I hope, the Executive will produce in the very near future.

**Mr O'Dowd:** By and large, we will support the group 1 amendments, but, as the Minister said, it is not a case of supporting the legislation. This question has to be asked: is it a Bill for every ill? Mr Allister's rush to introduce the Bill has produced poor legislation. The fact that we have 56 amendments in front of us shows how poorly drafted the original legislation was.

Mr Frew gifted us with his single transferable speech on why he likes legislation — it helps him to make friends on the Committee, and he likes reform — but, during his time on the Committee and through his support for the Bill, he, like others in the Chamber who have supported it, has failed to recognise that the legislation is poorly drafted and unnecessary.

**Mr Catney:** I thank the Member for giving way. I am on the Finance Committee and noted that its members from Sinn Féin never engaged with the rest of us on the Bill to try to make it better. Some of that fault therefore has to lie with your own party.

**Mr O'Dowd:** You can try to make a silk purse out of a sow's ear, but it is still a sow's ear at the end of the day.

The question that Members have to ask themselves of the Committee, and of those who have been cheerleading the Bill, is, first, what is the motivation of the Bill's sponsor? Is Mr Allister a defender and supporter of the Good Friday Agreement? Does he want to see government function well here? In my opinion, he does not. He is an opponent of the Good Friday Agreement and the Executive. He has told everybody who is prepared to listen to him that this place is unworkable because it is built on a foundation of sand. Why would he therefore want to improve the functioning of government? Is it not the case that the legislation, as originally drafted, was going to make the functioning of government more difficult? I think that it will make it more difficult. That may not become immediately visible to members of the public, who see their public services being delivered, but it will make the work of Ministers, the Executive, spads and civil servants much more difficult and much more complicated. Everyone has to work to the rule book, but the rule book as it was during the RHI scandal should have prevented spads sending emails to their fathers-in-law, cousins and others on how to make a quick few pounds off the public purse. It should have prevented spads from filling their boots and Ministers coming into the Chamber and presenting legislation that they had not read or of which they were not over the jot and tittle.

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

**Mr O'Dowd:** I will.

**Mr Storey:** We can also include in that list of ills Ted Howell, Padraic Wilson and Martin Lynch, as well as the Finance Minister's predecessor, Máirtín Ó Muilleoir, who is no longer in the House. Strangely enough, he somehow just disappeared. Would it prevent the ill that is Connolly House having been, and probably still being, the centre of policymaking for your party, as opposed to the House being given its proper place?

**Mr Deputy Speaker (Mr Beggs):** Members, I encourage you to get back to our function today rather than to recount history. Our function is to consider the amendments before us to the Bill.

**Mr O'Dowd:** Amendment Nos 3 and 4, and the other amendments tabled by the Minister, allow for proper accountability mechanisms for special advisers. Connolly House was certainly

not the problem. The problem was those who were prepared to fill their boots with public money. Those who were prepared to fill their boots with public money were sitting over there on the other side of the House, were employed by Members sitting over there or were encouraged by Members sitting over there. Let us not try to deflect responsibility for that.

I will get back to the Bill before us. Spads are a political appointment, as they are in all institutions that I can think of in Western-style democracies. The Minister is responsible for the appointment of the spad. To try to equate spads fully with the Civil Service is a mistake and will not allow for a good, functioning Government. Let us not try to create a scenario in which government is not working, which I think is Mr Allister's intention. The amendments before us allow for mitigations of the worst aspects of the Bill. It is unfortunate that, many times in the Chamber, we have to spend our time mitigating the worst ideas from Members of the opposite benches. We spent a long time trying to mitigate Brexit. Today, we are going to try to mitigate the worst aspects of another piece of legislation that is being supported by Members opposite.

In conclusion, we are supportive of a majority of the amendments before us. We still think that the Bill is unnecessary and that its sponsor's motivation is to create problems in the functioning of government. It is always worth remembering that, if someone wants to break the rules or go around the legislation — if that motivation is there, it does not matter how thick the rule book is, because they will continue to do it.

**Mr O'Toole:** I rise to speak, hopefully very briefly, on group 1. Group 1, as others have said, contains in large part technical amendments that tidy up the drafting of the legislation. In group 2, we have some amendments, and obviously I will be speaking for longer on that group.

First of all, since others have done it, I will give some broad thoughts on the context and purpose of this Bill. I and my party have come to this with an open and constructive mind throughout. We have not sought to assume that absolutely everything in this Bill makes sense. We have had specific and substantive reservations. Indeed, the purpose of today, hopefully, is to discuss and correct some of those. In answer to the Member who spoke previously, have we taken a closed-minded approach to the principle of legislation? No, we have not, to be perfectly honest. The reason why we have not is that the depth and breadth

of public concern over bad behaviour, to put it lightly, in our political institutions is so severe and so profound that we cannot simply brush away the principle of legislation on the basis either that we disagree with the Bill sponsor — be in no doubt that we do disagree with the Bill sponsor on practically everything else, and I look forward to returning to normal business and arguing with the Bill sponsor passionately about virtually everything else — or on the basis of the idea that legislation in and of itself is not the way to deal with this. We have not taken those blanket approaches.

I will deal with that second approach: that legislation is, in a sense, anathema to good government or that this is all captured in codes and guidance. Up to a point, that is right. Legislation cannot change culture, and it cannot change behaviour. However, legislation exists in a whole range of areas in order to give legal underpinning to standards of behaviour. Where there is a particular clear public desire for a shift in approach, I think that there is a real, meaningful argument for legislation. Will this legislation, either as it was tabled or as it is amended, fundamentally shift behaviour patterns among certain political parties and their —?

**Dr Aiken:** I thank the Member for giving way. I think that it might be useful for Members of the Assembly to remind ourselves that, at the same time that we had officials from the Department explaining to the Committee that there was no need for any legislation and legislative process because normal processes and procedures would have seen things improve, or shortly thereafter, the Committee was looking to take opinion on whether we would have to compel the Department to give us information and advice. Do you consider that to be normal legislative process?

**Mr O'Toole:** I thank the Member for his intervention. I can say as a former civil servant that civil servants will very often prefer that things are in code and guidance. That is understandable. Also, in large part, it is justifiable. I do not think that everything is best captured by legislation, but I think that this Bill will go a significant way, or go some way, to allowing us to be able to say to members of the public that we are starting to take action. There will be a range of other things that need to be taken forward. I know that the Minister is working on this area himself. I hope that he will come forward with further proposals, and we will be constructive and open-minded about them. However, let us be honest. The Civil Service view that codes and guidance are always the exclusive and sole answer to

profound questions of public administration is something that we as legislators have a right and a duty to challenge and think about.

A couple of months ago, the Northern Ireland Audit Office brought out a report on the capacity and capability of the Northern Ireland Civil Service, and it was not, I am afraid, flattering, notwithstanding the terrific and diligent work that many hundreds if not thousands of civil servants have done in the past year in response to COVID.

We know that profound problems were highlighted by the RHI scandal; problems that we need to address. On the Civil Service, it is also worth saying that part of what happened during the amending process of the Bill — I hope that it happens further today — means that the Bill's focus will be more clearly on special advisers and politicians. That is a good thing because it clarifies the purpose of the Bill. That is not to say that further legislation on Civil Service reform may not be necessary, but it is clear that some of the previous provisions, for example, on criminalisation, were too broadly directed and would have captured too many civil servants.

### **12.00 noon**

There was a principle that the Bill's contents were wrong, but, at the same time, there were significant and challenging issues with its drafting and some of its provisions. We have worked on the provisions and, in large part, the Bill's sponsor has engaged on that. I know that the largely technical amendments in the first group that the Minister tabled will improve the functioning of the Bill. All that we can ask for is a Bill that lands on the statute book and is functional from day one.

I will not go into too much more detail other than to say that we support the vast range of technical amendments that should make the Bill work. I am glad that the Department has been drafting and is confident. I hope that the Bill will be a more usable piece of legislation when it is placed on the statute book. As I said, as a former civil servant, I am in no doubt about the efficacy of legislation to correct all ills or fundamentally change the culture of either a political system or a bureaucracy, but that does not mean that it is without merit or that we should say that we will not legislate or that legislation has no purpose at all.

I am disappointed that an amendment that my party tabled has not been accepted for debate. I am slightly confused as to why, as other

amendments were accepted that seem to be slightly more extraneous to the core purpose of the Bill. We had hoped to introduce a provision to tighten down on bullying inside government by Ministers and special advisers. We are certainly not lobbing accusations at present or past Ministers, but we know, and have seen recently at Westminster, that, when behaviour is set out purely in codes and guidance, Ministers can get away with the most egregious behaviour.

Priti Patel, the Home Secretary — I see that the Deputy Speaker is about to direct me back to the Bill. I am merely making the point that we were very disappointed that we were unable to include that in legislation. It would have been a clear sign and an example of this place taking the lead. Hopefully, other jurisdictions would have followed us.

In conclusion, I am pleased that the Minister and his Department have got to work and tabled a range of technical amendments. My party has been broadly supportive of the intentions of the Bill but has retained a desire to improve it throughout. We thought that it was far from perfect when it was introduced, and we had very specific reservations. We will continue to try to improve it today, and that is why we hope that several amendments, particularly in the second group, are passed. They are important. On that, I conclude my remarks on the first group of amendments. We are broadly supportive of the largely technical amendments in it.

**Mr Muir:** On behalf of the Alliance Party, I will speak to the amendments in the first group. During the Bill's previous stages, our party expressed concerns about aspects of the Bill while remaining supportive of its overall aims and objectives.

The debate today focuses specifically on the amendments tabled at Further Consideration Stage. It should not be Groundhog Day. Therefore, I do not intend to reheat the debates that have been covered extensively and into the small hours in the Chamber at Consideration Stage and at Second Stage on 16 March 2020. Nor do I intend to speak at great length. Many years ago, my English teacher taught me an important lesson after I had written reams and reams of paper. She taught me your work should be judged not on the quantity, but, rather, on the quality and substance of your argument.

I welcome the numerous amendments that have been tabled at Further Consideration Stage. I thank the proposers, their staff and the

Bill Office for all their hard work to date. My party has considered each and every one of the amendments in detail and held fruitful discussions with other parties and Bill Office staff to ensure that we are clear on the amendments' intentions and their potential impact.

I would particularly like to thank my researcher, David Morrow, who continues to studiously analyse the Bill as it progresses. Scrutinising legislation that has the potential to become the law of the land is at the core of why we are sent to be here as MLAs. It is a responsibility that should be taken with the utmost seriousness. To be included in the Bill, each amendment must pass the test that it will improve the quality of the proposed legislation and serve to fulfil the Bill's ultimate objectives.

I turn to the first group of amendments. The Alliance Party will support amendment Nos 1 through to 13, which focus on clause 1. Amendment No 4 addresses concerns that we raised at Consideration Stage. It ensures that Ministers will continue to be able to dismiss their spads and, therefore, retains the crucial principle that Ministers are accountable and responsible for their spad's behaviour. We also welcome amendment No 7, which aligns the cap on spad remuneration to Civil Service pay grades.

Overall, we are satisfied that amendment Nos 1 to 13, if passed at Further Consideration Stage, significantly improve clause 1. We will support amendment Nos 14 and 15, which amend clauses 2 and 3 respectively. We have satisfied ourselves that those amendments are purely technical. As already mentioned, amendment Nos 16 and 17 and amendment Nos 49 to 51 are linked, and what they are trying to achieve is very similar in substance. We are content to listen to all the arguments that will be made before deciding which of the amendments is the most appropriate. We value the opportunity to engage on those amendments in the Chamber today. Lastly, we are content to support the remaining amendments in the group and to change the long title of the Bill.

In conclusion, we broadly welcome the amendments in group 1 and believe that they improve the Bill.

**Mr McGuigan:** As my party colleague has said, Sinn Féin will support most of the amendments in group 1. He outlined the politics of why we continue to oppose the Bill. We have been consistent in that approach from the outset and do not believe that the Bill is necessary. I listened to Paul Frew talk about reform coming

from the Executive. However, in the context of the Bill, the issue was dealt with and agreed by all parties in NDNA, and, as Matthew O'Toole has said, the Minister has brought forward reform and changes and is working on further reform of the issue.

Jim Allister has named the Bill —.

**Dr Aiken:** I am sorry. I apologise. I ask respectfully whether the Member will give way.

**Mr McGuigan:** Go ahead.

**Dr Aiken:** Thank you very much indeed. For clarity, when it came to the discussions about NDNA, many of the things that our party, in particular, asked to be included were not put on the table and, indeed, are not reflected in the document at all.

**Mr McGuigan:** That is an issue for all parties. NDNA is an agreement, and not every party got everything that it asked or wished for.

As I and others have pointed out in this and other debates, even the name of the Bill as the Functioning of Government (Miscellaneous Provisions) Bill is ironic, in that its sponsor's intentions are, in all likelihood, that it should cause dysfunction in the work of the Government, Ministers and spads, and strangle effective government.

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

**Mr McGuigan:** Go ahead.

**Mr Storey:** Why is it that every time we come to the House when a Bill or a proposal comes from the Members on the opposite Benches, they say, "This is how it is", but when someone else does it, they say, "There is an ulterior motive. Let us question it". If we started to question the motives of the Members opposite for all that they have done over the years, we would be in a far worse place than we are now. Will the Member, at least, show respect to the House and to the sponsor of the private Member's Bill? There are more private Member's Bills to come, and we need to accept the fact that the Member brought the Bill in good faith. We should, at least, have the decency to let it be heard in the Chamber today.

**Mr McGuigan:** Over many years, I have listened to the sponsor speak in relation this House, these institutions and the Good Friday Agreement. Never once have I heard him speak

positively about the outworking of any of the institutions. As I say, he makes no secret of his opposition, quite the opposite. Despite Mervyn Storey's allusion to a road to Damascus change, I doubt very much that the Bill's sponsor has changed his opinion on this institution.

We have said from the outset that the Bill is unnecessary, and that must also be stated today. The amendments, though, will mitigate some of the most problematic clauses in the Bill and, I hope, ensure that any legislation that may emerge does not inhibit Ministers from delivering the good and efficient government that we should all want to see in this institution.

Supporting the amendments does not, in itself, indicate support for the Bill; rather, it is an attempt to mitigate the worst and most damaging aspects of it, in the event that it should pass.

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

**Mr McGuigan:** I will.

**Mr Wells:** Will the Member reflect and agree with me, that the attitude of his party's Members is negative? He, himself, cannot be blamed, because he only arrived in the Committee late in the process, having replaced the dynamic contribution of Mr Lynch.

Does he agree with me that the entirely negative approach of his party does not reflect well on it? I have sat in this Chamber for 26 years, and I have never seen a party oppose the long title of any Bill, in that time. That just does not happen. It does not happen in the Oireachtas, Westminster or any parliamentary assembly. Does he not accept that there was ample opportunity to deal with his concerns at the Committee, and it was not taken? I have never seen a more negative approach taken by any party to any Bill in my long time in the Chamber.

**Mr McGuigan:** I made the point, the last time, about the title of the Bill. I have made it already. The title is, "Functioning of Government" and, in my view, the Bill's sponsor is not bringing it forward to enhance the functioning of Government. That point has already been made.

My party colleague made a really good point about the mitigations and amendments brought forward by the Minister, when he described Brexit. That is a situation similar to the one that we are in with this Bill. Supporting these

amendments, as I have said, does not indicate support for the Bill. It is, rather, an attempt to mitigate the worst aspects of it, should it pass.

The Minister has already outlined, in great detail, the substance of the amendments, and I echo much of what he has said about them. As others have said, many of the amendments are technical in nature and are designed to fix unfortunate or ill-conceived wording, provide greater clarity and indeed cover —.

**Mr Frew:** I thank the Member for giving way; he knows that I always give way too. I reserve and protect his right to oppose any Bill, legislation or amendment. However, what the Member is saying is that he is opposed to the Bill, not because of the content but because of the sponsor. That is really bad form. I ask the Member, if he opposes the content of the Bill, is there not one clause that he can support on a blank blue page?

**Mr McGuigan:** The Member obviously has not been listening to my contribution. My opposition is not because of the Bill's sponsor. The Bill itself is unnecessary and unwieldy. It is bad legislation. All that has been pointed out, and the proposed amendments are, in some way, an attempt to mitigate it. Amendment Nos 3 and 4, for example, will reassert the primacy of the Minister over the special adviser. Special advisers are political appointments, and Ministers are, therefore, granted full discretion in their appointments. That is why spads should not be subject to the Civil Service disciplinary procedures. The Minister is ultimately accountable for the actions of the special adviser and should, therefore, have full discretion when it comes to disciplining spads, including removal from the post, should that be necessary.

Amendment No 8 deals with the problematic clause 1, subsection 4, which renders the appointment of a special adviser of no effect, if the appointing authority does not adhere to the code of appointment outside the Civil Service (Special Advisers) Act 2013.

Retrospectively invalidating an appointment leaves open the possibility of legal challenge over remuneration for work already done. The amendment provides for immediate rather than retrospective termination, and that is just one example of the short-sightedness of the Bill. There are many others, of course, and I finish by reiterating that the Bill is not necessary.

**12.15 pm**

**Mr Carroll:** I welcome the opportunity to speak about the Bill again. One of the most pressing matters of this part of the debate is when we get the measures into place in the Assembly and when they will come into operation. Few of us will doubt why it is important to get changes relating to junior Ministers and spads in place as swiftly as possible and to ensure that there is a code of practice in place that at least attempts to get the standard of behaviour from those in power and their advisers that the public should expect.

From my reading, at least, of some of the amendments, it is concerning that, while the Bill's sponsor seeks to ensure that as much as possible of the Bill comes into effect the day after it receives Royal Assent, the Minister wants to put in a six-month delay for some clauses and, indeed, to maintain a delay until 1 April for others. Will the Minister, in his closing remarks, speak to his desire and rationale for that? I did not hear it in his introduction of the amendments, especially on the ability to appoint a spad and insert a six-month delay before the changes to the code of conduct will be made. His answer may provide clarity on the amendments that we will vote on shortly. I cannot see the need to push the measures back. We have gone long enough with a lack of rules in this place and the scandalous effects resulting from them. We would be in favour, without further explanation from the Minister, of introducing the measures as quickly as possible.

To be frank, if we were in the Executive and in a position to set rules on the issue — we are obviously not — junior Ministers would not have spads. There would never have been as many spads to begin with, and they should have and would have been paid in line with the average worker's wage, along with Ministers. The upper echelons of this institution should not be and would not have been allowed to get away with some of the dodgy schemes and decisions that we have seen over the past 10 years and, in some cases, longer.

If we had been bringing through the Bill, we would have sought to go much further and, in some cases, in different directions. I remain as unconvinced as ever that strengthening the hand of this institution when it comes to doling out punishment or taking action is the sole solution to many of the scandalous problems at the heart of the Assembly. As it goes, we are obviously not calling the shots, probably to the relief of many in the upper echelons of the Assembly, but we are able to talk to some measures in the Bill that seek to curtail the

actions and conditions that led to the RHI scandal in the first place.

We are satisfied with most of the amendments and seek clarification of amendment Nos 48, 49 and 50.

**Mr Catney:** I enjoyed the work that was done at the Committee Stage of the Bill and being able to take an in-depth look into the impact of each clause. It is clear — I suggest that no party here will disagree — that there is a responsibility on all of us to restore the public's confidence in these institutions. Many will point to occasions when we failed to do that, but we have another opportunity in how we look at the Bill and the important reforms that it is trying to bring in. The Bill speaks to the heart of how this place operates, how Ministers interact with Departments and the Chamber, how special advisers fulfil their role without stepping over boundaries and how this place can operate in a transparent and effective way that the public can have faith in. We all know that that has not been the case in the past, and it goes further than RHI. It is a culture that must be rooted out from structures that must be reformed. Although there are disagreements on how that should be done, there is no disagreement on the fact that it must be done.

The issue of whether the changes that the Bill would make should be implemented through a private Member's Bill has been raised at each stage. Some have suggested that as a reason to vote against the Bill in its entirety. I agree that legislation must be properly formed, and poor legislation leads to poor outcomes. Although I have many disagreements with the Member on policy, there is a saying about broken clocks. The Bill sponsor has shown himself to be well versed in all the detail required to create sound legislation, the meaning of which would be unnecessarily debated for years to come by — dare I say it? — overpriced lawyers. It would be a poor decision to reject the Bill just because of the person who is sponsoring it. That said, those who engaged fully with the process will know that the amendments at each stage have made a positive contribution and will improve the functioning of the Bill. I thank the Bill sponsor for his willingness to listen to Members' concerns. A lot of his amendments sought to address many of those concerns. That positive attitude has gone a long way towards finding consensus. Who knows? Maybe the Member is softening in his old age [*Laughter.*] The amendments in this group are largely technical, so I see no issue with them. I welcome the clarity brought by amendment Nos 4, 5 and 8. Those amendments should be made, as they

allow for the Bill to function more clearly in real life. Amendment Nos 16, 17, 48 and 49 address commencement, which was a concern for some. Each amendment should allow for the provisions to come into force in an acceptable but realistic time frame. As I said, most of the amendments are technical and provide clarity. I will speak to the amendments on administrative reform and accountability later.

**Mr Wells:** We are in a rather surreal situation. I sat for every minute of the scrutiny of Mr Allister's Bill in the Finance Committee. As I said in a previous debate, the Finance Committee has turned out to be an extraordinarily interesting body to be on, and that is reflected in the very high member turnout for the scrutiny of Mr Allister's private Member's Bill.

I have never seen a more negative approach by any party in any Committee in my time in this Building. The attitude of Mr McGuigan's colleagues was simply that they were against every line, jot and tittle of the legislation: "We are totally opposed to it and will vote against every clause and sentence", which they did. Now, at the very last minute — the eleventh hour — the Minister comes forward with amendments, having not put forward one change or one amendment at Second Reading or at any part of the Committee scrutiny. Why? That is no way to do legislation. I have opposed much legislation over the years, but I have always made a point of coming in early at Second Reading to flag up my concerns and submit amendments and changes as the process went along. We now have Sinn Féin coming up with a series of amendments.

Mr McGuigan has let the cat out of the bag, for which I thank him. The reason that there is so much opposition from his party is not about the Bill; it is about the person who wrote it. If Mr Allister stands up and says, "Crows are black", Sinn Féin immediately says that it is a plot to bring down the Assembly and crows must be white. Everything that emanates from the mouth of Mr Allister is wrong because his motivation is to bring this place crashing down". He is opposed to the Good Friday Agreement: well, I was too.

He is opposed to the institutions and to mandatory coalition, and, because of that, everything that he does must be suspect and thus must be opposed, even when most reasonable Members of the House are saying, "Let us look at the content. Do not look at the motivation. What does the legislation actually say?". Mr Allister has been successful in achieving consensus across the House, apart

from one party, that there is an awful lot to be said for what he is trying to do. Sinn Féin knows full well that, if the legislation goes ahead, the obscene situation in which dozens of Executive decisions were delayed because Ministers from Mr McGuigan's party were referring material — confidential material — to Connolly House, where super-spads made important decisions on behalf of the people of Northern Ireland, can no longer happen. Those super-spads were never elected, never stood for election, were never appointed through the normal process, were never subject to the limited controls that there were —.

**Mr O'Dowd:** Will the Member give way?

**Mr Wells:** I certainly will.

**Mr Deputy Speaker (Mr Beggs):** I draw the Member back to the amendments.

**Mr O'Dowd:** First, can the Member clarify whether he includes himself in those whom he considers "reasonable Members of the House"? That would be an interesting confirmation or denial.

I doubt that the spads who caused problems with RHI ever set foot in Connolly House. They spent a lot of time around DUP headquarters, though.

**Mr Deputy Speaker (Mr Beggs):** Again, I encourage all Members to return to our duty today, which is to discuss and decide on the specific amendments in front of us.

**Mr Wells:** That is an awful lot of *[Inaudible]*, Mr Deputy Speaker. Anyhow, I will try to come back to the amendments anyhow. I will just respond to Mr O'Dowd's intervention first. Yes, but at least the DUP has had the sense to see that things went badly wrong with its spads and is supporting Mr Allister's legislation. Mr O'Dowd's party is still opposed to every jot and tittle of it. That is the difference. His party has not realised the fundamental mistake that it made by having people who were totally detached from the democratic process in bunkers up in Connolly House making decisions on behalf of the people of Northern Ireland.

Again, Mr McGuigan let the cat out of the bag by saying that the legislation is wrong because Mr Allister suggested it, including some of the amendments. I say that just to keep myself right with the Deputy Speaker. The fact is that I have never seen anybody be so reasonable in promoting a private Member's Bill. He spent

hours before the Committee discussing its concerns with the Bill. As it happened, fortunately, he turned out to be a member of the Finance Committee, so the Committee had the benefit of his expertise. There is a lot of merit to the proposal that those who are promoting a private Member's Bill should be allowed to sit ex officio, but without a vote, on the relevant Committee. I see a lot of merit in that, because, fortuitously, we had that situation with Mr Allister. It was absolutely invaluable. Regularly, he had to declare an interest for that reason. It certainly helped the promotion and scrutiny of the legislation, however.

I would not like to think how many amendments to the Bill Mr Allister proposed, including quite a few that are before us, such as those to the first clause. Once again, I am keeping myself within the correct parameters. He has tried and tried to meet the concerns of Members. In many cases, his amendments have strengthened the legislation. It was unfortunate that, on a couple of major points, that did not happen, however. Mr Muir, having obviously received his orders from the Justice Minister, stood up and opposed what I thought was an important part of the Bill, and that helped to secure its defeat. I hope that Mrs Long is proud of what she achieved. The point is that, time and time again, Mr Allister came back with amendments and tweaks to his Bill to try to achieve consensus. The Members opposite have just thrown that back in his face.

In the years leading up to the RHI inquiry, the behaviour of spads on all sides in this Building was absolutely disgraceful. It besmirched this Building. In fact, it led directly to the fall of the Executive. I believe that Mr Allister's Bill goes some way — in fact, a long way — to addressing public concern about the behaviour of spads.

The amendments before us are very much technical in nature and clarify what should have been brought up long before now, but I accept that many of them improve the Bill. I do not see that there is much in the way of controversy, but I would like an answer to Mr Frew's point about the status of the senior civil servant who can intervene. Who will that be? What powers will they exercise? That needs to be clarified. Beyond that, there is a lot of merit in the proposals.

### 12.30 pm

The meat of the debate will come after this — presumably after lunch — when we get down to the much more controversial nitty-gritty issues.

Please do not oppose the Bill simply because Jim Allister's fingerprints are all over it. That is an absolute nonsense. If Mr McGuigan was to propose a Bill — an anti-litter campaign Bill — I would not stand up and say that it has got to be wrong because it is from Sinn Féin. I would look at the merit of the legislation and judge it by that, rather than by the person who is proposing it.

**Mr Deputy Speaker (Mr Beggs):** No other Member has indicated that they wish to speak, so I call the sponsor of the Bill, Jim Allister.

**Mr Allister:** Thank you, Mr Deputy Speaker. I too will be relatively brief. I am not going to be tempted into a debate about the chronology and history of the Bill. I am big enough to take the churlish jibes of Mr O'Dowd, recognising a sense of embarrassment and discomfort amongst the ranks of Sinn Féin, having spurned every opportunity to help frame the Bill until this last moment. The Chairman made the legitimate point that, when the Department was asked, it had nothing to say. I am glad that it has something to say now, because I have no interest in putting on the statute book anything but the most orderly of legislation. I therefore welcome the assistance being given by way of the various stylistic and textual amendments that have belatedly come forward. Sinn Féin's biggest problem is probably not with just the messenger, which causes them not to look at the message, but with the fact that it is probably continuing to smart over the fact that my first private Member's Bill removed from office convicted terrorists as spads. That still smarts, and I think that bringing a second private Member's Bill stretches Sinn Féin beyond the point where it can be rational and supportive.

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

**Mr Allister:** Yes.

**Mr Storey:** I thank the Member for reminding us of that. Does he accept that, unfortunately, it found another way to circumnavigate that piece of legislation and that some of the same people are still under the confines of the party opposite?

**Mr Deputy Speaker (Mr Beggs):** Members, again, I encourage you to speak on the amendments that are before us.

**Mr Allister:** Yes, but, of course, that relates directly to clause 1(6) of the Bill, because that is precisely what it is directed at: trying to curb that abuse.

I want to make another general point, albeit when we come to the Final Stage, in a fortnight's time or thereabouts, there will, no doubt, be more opportunity to make wider comments. Mr Wells made the legitimate point that, post-RHI, if there was one party that, understandably, might have felt a need to bury its head in the sand, it was the DUP, but that, to its credit, in this Bill, it has faced up to issues. On the other hand, Sinn Féin cannot get past the small-mindedness of who is bringing the Bill. That is a commentary more on Sinn Féin than it is on me.

I raise no objection to amendment Nos 1 to 15. They are stylistic and textual in nature. I want to comment on amendment No 8, because Mr Frew commented on it. Amendment No 8 introduces the idea that a senior officer, as defined in the Departments (Northern Ireland) Order 1999, in the Department of Finance — which, of course, it would be, because ultimately the Department of Finance has responsibility for personnel — can intervene and abort an appointment if it did not follow the code of appointment.

That is of incidental significance because the code of appointment does not have any process for appointment, courtesy of Minister Murphy. The code of appointment had all the process stripped out of it whereby you had to have a pool of candidates and keep a record of why you chose whom you chose etc. It is hard to imagine how a senior officer could find anything in terms of process that might have been done inappropriately if the code does not contain any process. The impact of amendment No 8 is more imagined than real. It could become real if we, hopefully, reached the day that the code of appointment actually had proper processes. This legislation would govern that, and that would be good. As of now, I do not see that amendment No 8 makes any tangible difference.

I will now move to the first of my amendments — amendment Nos 16 and 17. I am trying to meet some points that were legitimately raised with me during Consideration Stage, and some Members have recognised that I have striven to meet those points. Let us be frank. If you are a single Member trying to introduce legislation, you can only sustain and progress it if you seek to meet the objections raised. I am grateful to those who have acknowledged that I have sought to do that.

In amendment Nos 16 and 17, I try to get away from being calendar-led about when the impact of those measures come into effect, recognising that time is telescoping and that there is a

better way. The better way is simply to say that clause 4 will come into effect three months after Royal Assent has been given. Those who raised it raised a sensible and rational point, and I am more than happy to meet it. It tangentially affects the link to the commencement clause in 14(1).

I want to come briefly to that because amendment Nos 48 to 51 deal with commencement. At amendment No 48, the Department seeks to introduce a six-month grace period to revise the Civil Service code as it would apply, disciplinary-wise, to spads. I had a useful engagement last Friday with departmental officials and probed them on why they needed six months, as that struck me as a rather long period. They explained that, because it involves revision of the Civil Service code, there has to be a stipulated process of consultation with the unions and that, of its nature, tends to be longer rather than shorter. Therefore, it was explained that it might take up to six months to complete that process, although hopefully fewer. If that is correct, I will not die in a ditch over it. If the Minister confirms that that is the rationale for the six months, then, although it seems somewhat long, I will not divide the House on it. I will accept it.

Amendment No 49 comes from me. It flows from the alternative provision being made under amendment Nos 16 and 17 to give the three-month delay on the end of the employment of anyone engaged under the 2007 Order who has to lose their employment. As I understand it, that simply means that the spad appointed by the Sinn Féin junior Minister in the Executive Office or anyone in position — a David Gordon-type figure — who was appointed under prerogative powers. If such a person was in position, they too would have the three months. Through amendment No 49, I want to take out clause 14(1) because, on reflection, I see no reason to delay the repeal of the 2007 Order, which is the one removing junior Ministers' spads, or the prerogative power Order, which relates to the David Gordon-type appointment. There is no logical reason to delay that beyond the Bill coming into effect. Therefore, clause 14(1) no longer has any function. Hence, my desire to remove it.

Amendment No 49 is compatible with accepting the Minister's amendment No 48. The outcome would be that everything except the disciplinary code aspect of clause 1 would come into effect upon Royal Assent, and that aspect would have the six months' grace. That seems appropriate to me.

In view of amendment No 48, I will not move amendment No 51. In relation to amendment No 52, the Department has advised that it is not necessary in legislation to define the Executive Office. I am quite happy to accept the Department's word on that and to accept amendment Nos 52 and 53. That simply leaves amendment No 56, which tidies up the long title.

There is little of controversy in group 1. There is a little more meat in group 2. I am content to accept any amendments that make for more-orderly legislation and have indicated to the House my expectations in that regard.

**Mr Murphy:** I thank the Members who contributed to the debate and gave their attention to the extensive list of amendments, some of which make significant and important changes to the Bill.

As Minister of Finance, with responsibility for most policy areas covered by the Bill, I am interested in ensuring that the legislation, at the very least, does not prevent the effective work of Ministers and civil servants, including special advisers.

I am happy to respond to a number of points raised by Members. There is a fundamental misunderstanding of my role as a Minister, and therefore the role of the Department, in a private Member's Bill. I absolutely encourage all private Members to bring forward legislation. I have no difficulty with that. I am sure that private Members from all parties will bring forward legislation, so I am not sure where the notion that private Member's Bills should not be brought forward has come from. It is not part of the opposition to this particular legislation. Nor do I have any particular issue with the sponsor of the Bill bringing it forward. He is perfectly entitled to do so, and that does not in any way reflect my view of the Bill itself. However, the Chair and Deputy Chair of the Committee have advanced a notion about my opposition.

This Bill does not come in a vacuum, although some, including its sponsor, have tried to create that impression. It comes on the back of a process agreed by all Executive parties for dealing with the issues that came from the fallout of the RHI inquiry, a process that was talked through by the parties before the Executive were reformed. The course of action that the parties agreed did not require legislation. It was translated to the Executive, who also confirmed that legislation was not required, and the Executive agreed a course of action. Having taken up the post of Finance Minister on the restoration of the Executive, I

was given the responsibility of leading on that course of action and bringing forward significant reform of the codes. I will get back to that area of work in due course.

That was the context in which the Executive and Executive parties agreed to approach this. People who are part of Executive parties are very much entitled to change their view. Obviously, the SDLP has: at one stage, it agreed that legislation was not required; now, it does not.

They want to see legislation coming forward in whatever form, through a private Member's Bill or otherwise. However, the Chair and Deputy Chair have assumed that the Department, having opposed that — I was leading on the agreed Executive position on how the issues should be addressed — has a responsibility to fix flawed legislation that we opposed at an early stage and to make it better. I expressed at every opportunity, as the Member has acknowledged, opposition to legislation being brought forward, but Members opposite, including Mr Wells and others, assumed that I would come in like a knight on a white horse over the hill to fix the Bill and make it good legislation. I had argued that it should not be brought forward, and I opposed it at Consideration Stage.

## 12.45 pm

Now that the legislation has been voted for at Consideration Stage, it can no longer be opposed, unless the entire Bill is brought down at Final Stage, which is still the prerogative of the House and one that I advise it to consider. We now have a responsibility to try to fix the bad legislation that the Assembly voted through at Consideration Stage. It is an entirely consistent position, and it is a fundamental misunderstanding of my role to suggest that the Department, as led by me, had some responsibility to come in at an early stage, after we had opposed the legislation, stated that we opposed it and outlined the reasons why we opposed it. We were true and consistent to the agreed position of the five parties that make up the Executive and their Executive colleagues who sit on the RHI subcommittee representing all five parties. It would have been inconsistent to try to fix what we considered flawed legislation, so I am aghast.

Mr Frew, showing, I think, that some lessons have not been learned from RHI, went on to suggest that I should have somehow used my Department's resources to feed information to my party colleagues on the Finance Committee

to allow them to engage with the Bill. I am sure that I would have been before the Committee to answer questions about why that was the case. You cannot have your cake and eat it. You cannot insist that, if I was not going to engage with the Bill, I should have given Sinn Féin Committee members information to engage. That is the Department's information, and that is why I, as Finance Minister — not as a member of Sinn Féin — have come forward at this stage to try to fix what has already been passed by this legislature. I took a consistent position of opposition to the Bill throughout. However, I now have a duty and obligation on behalf of the Executive to make sure that this flawed legislation that the Assembly, in its wisdom, has voted for does not become so damaging as to absolutely prevent the proper functioning of government. I am happy to give way.

**Mr Frew:** I thank the Minister for giving way. The Minister well knows, as do I and the House, that the Department of Finance and the Minister are completely and utterly separate from any political party, namely Sinn Féin this time. However, both the Department and Sinn Féin have failed miserably on this legislation.

**Mr Murphy:** First, that is his political viewpoint, but I think that, if he reads Hansard, he will see that he suggested that I should have facilitated my party colleagues on the Finance Committee in engaging with the Bill. Of course, it is not the role of a Finance Minister or, indeed, any Minister to use departmental resources to inform a party political approach.

Far from failing the Bill, as I have said — the Member chooses not to listen, and that is his prerogative — I have been consistent in my approach. That is not just in my personal approach; I have been consistent on behalf of the Executive and the Executive parties, who agreed that the way to do this was through amending the codes, which we have already done. That is the way to achieve this.

Mr Frew said that he supported the Bill because it was reform and that I should have carried out reform. He is the Deputy Chair of the Committee, and we have put all of the documents to the Committee. Maybe they bypassed him. We have reformed the ministerial code of conduct, the guidance for Ministers, the spad code of conduct, the code for the appointment of spads, a letter for the appointment of spads and enforcement arrangements. They have all been brought forward. He and others have tried to create an impression that there has been a vacuum and the only thing that can fill it is Mr Allister's Bill. Mr Allister is entitled, in any circumstances,

even had we brought forward what he might have considered to be the most robust codes and guidance, to introduce his Bill. However, suggesting that there was a vacuum and that there was no proposition of reform is not just to deny what I, as Finance Minister, have done; it denies what his party colleagues have done in the Executive. The Executive subcommittee and the Executive approved all of those things. His party's fingerprints are on those pieces of reform, which were the agreed Executive approach to dealing with the outcome of the RHI inquiry. What Mr Allister has brought forth, which you now support, was not that.

I have been consistent about not only my position, which I outlined, but the position of the Executive.

**Mr Frew:** Will the Minister give way?

**Mr Murphy:** Yes.

**Mr Frew:** I thank the Minister for his clarification, but he neglects to realise that, just because parties agree on a certain stance, that stance cannot be added to and enhanced by other ways and means. That is simply what we have considered. If you come to a political agreement between parties to advance something and somebody else then has a better idea that will enhance and add to it, we should look at and review that, and, if it is worthy and acceptable, we should accept it.

**Mr Deputy Speaker (Mr Beggs):** Members, we are getting into a debate that is beyond the legislation that is in front of us.

**Mr Murphy:** I said in an earlier response that, if parties change their position, that is entirely a matter for them. They are entitled to change their position and decide that legislation is now required. Mr Frew made the point during his contribution, which was allowed, that the Department should have brought forward reform. However, not only did the Department bring forward reform but the Executive endorsed it. The Executive as a whole brought forward a number of pieces of reform of code. To try to suggest that this legislation appears in a vacuum of no other activity is incorrect and misleading. I just wanted to put that point on the record.

He raised some points and questions about amendment No 8. A termination would be the fault of the appointing Minister through neglect, error or deliberate intent. The Bill requires that the appointment be ended. That was decided by the Assembly at Consideration Stage, so I

am trying to fix some things that the Assembly, in its wisdom, already agreed to. The amendment ensures that termination is not retrospective, which would be very unfair. The senior officer I am referring to is a senior civil servant in the Department of Finance — they are at grade 5 and above — and it would be for that official to examine evidence to their satisfaction. The Bill does not specify a procedure for doing that. The amendment reflects the need to give someone the duty to effect the termination of appointment. The original clause did not place that duty on anyone, which raises the question of whether it could have been effective. A senior official would be bound, of course, by the code of ethics, which require objectivity, impartiality, integrity and honesty.

Mr Frew also raised a question that, I think, Mr Carroll asked about the Bill's sponsor, who engaged with departmental officials with my approval last Friday. I was happy to have them engage with him. We are beyond the stage where we can prevent this, which we tried to do. We are at the stage of trying to tidy up the mess. Of course, the amendment to the handbook is a matter of negotiation, as he outlined, with the Civil Service. The six months, as the Department has said, may be on the longer side, but it is much better to give a longer time in order to recognise the unions and to give them their place. I am sure that that is something that Mr Carroll does not disagree with. He asked questions about that. Others might not give the unions the required attention, role or right to consultation that they deserve, but that is the purpose of the extra six months. I hope that that answers a number of the questions that Members raised about that.

Mr O'Toole and others in the SDLP outlined their view of the need for legislation. It is not fair to say that it was the Civil Service view that codes are all that are required. It was the parties that agreed that codes are required to deal with the issues coming out of RHI. It was the parties in the Executive that agreed to continue that approach. To somehow suggest —

**Mr O'Toole:** Will the Minister give way?

**Mr Murphy:** Let me finish my point.

It is not fair to suggest that the idea of codes coming forward was almost a Civil Service means of cocooning itself from any real reform and that we went with that. I know that he was not part of it because he was not in this institution or active in the SDLP here at that time, but the parties sat round the table in the

working group and decided and agreed that the way forward was an amendment of codes of practice and to enforce those and make them as strong as possible. That work was then carried on in to the Executive. I was given the responsibility of leading it, and the Executive parties agreed that that was the way forward. It is not fair to suggest that the idea of codes is the Civil Service view.

He gave some rationale for the SDLP changing its view by talking about the importance of legislation as public presentation so that we can tell the public that we are doing something. It may be flawed and may create a mess down the road, but at least we can say that we did something. I am happy to give way.

**Mr O'Toole:** I thank the Minister for giving way. Is he saying that, because there were working groups before NDNA, all parties that were in those working groups are, for ever and a day, committed to not examining legislation, or is it that the Executive subcommittee on RHI looked at specific proposals and said, "Yes?". Were they, consequential to that, also saying, "No other form of reform, legislative or non-legislative, will ever be required, and we are precluding our support for it"? That seems to be what the Minister is saying.

**Mr Deputy Speaker (Mr Beggs):** I again encourage Members to speak to the amendments before us.

**Mr Murphy:** I have already said that parties are entitled to change their view. I am leading the debate on behalf of the Department, as an Executive Minister, reflecting the approach that the Executive took and that is agreed by all the political parties. The Executive have never suggested that we should legislate for this. None of the Ministers in the RHI subcommittee has ever suggested that we require legislation. If they do, that will obviously be considered.

Of course the Member is entitled to change his point of view. What I was challenging in his contribution was the suggestion that somehow the idea of producing codes as a way to deal with this was a Civil Service view: it was not. It was the view of the five parties that make up the Executive, and that has been carried through in the Executive's approach to this. Absolutely, parties are entitled to change their mind if they feel that public presentation is more important than an effective way to deal with such things.

Mr Wells lamented a negative approach. I know that he has created clear blue water between

him and the party — maybe the party has created clear blue water between it and him — but that party has blocked more legislation in the Assembly than all the other parties put together. I would love to have seen that open-mindedness in his engagement with marriage equality legislation, against which he continues to fight a lonesome battle, or reproductive rights for women or, indeed, the language legislation that will come to the Chamber. I am sure that he will embrace that in the spirit of being a parliamentarian. He laments the behaviour of spads over a long number of years. That did not prevent him becoming a Minister for the party whose behaviour he laments. He was obviously able to put that to one side; indeed, he challenged and advocated his being brought back into a ministerial position at that point.

I know that we are coming to a break, so it is probably a suitable point for me to draw my remarks to a conclusion. The idea that the Bill is proceeding in a vacuum is a falsehood. I still believe that the legislation is unnecessary and wrong and will create more problems than it resolves. I have a responsibility, on behalf of the Executive, the Department and any future Ministers who will have to deal with the legislation, to try to tidy it up in some shape or form. That is consistent with my approach throughout the process of the Bill.

**Mr Deputy Speaker (Mr Beggs):** The Business Committee has agreed to meet at 1.00 pm. I therefore propose, 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 for Communities. Further Consideration Stage of the Bill will resume immediately after Question Time, when the Question will be put on amendment No 1.

*The debate stood suspended.*

*The sitting was suspended at 12.58 pm.*

**2.00 pm**

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

## Oral Answers to Questions

**Mr Principal Deputy Speaker:** Before we proceed, I remind Members that the Business Committee has agreed to reduce, on a trial basis, the number of Ministers responding to Question Time, so only one Minister will respond to questions each Tuesday until Easter 2021, at which point the Committee will review that arrangement. Only the Minister for Communities will respond to questions for oral answer today, and the remaining Assembly business will resume promptly at 2.45 pm.

Before I call Ms Sinead McLaughlin to ask her question, I take the opportunity, on behalf of all Members of the House, to welcome the Minister back to her place and to wish her all the best for a speedy recovery from her recent health difficulties.

## Communities

### Children Living in Poverty

1. **Ms McLaughlin** asked the Minister for Communities to outline her plans to reduce the number of children living in poverty. (AQO 1419/17-22)

**Ms Hargey (The Minister for Communities):** Before I start, thank you, Christopher, for your well wishes. I place on record my thanks to the Chair of the Committee, who was in contact with me when I took sick. I also thank Carál Ní Chuilín, who stood in for me very quickly at a challenging time, and all Members for the well wishes for my health. I am back again and glad to be engaging with everyone.

I thank the Member for her question. When Minister Ní Chuilín was in post recently, she announced the extension of the 2016-19 child poverty strategy until May 2022. The purpose of the strategy is to ensure that work is done collectively to tackle the issues faced by children and families impacted on by poverty. The extension will allow time for further engagement with the anti-poverty strategy expert panel and co-design group on how to address child poverty in the longer term. The panel and the group have been established just in recent months. They will consider whether the measures to deal with child poverty in the

overarching anti-poverty strategy currently in development are the right approach or whether a stand-alone child poverty strategy is required.

A review of 'People and Place: A Strategy for Neighbourhood Renewal' is ongoing and involves a co-design approach with the key stakeholders. It is expected that the review will be completed within the current Assembly mandate, and its findings will inform the development of the anti-poverty strategy. As work progresses on the strategy, there will be a number of opportunities, particularly for young people, to engage with the development process. I will be engaging with the Children's Commissioner and other stakeholders who give young people a voice. It is planned that the anti-poverty strategy will be published this December, subject to Executive approval.

**Ms McLaughlin:** Thank you, Minister, for your response. As you will be aware, organisations that work to support families in poverty, many of which have at least one parent who is working, are clear that the benefit cap is a significant factor in child poverty. Will the Minister ensure that mitigations are provided for the benefit cap?

**Ms Hargey:** The Member will be aware that existing mitigations were included in yesterday's Budget announcement. I have a commitment to bring the paper on mitigations to the Executive in the coming weeks. I am also carrying out a review with departmental officials and, importantly, engaging with the critical stakeholders that impact on areas around poverty to look at what further mitigations and protections we can bring in. It is part of ongoing work, and I will inform the Committee and the Assembly as we take all of that forward.

**Ms Mullan:** I join you, a Phríomh-LeasCheann Comhairle, in welcoming back the Minister. It is great to have her back.

In your answer to the Member, Minister, you outlined her plan to engage with the Children's Commissioner and other stakeholders. Will you give some detail on how you plan to include young people in the development of the anti-poverty strategy?

**Ms Hargey:** It is critical to hear the voices of those who are directly impacted on by the policy that I, the Executive and the Assembly as a whole want to take forward. I had an engagement with the NI Youth Forum just last week on those issues and issues across my Department's remit.

I want to look at all the strategies in a co-design process with the stakeholders impacted on by the policies and strategies. The co-design panels and expert panels that have been designed are starting to look at that. We have ongoing engagement with the organisations that work in and around the wider policy issues around poverty and, indeed, with children and young people. Obviously, I want to directly hear the voices of children and young people and how any future policy will impact on them. I want them to be involved in that co-design process. Again, we are looking at ways to do that in the midst of a pandemic, to hear their voices and, importantly, to work with the organisations that support them directly, such as the NI Youth Forum and other local forums and organisations.

**Mr Principal Deputy Speaker:** Before I call Mr John Blair to ask question 2, I have a bit of housekeeping to do, Members. Question 8 has been withdrawn, and topical question 9 has been withdrawn.

## PIP Assessment Process

2. **Mr Blair** asked the Minister for Communities when she will publish her response to the recommendations of the second independent review of the personal independence payment (PIP) assessment process. (AQO 1420/17-22)

**Ms Hargey:** The independent reviewer, Marie Cavanagh, provided my Department with a copy of her final report on 11 December 2020. I take the opportunity to place on record my thanks to Marie for her report, which is extremely comprehensive, and for completing the review despite the unprecedented challenges that have arisen as a result of the pandemic. I acknowledge the important contribution made to the review by people and organisations and recognise that the findings are important in continuing to improve the PIP process and to ensure that it is delivered with compassion and in an empathetic manner. My officials are currently considering the recommendations in the full report. In line with the approach adopted for the first independent review, my Department will publish a formal response in spring this year, so, in the coming months, we will publish a response on how we are taking that forward.

**Mr Blair:** I thank the Minister for that reply. Mr Principal Deputy Speaker, I echo your sentiments: it is good to see her back here.

Further to that question, will the Minister do all that she can to ensure that the future provision

of PIP assessments will concentrate on helping people to live independently, rather than making them prove their disability?

**Ms Hargey:** That is obviously an important question. In the review, Marie Cavanagh came forward with 12 recommendations in certain areas. We have engaged with over 250 responses on the impact of PIP. We are looking at disability assessor training around that. Giving those with a disability their independence and empowering them to engage is something that I want to seriously consider. When my officials come back with their assessment of the recommendations, I will pick up on those issues in the time ahead. The report will be published by the spring.

**Mr Durkan:** I welcome the Minister's return to the Assembly and the Executive.

Ms Cavanagh recommends that PIP assessments be brought in-house, given the well-publicised negative experience of claimants at the hands of Capita, yet the Minister has confirmed to me in a written answer that the contract with Capita that was due to end in July may be extended for another two years. The problems with Capita long predate the pandemic, so can the Minister tell us whether she is content to reward Capita with more public money for failure?

**Ms Hargey:** When I came into the Department, that was one of the areas I was acutely aware of, given the impact of the assessments and the concerns raised by the people who go through them and by the independent advice sector in terms of people's experience. As I said, I want to create a social security system that works with people, empowers citizens and is empathetic to their needs. There are restrictions at the moment. I cannot change a complete system right away. You will understand that a lot of the processes and the IT infrastructure do not just pertain to here; they work across England, Scotland and Wales. However, I have instructed officials to look at a reworked in-house model. I know that that has been picked up in the recommendations as well. When I review my officials' recommendations on the reassessment of the PIP process, that is one of the critical areas that I will look at in more detail.

We cannot change it right away; we cannot change something like that in a matter of months. However, I am instructing officials to look at what we need to do in the time ahead. We are looking at that in-house model, as, importantly, it meets the needs of those who require it. Engagement with those individuals,

and with the advice sector, in the design and in what that will look like will be critical in the time ahead. There is a commitment from me to look at all of it and to do that.

**Ms Dolan:** I too welcome the Minister back to the Executive. Minister, does the Department plan to ensure that all communications issued to disabled people meet their requirements?

**Ms Hargey:** That is one of the issues. We are considering the comments made by Marie in her assessment. It is one of the areas that we are looking at in terms of disability and the requirements there. I will bring forward an assessment of it, as well as what the next steps will be, when we publish it, along with my Department's commitments, in the spring.

**Mr Butler:** I welcome the Minister back; it is good to see to see her in such good health. I thank your stand-in deputy, Carál Ní Chuilín. She was more than capable of doing the job.

Minister, you will note that the review recommendations on the special rules for terminal illness have been mentioned. They come further to the first review and to the cross-party support for scrapping the special rules. Can you provide an update on the Department's work in this respect?

**Ms Hargey:** Thanks very much. It is an important question. The Member will be aware that when Carál was in this role on a temporary basis she signalled a commitment to reform the terminal illness rules during the debate that took place at that time. The issue has been raised at the Executive. I think that there is broad support for urgent change. Treasury has raised areas of clarification in our attempts to make changes. Officials are working with Treasury to get the clarifications sorted out as soon as possible. A paper will be brought to the Executive for approval to make those changes. I will update members of the Committee, and the Chamber, when we do that. I want to expedite this as quickly as possible.

## **Museums: Reopening Preparations**

3. **Mr Harvey** asked the Minister for Communities what preparations have been made for the reopening of museums. (AQO 1421/17-22)

**Ms Hargey:** Thanks very much for your question. Preparations are under way for the reopening of museums by National Museums and the Museums Council, building on the

processes developed last year. That includes updating risk assessments to comply with the latest COVID guidance; working collaboratively with other bodies to redesign exhibitions and the visitor experience; and undertaking promotional activity in advance of reopening. I know that our museums are looking forward to welcoming visitors back and to ensuring that they do that safely.

**Mr Harvey:** First of all, it is good to see you back again, Minister. I too wish you well. My supplementary question is this: would you consider progressing a proposed development of a much-needed historic motor exhibition centre in a forest park in the Newry, Mourne and Down District Council area, with the hope of increasing footfall and serving the classic motoring fraternity?

**Ms Hargey:** Thanks very much. I am not aware of any request pertaining to that exhibition coming into the Department. However, if the Member and the council want to write to me, we can arrange a meeting to look at the issues and the request and then see how we can take it forward.

**Mr Principal Deputy Speaker:** Spot the classic car enthusiast.

**Mr Sheehan:** Gabhaim buíochas leis an Aire, agus fáilte ar ais arís, a Aire. I thank the Minister and welcome her back. What financial support has been given to museums during the COVID-19 pandemic?

**Ms Hargey:** National Museums has received an additional £1.22 million in resources from the Department. Working with the NI Museums Council and collaborating with the Art Fund, we have been looking at a programme to support 14 museums to reopen and to work in a safe environment. The outline value of that work so far has been £11,000. The NI Museums Council has also collaborated with the Arts Council and with the organisations emergency fund for local museums to the value so far of £50,000.

In the midst of the pandemic, and given the impact that it has had, when looking at these organisations and their sustainability, I am keeping these measures and any supports that we can introduce under constant review, and I am liaising with colleagues in the Executive on budgetary issues and commitments. I will update Members as those progress.

2.15 pm

**Mr O'Toole:** I, too, welcome back the Minister, who is my constituency colleague. It is great to have her back and at the Dispatch Box.

In the plan for a safe reopening, arts venues and galleries are, I think, currently in the same category as wet pubs. While I, and many others, would very much like to get back to a wet pub and an art gallery, is it worth looking at whether they belong in the same category for safe reopening? Is your Department looking at that?

**Ms Hargey:** We are keeping the regulations under constant review, which is in line with seeking the health advice on what is safe to do. We want to engage with the sector, and we have ongoing engagement with officials. I am not aware of any issues with the two being compared. We are looking at all of this in the context of health and safety. If an issue has arisen, I am happy to look at it. I will take your question away to get an answer.

Staff continue to engage with the sector. Obviously, we want things to reopen as quickly as possible, but only when it is safe to do so. In the coming days, the Executive will look at issues with the current regulations and where things sit. That discussion will depend on what the Health Minister brings to the meeting.

The regulations are under constant review, and we will engage with the sector on how to reopen safely. I will update Members on that. On the specific issue that you raised, Matthew, I will come back to you in a bit more detail.

**Mr Muir:** I join others in welcoming the Minister back to her post.

A number of years ago, when I was fortunate enough to get a tour behind the scenes of the Ulster Folk and Transport Museum, I was amazed to see the number of items that were in storage. What percentage of items are in storage, and what plans are there to bring more items out of storage and put them on display?

**Ms Hargey:** I am not aware of the percentage but I can get that information to you. We do, of course, engage with museums. Your question feeds into the initial question. Given the pandemic, we are working with our museum partners to try to get as many exhibits as possible into the public sphere, rotating them where possible. The worst thing to do is to keep material in storage where members of the public do not see it.

There is an ongoing programme, and we are learning how to put virtual exhibitions online. As a result of the pandemic, people have not been able to visit these spaces, so we are trying to look at ways of improving and doing more of that. We are also looking at whether, when things open up again, some exhibitions can go out beyond the museum building.

We continue to keep that under review. If you are looking for specifics on a programme at the Ulster Folk and Transport Museum, I am happy to give you that detail after this sitting.

**Mr Principal Deputy Speaker:** Now, for an encore, Mr Andrew Muir.

### **Job Start: Update**

4. **Mr Muir** asked the Minister for Communities for an update on the establishment of the Job Start scheme. (AQO 1422/17-22)

**Ms Hargey:** I thank the Member for his question. The Job Start scheme was due to launch on 14 December. Unfortunately, the Department has had to pause the scheme because clarification is needed on funding approval for it going into the new financial year. I continue to keep the situation under review and will advise of developments. There have also been limitations due to the current regulations, which encourage people to stay at home.

We engaged with employers and key stakeholders in devising the Job Start scheme, and I want to get it kicked off as soon as I possibly can. The Budget was announced yesterday, and we can see the pressures that it has presented. I continue to engage with the Finance Department and other Executive colleagues. I continue to look at the labour market and at what interventions we can make. I commit to getting the Job Start scheme up and running as soon as possible.

**Mr Muir:** I thank the Minister for her response. I asked a question about this on 8 September after the Kickstart scheme was launched across the water on 8 July.

I was told that it would launch in November, and it is now being put off yet again. Rather than Job Start, it seems more like "Non Start". Can the Minister outline what funding was bid for and say whether any money has been returned to the centre as a result of the delays in launching this much-wanted scheme?

**Ms Hargey:** We are trying to launch the scheme in this financial year, so, as yet, no money for the scheme has been returned to the centre. The delays are around financial commitments in terms of whether we can run the scheme in the new financial year. I completely understand the frustrations. I have been raising this in terms of the financial commitments in the Budget, because this is one of the critical areas as we start to look at recovery from the pandemic. Because of the current restrictions, there are limitations on what we can do to engage with young people entering the labour market, albeit that we hope that those restrictions will start to ease in the coming months. This is under constant review. It is an urgent matter for me to get the programme up and running as soon as possible when we have the resources committed to do so.

I will update Members as we move through this, and I appreciate that the Member has communicated with me on this; others have as well. We want to get this resolved as soon as possible.

**Ms Sheerin:** I join others in welcoming the Minister back. I have the honour of being next door to Carál Ní Chuilín upstairs, and, when the Minister was off, the biscuit supply was affected, so I have a dual reason for welcoming you back.

Minister, can you advise what types of job young people will be advised to enter in the Job Start scheme?

**Ms Hargey:** The Job Start scheme is different from Kickstart. There is greater flexibility in the Job Start scheme in that, if a single job opportunity arises, we can engage with the employer. There are restrictions in the scheme across the water in that a smaller employer would need at least 30 applications before that can be considered.

We are looking at any area across the employment sector. We want to engage with young people to ensure that they are job-ready to look at opportunities lasting up to six months, where they can be placed in a work-based environment with job and youth work coaches who can support the young person and match them to job opportunities. Engagement is ongoing with employers to look at potential placements, and I hope that, as soon as we can go live with the scheme, we can issue more details on the uptake that we get from young people.

**Mrs Barton:** Minister, I wish you all the best in your recovery too. You are very welcome back here.

Will there be any training for the young people for the jobs that they are interested in and, perhaps, for the people who will employ them?

**Ms Hargey:** There will be training and support. We are working with psychology experts in the Department on the barriers and limitations for the young people. They will be assigned support from the Department to work with them to ensure that they are job-ready and to prepare them for the transition into a six-month placement. We will work with them through designated work coaches who deal specifically with young people on the issues and barriers pertaining to young people.

There will be opportunities for young people to be employed for a minimum of 25 hours per week for six months. Training will be assigned to meet the young person's individual needs as they work through the initial application stage.

**Mr Givan:** I welcome the Minister back to her place and wish her well.

The job support scheme is an important one that we would like to see commenced; however, it is equally important to keep people currently in jobs. What representation is the Minister making on behalf of sports clubs that have hospitality, including bars, that are being denied access to the localised restrictions support scheme? I refer to clubs such as Ballymacash Rangers Football Club, which you visited, that are being deprived of that support, which is jeopardising their projects.

**Ms Hargey:** I thank the Member for his question. That matter has also been raised in my constituency. I know that it not only relates to social premises in sporting clubs but includes social clubs as well. There are limitations. I have given support to sport through the grants that have been made available. Where there is lost income from the social club end that benefits the sport, that can be picked up under that sports programme. The closing date for that is tomorrow, so I encourage all Members who have sports organisations in their constituency to ensure that they put in for that grant.

Last year, during the first lockdown, sports clubs and social clubs were impacted, and I wrote to the Minister for the Economy about schemes in that Department. In reference to this scheme, you pointed to the Department of

Finance, and we have raised the matter with it. Officials from both Departments are looking at this to see what additional scheme can be put in place. I cannot amend the existing sports scheme because it is a live application process. We are now working collectively and urgently. We had a meeting at the end of last week, and we will re-engage this week to see whether we can look at an additional measure to meet the need that is being expressed by Members. It is a concern for people. There is a concern that their profit should not go into private pockets but should go to meet a broader social need in how they reinvest it. We are looking to see whether a scheme can be created, and, again, we will keep Members updated on where that sits.

I am told that the difficulty with the existing scheme at the finance end is with the rate and the rateable value. If some of those organisations were to be paid on the basis of their rateable value, although they may operate only a room, they would be paid more than some of our hotels. Obviously, there is a disparity that we need to address, but I am conscious that there is a gap and that we need to find a way as urgently as possible to meet the need and fill that gap. We can update Members as we progress in those discussions, and that will come to a conclusion over the next week or so because, obviously, we need something in place before the end of this financial year to support those sports clubs and, indeed, social clubs.

## **Welfare Mitigations: Two-child Limit**

5. **Ms Bradshaw** asked the Minister for Communities whether there will be any measures in the revised welfare mitigations to prevent the continued application of the two-child limit. (AQO 1423/17-22)

**Ms Hargey:** Thanks very much for the question. The New Decade, New Approach deal committed to a review of future welfare mitigation measures. I am finalising proposals for the review, and I plan to make a formal announcement on how it will be taken forward in due course. Details of the review will be shared with the Committee for Communities at the earliest opportunity, and members will be afforded the chance to present their views on the proposal. I am not yet in a position to provide the specific details on the issues that will be covered in the review; however, I can confirm that mitigation of the two-child policy will be considered. That is part of the considerations. The overarching purpose will be to identify the need to develop a prioritised

mitigation package that will be costed and assessed for affordability.

I am committed to the principles of co-design and the desire to embed human rights in all that the Department does, and that will be an integral part in the development of any new mitigation measures. It is therefore planned to include representatives of the independent advice sector and other groups that have an interest in social security at all stages.

We know that, on 6 April 2017, the British Government introduced a limit on support for a maximum of two children. Families are not able to claim a child element for a third or subsequent child born on or after 6 April 2017. There are a number of exceptions to the two-child limit.

I recognise that children living in poverty are subject to poorer outcomes in education, health and other opportunities, and I want to look at how we can close those gaps to allow children to prosper and participate fully in society. There are few things more important than the well-being of children and young people, and, as part of the review of welfare mitigations on the two-child policy that are being considered, I want to bring forward the new proposals as soon as possible.

**Ms Bradshaw:** I also welcome the Minister back. It is great to see you.

Will you give us an update on the child anti-poverty strategy? We are a year on from 'New Decade, New Approach'.

**Ms Hargey:** Yes, I covered that in an earlier answer; I am not sure whether the Member was in the Chamber. There is a commitment to have a draft paper ready for December, and there were delays at the start of last year due to the pandemic. On the social strategies — the child poverty and anti-poverty strategies — we have engaged a group of academics and experts who are trying to bring together all the information and data. We are engaging in a co-design panel with people who represent and have a voice in dealing with those issues. We will bring forward recommendations for the next stages of the policy by December, subject to Executive approval.

## 2.30 pm

As I touched on earlier, the expert panel that has been established for the child poverty strategy is considering whether it needs to be a stand-alone policy or can be knitted into the

wider anti-poverty strategy. We are looking at those issues, and I will update the Committee and Members as the expert panels that are looking at those two important strategies come forward with their work. We also want to continue to engage the sector because lessons have been learned, even as a result of the pandemic. One of those is about the impact of the pandemic on women and children. We want to look at using gender lenses and to gender proof all the strategies.

I am keen to engage and will engage with some of the key sectors. I will also look at some of the lessons from the pandemic and at how they feed into the poverty strategy work. Indeed, I am sure that members of the expert panel, who are embedded in that work regularly, will also be thinking about those issues so that lessons can be learned, and we do not lose anything from the strategies that are coming forward. There is a commitment to complete that work and present it by December.

**Mr Principal Deputy Speaker:** That concludes the period for listed questions. We now move on to 15 minutes of topical questions.

## Housing: New Homes

T1. **Mr Blair** asked the Minister for Communities whether she can confirm that when, yesterday, in his Budget statement, the Minister of Finance said that there could be an additional £70 million for housing, which could lead to 1,900 new homes, that is the correct number and to state whether that is in addition to existing targets or to supplement them. (AQT 881/17-22)

**Ms Hargey:** We have made a bid under reinvestment and reform initiative (RRI) borrowing for our overall capital programme, of which housing is a part. We want to bring forward a housing programme of just over 1,900 homes for the incoming financial year. That will be the biggest housing programme in recent years. In the longer term, I want to build capacity. We need to build more social homes.

In the first six months of the pandemic, 2,000 additional people presented with housing stress. It would normally take two years to reach those kinds of figures, and the pandemic has definitely increased the pressures. I want to look at ways in which I can not only increase the social housing build programme but put more investment into co-ownership and other types of housing choices.

The draft Budget is out for consultation and has to come back to the Executive to be signed off. Once I know the definite figure for the borrowing and the overall budget allocation for the Department, I can give more clarity.

**Mr Blair:** I thank the Minister for her reply. Can she confirm where those new homes will be built? Will she ensure that rural housing need in constituencies such as mine will be addressed?

**Ms Hargey:** The social housing development programme is in the public domain and looks at where the housing need exists. There are big pressures, particularly in areas of the highest housing need, and we are not building enough homes in those areas. I know that Carál wanted to look at that when she was in post, and I raised the issue when I came into the Department last year.

There is a programme. I can forward to the Member the specific details of the proposals and where the homes will be ready in this financial year, but we are looking at how we can potentially ring-fence or focus on areas of the greatest housing need. I am also committed to rural proofing the strategy and identifying where there are disparities. There are unique challenges for rural communities, particularly in accessing or maintaining homes, and I have asked staff to look at that in more detail. Again, I can engage with the Member on those specific areas.

I want to ensure that we have a more ambitious social housing building programme in order to build infrastructure and capacity. That is part of the housing transformation and revitalisation piece that was mentioned in Carál's November statement, and I will update Members as we move through that. If the Member has any specific issues or queries, we can follow them up afterwards.

## **Sports Sustainability Fund: Update**

T2. **Mr Nesbitt** asked the Minister for Communities, after wishing her a better 2021 than 2020, for an update, in her capacity as the Minister responsible for sport, on the sports sustainability fund, which closes to applications tomorrow. (AQT 882/17-22)

**Ms Hargey:** The fund was launched just before Christmas, and COVID response money was committed. As the Member said, it is open to applications at the moment, and I encourage any sports organisation to apply to the fund, which is closing tomorrow. We hope to do an assessment and have a quick turnaround of

applications to see what the demand is. Mr Givan mentioned social entities and the impact that the loss of alcohol sales has on some sports. Some of those areas can be picked up through the existing fund if it can be proved that the lost income has had an impact on the sport itself. I am working with DOF to look at what other measures we can put in place.

We know that there will be a huge demand for funding. That was the case when we released the initial hardship fund of £2 million. I want to continue to engage with Sport NI and with the sports organisations and codes to see whether, if the fund is oversubscribed, there are other things that we can do. Applications are live at the moment, but the closing date is tomorrow, so I encourage organisations and, indeed, Members here to get applications in before close of play tomorrow.

**Mr Nesbitt:** I thank the Minister. I believe that the fund totals £25 million. As chair of the all-party group on sport, I have been warned that, if the big three — Ulster GAA, the IFA and Ulster Rugby — put in big bids, there could be less than £10 million left for everybody else. Will the Minister commit to two things? First, I ask that she lobby the Finance Minister for some of the £126.9 million of COVID mitigations that he said is being held back — that was in his Budget announcement yesterday — and, secondly, that she lobby for sports clubs to be included in the localised restrictions support scheme.

**Ms Hargey:** I thank the Member. We are keeping all those issues, be they sports-, culture- or arts-related, under review and are looking at the initial community COVID response. There is a capacity issue with getting the money out in the time in which we need to spend it. The process is live, and the closing date is tomorrow. At close of play tomorrow, we will know how many applications are in. Over the coming weeks, we will know what the budget for the fund is going to look like. I have been engaging with DOF, Sport NI and others on whether there are additional pressures and what those might look like in monetary terms in order to allow us to make a bid.

The important thing is to get certainty from arm's-length bodies that, if the money is there, we are able to ensure that it can be spent in time. There are specific capacity challenges around doing that, because none of the organisations could have foreseen the pandemic. The situation is under constant review, and I am looking at it at the moment. We will know more after close of play tomorrow.

I am not sure whether the Member was here for it, but the other issue that I covered is that there is a gap where social clubs are linked to sporting organisations. Indeed, there is a gap for social clubs more broadly. In some of the engagement that I have had around the rates scheme, some people have told me that there is a huge disparity as a result of rates being based on the building in which the club is situated. In some clubs, drinking takes place in one room yet the rateable value is based on the entire site. For example, a club with a bar in one room may be paying more in rates than a hotel. That will cause a huge disparity and an imbalance. We want to see whether, in this financial year, there is anything else that we can be doing. I cannot amend the existing sports scheme, because it is live for applications. My officials and DOF officials are working proactively at the moment to see whether we can find a solution and a way forward to meet the needs not only of clubs that are affiliated to sports but of social clubs more widely.

### **Belfast Multicultural Association**

T3. **Mr Boylan** asked the Minister for Communities, after welcoming her back, whether she will join him in sending the Assembly's support to the management and staff of the Belfast Multicultural Association and to state what support can be provided. (AQT 883/17-22)

**Ms Hargey:** Thank you for the question. Obviously, I was devastated by the news that came through last week of the fire that took place. It was not just that a beautiful historic building was destroyed, but that the Belfast Multicultural Association was doing vital work in the midst of the pandemic. I attended the scene on Friday and spoke to members of the association to give my support and ask what I could do. There was fear at that point, because we did not know what was going on. The police had not confirmed that it was a hate crime; that news came through later in the evening. Over the weekend, I liaised with members of the association, and I held a Zoom meeting yesterday with the association and affiliated groups. With this attack, fears have risen in the community. It is not just pertaining to now; there has been a building of events and there have been previous attacks. There is concern, anger and frustration amongst the members of the association and minority ethnic communities generally. Were all the protections put in place, or were there gaps?

Officials in my Department are working with Belfast City Council on this. The first intervention is to ensure that there is temporary accommodation, because association members deliver essential food and other support to communities and families in need. At the weekend, they operated that from their homes, but that is not sustainable, so we are looking at other locations. Last night, Belfast City Council offered the use of the Waterfront Hall. Other voluntary associations have come forward to the Department offering support and buildings that they can get on a temporary basis. We are working through the food programme that the Department supports with Belfast City Council, in this instance, so that we can get food to those families as soon as possible.

In the longer term, we hope to get the organisation back into the building. That is one of the big things. There is support from the Assembly and others; we want the building opened again, with the association back in it and delivering more services than it does at present. There is an aspiration and an ambition in the project to do that. I will engage with the association on a regular basis. Obviously there are issues pertaining to the Executive Office in terms of race relations, and to the Department of Justice around security, protection and concerns that the association has raised. I will be engaging proactively with Ministers in the coming days and weeks on that as well.

**Mr Principal Deputy Speaker:** Before I call Mr Boylan for a supplementary question, let me say that it is at Ministers' discretion if they wish to spend over two minutes on an answer. However, they should let me know beforehand. Given the importance of this subject, I was loath to interrupt the Minister's answer because it is important that the House is informed.

**Mr Boylan:** I thank the Minister for her comprehensive answer. Will she commit to keeping the proactive engagement going and working with the relevant authorities to ensure that we get out the message that this behaviour will not be tolerated in our society?

**Ms Hargey:** Racism cannot be tolerated, and it has to be faced down. One of the things that members of the association and the wider community want to see more of is visible support out on the ground when incidents like this happen. That needs to be the case when racism or sectarianism raises its ugly head. I will continue to support the association through the Department where I can. I will obviously look at the wider community and what else can be done. The big thing is to ensure that we get

the organisation back into its existing building as soon as possible. I am committed to that.

### **War Pensioners' Mobility Supplement: COVID-19 Payments**

T4. **Mr Easton** asked the Minister for Communities, after welcoming her back, to state why people who receive the war pensioners' mobility supplement are not entitled to the COVID-19 heating payment and how she plans to address that. (AQT 884/17-22)

**Ms Hargey:** This is a live issue at the moment. Carál was Minister when it came forward. She recognised that fuel poverty was a growing issue during the pandemic, and her main motivation was to get additional support to people who needed it.

I am glad that the Committee has agreed that the corresponding benefits should be picked up. The issue was raised by Andy and others in the Committee, and I recognise that. The system is in place to work with the Department for Work and Pensions (DWP) to release the payment as soon as possible. I am proactively looking at how we close the gap with the corresponding benefit and whether any other corresponding benefits have been missed.

**2.45 pm**

I want to get as much support and payments out to people as I can, particularly during the pandemic. The gap has been recognised, and I thank the Members who highlighted it. We are trying to work with DWP and key stakeholders to find ways of making that payment. About 800 people are entitled to that benefit, and we are trying to find a way to pay it as soon as possible. Once we have clarity, we will bring it back to the Committee. However, there is a definite commitment to address the issue.

**Mr Principal Deputy Speaker:** I am afraid that time is up. The Minister is like Geoff Boycott at the crease, slow and steady. I thank the Minister and, again, welcome her back.

We will return to the Further Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill shortly. I ask the House to take its ease for a few moments. If you are leaving the Chamber, please wipe down the surface where you were. Please, take your ease for a few moments.

## **Private Members' Business**

### **Functioning of Government (Miscellaneous Provisions) Bill: Further Consideration Stage**

#### **Clause 1 (Amendment of the Civil Service (Special Advisers) Act (Northern Ireland) 2013)**

*Debate resumed on amendment No 1, which amendment was:*

In clause 1, page 1, line 5, leave out "amend subsection 3 to read 'Within" and insert -

*"for subsection (3) substitute—*

*'(3) Within".— [Mr Murphy (The Minister of Finance).]*

*The remaining amendments in the group stood on the Marshalled List.*

**Mr Principal Deputy Speaker:** We return to the Further Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill. We have a series of Questions to deal with.

*Amendment No 1 agreed to.*

*Amendment No 2 made:*

In page 1, line 7, leave out "under" and insert "mentioned in".— *[Mr Murphy (The Minister of Finance).]*

*Amendment No 3 made:*

In page 1, line 12, after "Service" insert -

*", as that code applies to special advisers,".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 4 made:*

In page 1, line 15, at end insert -

*"(3C) For the purposes of subsection (3A), the following are not Ministerial interference—*

*(a) the carrying-out of a role given to a Minister by the disciplinary code mentioned in that subsection;*

*(b) the termination of a special adviser's appointment by the appointing Minister outside of, or before the conclusion of, any process or procedure under that code.*— [Mr Murphy (The Minister of Finance).]

*Amendment No 5 made:*

In page 1, line 16, leave out subsection (4).— [Mr Murphy (The Minister of Finance).]

*Amendment No 6 made:*

In page 1, line 18, leave out "After subsection (3)(b)," and insert -

*"In section 8(3) (contents of code for appointments), after paragraph (b)".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 7 made:*

In page 2, line 1, leave out from "above" to "(Grade 5)" on line 2 and insert -

*"at a level higher than the highest level under the published pay scale applicable to an Assistant Secretary (Grade 5) in the Northern Ireland Civil Service".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 8 made:*

In page 2, line 2, at end insert -

*"(5A) In section 8, after subsection (5) insert—*

*'(6) If, at any time after a special adviser is appointed (and whether or not the appointment has taken effect), a senior officer in the Department of Finance is satisfied that a person exercising functions in respect of the appointment did not have regard to the code, the Department of Finance must as soon as reasonably practicable after that time give the special adviser notice terminating the appointment with effect from the giving of the notice, but this—*

*(a) does not apply if the appointment otherwise terminates before the notice is given, and*

*(b) is without prejudice to the person's rights (if any) to payment in lieu of notice.*

*(7) In subsection (6) 'senior officer' has the meaning given by Article 2(3) of the Departments (Northern Ireland) Order*

*1999."— [Mr Murphy (The Minister of Finance).]*

*Amendment No 9 made:*

In page 2, line 4, leave out "the duly appointed" and insert -

*"a person duly appointed as a".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 10 made:*

In page 2, line 5, after first "the" insert "Minister's".— [Mr Murphy (The Minister of Finance).]

*Amendment No 11 made:*

In page 2, line 6, leave out "post" and insert -

*"person's post as a special adviser".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 12 made:*

In page 2, line 6, leave out "a permanent secretary" and insert -

*"the permanent secretary to a Northern Ireland department".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 13 made:*

In page 2, leave out lines 10 to 13 and insert -

*"(2) A special adviser—*

*(a) in carrying out the functions of their post, is not to be supervised or directed by,*

*(b) is not to report on their carrying-out of the functions of their post to, and*

*(c) is not answerable for their carrying-out of the functions of their post to,*

*any person other than their appointing Minister, save as permitted by subsection (3) or (4) or section 7(3) or required by section 7(3A).*

*(3) A special adviser's appointing Minister may authorise the special adviser, to such extent as the appointing Minister specifies, to be directed by or report to a junior Minister in the same department as the appointing Minister.*

(4) *Where a special adviser is a member of a profession or organisation, subsection (2) does not stop them being answerable to the profession or organisation for acts done in carrying out the functions of their post if they would be similarly answerable—*

(a) *for corresponding acts done in carrying out the duties of an employment otherwise than as a special adviser, or*

(b) *for corresponding acts done otherwise than in the course of an employment.”.— [Mr Murphy (The Minister of Finance).]*

**Clause 2 (Repeal of the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007)**

Amendment No 14 made:

In page 2, line 16, at the beginning insert -

*"(1) In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—*

(a) *in paragraph (3) omit sub-paragraph (d) (and the 'or' preceding it); and*

(b) *in paragraph (4) omit the words after 'paragraph (2)(b)'.*

(2) *In consequence of subsection (1),”.— [Mr Murphy (The Minister of Finance).]*

**Clause 3 (Repeal of the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016)**

Amendment No 15 made:

In page 2, line 20, at the beginning insert -

*"In article 3 of the Civil Service Commissioners (Northern Ireland) Order 1999 (selection on merit)—*

(a) *in paragraph (2), omit sub-paragraph (c) (and the 'or' preceding it);*

(b) *omit paragraph (4A); and*

(c) *in paragraph (5), omit 'or (c)'.*

(1A) *In consequence of subsection (1),”.— [Mr Murphy (The Minister of Finance).]*

**Clause 4 (Special Advisers in the Executive Office)**

Amendment No 16 made:

In page 2, line 28, leave out "on 31 March 2021" and insert -

*"at the end of the period of three months, beginning with the day on which this Act receives Royal Assent".— [Mr Allister.]*

Amendment No 17 made:

In page 2, line 30, leave out from "on" to "2021" on line 31 and insert -

*"at the end of the period of three months, beginning with the day on which this Act receives Royal Assent".— [Mr Allister.]*

**Mr Principal Deputy Speaker:** That is the first group of amendments addressed.

**Some Members:** There are more.

**Mr Principal Deputy Speaker:** More? [Laughter.] Fair enough. I thought that we were just doing one group, but that is OK. Here we go. We will keep going.

You asked for more, and we now come to the second group of amendments for debate. With amendment No 18, it will be convenient to debate amendment Nos 19 to 47, 54 and 55. Within this group, amendment Nos 21 and 22 are mutually exclusive; amendment No 24 is consequential to amendment No 23; amendment Nos 31 and 32 are mutually exclusive; amendment No 37 is consequential to amendment No 36; amendment Nos 38, 39 and 40 are consequential to amendment No 37; amendment No 41 is consequential to amendment Nos 36 and 37; and amendment No 54 is mutually exclusive with amendment No 35. If you understand that, you are a better man than me.

I call the Minister of Finance to move amendment No 18 and to address the other amendments in the group.

**Mr Murphy (The Minister of Finance):** Go raibh maith agat, a Phríomh-LeasCheann Comhairle. By way of information and for advice, I assume that amendment Nos 48 to 56, which were part of the first debate, will be voted on at a later stage.

**Mr Principal Deputy Speaker:** Yes.

**Mr Murphy:** Thank you for that.

**Clause 5 (Amendment of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011)**

**Mr Murphy (The Minister of Finance):** I beg to move amendment No 18: In page 2, line 41, leave out "the complaint" and insert -

*"in the case of a complaint that it".*

*The following amendments stood on the Marshalled List:*

No 19: In page 3, line 6, leave out subsection (6) and insert -

*"(6) In section 17(3), at the appropriate place insert—*

*'the Ministerial Code' means the Ministerial Code of Conduct set out in Schedule 4 to the 1998 Act;."*— [Mr Murphy (The Minister of Finance).]

No 20: In page 3, line 9, leave out "for the purposes of defining 'relevant time'" and insert -

*", in the definition of 'relevant time',."*— [Mr Murphy (The Minister of Finance).]

No 21: Leave out clause 6 and insert -

**"Records of meetings**

**6.***The Civil Service will make and keep an accurate written record of every meeting attended by a Minister in departmental service during which any substantive Ministerial decision including the authorisation of spending, or the development of legislation in the Northern Ireland Assembly is taken."*— [Mr O'Toole.]

No 22: Leave out clause 6 and insert -

**"Records of meetings**

**6.—(1)** *The permanent secretary to a Northern Ireland department must ensure that relevant arrangements are put in place.*

**(2)** *'Relevant arrangements' are arrangements designed to ensure—*

*(a) that an appropriate written record of each relevant meeting is compiled by the civil*

*servant, or one of the civil servants, attending the meeting,*

*(b) that, where an official Ministerial decision is made at a meeting other than a relevant meeting, an appropriate written record of the decision is compiled by a civil servant as soon as reasonably practicable after the decision is first communicated to a civil servant, and*

*(c) that the written records mentioned in paragraphs (a) and (b) are retained in accordance with the department's policy on the retention and disposal of records.*

**(3)** *A 'relevant meeting' is a pre-arranged meeting set up to conduct official business—*

*(a) where those attending include—*

*(i) at least one Minister, and*

*(ii) at least one civil servant serving in the department, or*

*(b) where those attending include—*

*(i) at least one special adviser,*

*(ii) at least one civil servant serving in the department, and*

*(iii) at least one person who is not a Minister, is not a special adviser and is not a civil servant,*

*but this is subject to subsection (4).*

**(4)** *The following are not relevant meetings—*

*(a) a meeting of the Assembly;*

*(b) a meeting of any committee of the Assembly other than the Executive Committee of the Assembly;*

*(c) a meeting of any sub-committee of the Assembly other than a sub-committee of the Executive Committee of the Assembly;*

*(d) a meeting within subsection (3)(a) where the official business does not include anything other than the presence of, or a presentation by, the Minister.*

**(5)** *An 'official Ministerial decision' is a decision made by a Minister—*

(a) under any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954),

(b) in exercising any of the prerogative or other executive powers of Her Majesty in relation to Northern Ireland, or

(c) otherwise in the course of official business.

(6) In this section 'civil servant' means a person serving in the Northern Ireland Civil Service who is not a special adviser.— [Mr Murphy (The Minister of Finance).]

No 23: Leave out clause 7 and insert -

**"Presence of civil servants**

**7.—(1)** A Minister, or special adviser, who holds a meeting with a third party about official business must take such steps as are reasonable to ensure that the meeting is attended by at least one person serving in the Northern Ireland Civil Service who is not a special adviser.

(2) Subsection (1) does not apply if the meeting is for liaison with the Minister's political party.

(3) In this section 'third party' means a person who is not acting in the person's capacity as—

(a) a Minister or a Minister of the Crown or a member of the Scottish or Welsh Government or a junior Scottish Minister,

(b) a Minister of the Government of Ireland,

(c) a member of—

(i) the Assembly,

(ii) the House of Commons,

(iii) the House of Lords,

(iv) the Scottish Parliament,

(v) Senedd Cymru,

(vi) Dáil Éireann, or

(vii) Seanad Éireann,

(d) a member of the Assembly's staff,

(e) a person serving in any part of the civil service of the State,

(f) the Attorney General, or

(g) a member of the Attorney General's staff.

(4) The duty under subsection (1) applies only so far as it is exercisable in or as regards Northern Ireland.— [Mr Murphy (The Minister of Finance).]

No 24: In clause 7, page 3, line 22, after "party" insert -

"or other Members of the Assembly".— [Mr Allister.]

No 25: In clause 8, page 3, line 25, leave out from ", other" to "then," on line 26 and insert "being lobbied,".— [Mr Murphy (The Minister of Finance).]

No 26: In clause 8, page 3, line 27, leave out from "provide" to end of line 28 and insert -

"as soon as reasonably practicable provide their department with a written record of the lobbying; and the department must retain the record in accordance with its policy on the retention and disposal of records."— [Mr Murphy (The Minister of Finance).]

No 27: In clause 8, page 3, line 33, after "to" insert "seek,".— [Mr Murphy (The Minister of Finance).]

No 28: In clause 8, page 3, line 40, leave out from second "or" to end of line 41.— [Mr Murphy (The Minister of Finance).]

No 29: In clause 8, page 4, line 2, at end insert -

"(3A) The Minister may determine to waive compliance with subsection (1) if the subject matter is inconsequential."— [Mr Allister.]

No 30: In clause 8, page 4, line 5, after "Committee" insert -

"of the Assembly or any sub-committee of that Committee or any other committee or sub-committee of the Assembly".— [Mr Murphy (The Minister of Finance).]

No 31: In clause 8, page 4, line 6, after "party" insert -

"or other Members of the Assembly".— [Mr Allister.]

No 32: In clause 8, page 4, line 6, after "party" insert -

"or members of the Assembly".— [Mr Murphy (The Minister of Finance).]

No 33: In clause 8, page 4, line 6, at end insert - "(c) made at a meeting attended by a person serving in the Northern Ireland Civil Service who is not a special adviser,

(d) received personally by a Minister or special adviser after having been first received and recorded by a person serving in the Northern Ireland Civil Service who is not a special adviser, or

(e) made to a Minister by a member of the public in their capacity as a member of the public, or in their capacity as a community representative, and relating to a matter in which the person making the communication has only the same interest as all other members of the public or all other members of a section of the public."— [Mr Murphy (The Minister of Finance).]

No 34: After clause 8 insert -

### **"Use of official systems**

**8A.**—(1) A Minister or special adviser when communicating on official business by electronic means should not use personal accounts or anything other than devices issued by the department, systems used by the department and departmental email addresses.

(2) If out of necessity it is not possible to comply with the requirements of subsection (1) the Minister or (as the case may be) special adviser must within 48 hours, or as soon thereafter as reasonably practicable,

(a) copy to the departmental system any written material generated during the use of non-departmental devices or systems; and

(b) make an accurate record on the departmental system of any verbal communications of consequence relating to departmental matters."— [Mr Allister.]

No 35: In clause 9, page 4, line 20, at end insert -

"(4) For the purposes of subsection (3)(a), two people are partners if—

(a) they are civil partners of each other, or

(b) they are not married to, or civil partners of, each other but are living together as if spouses of each other.

(5) For the purposes of subsection (3)(a) 'close family member', in relation to a person, means someone who is—

(a) a parent, or parent-in-law, of the person,

(b) a child of the person,

(c) a whole-blood sibling of the person, or

(d) the spouse or civil partner of someone within paragraph (b) or (c)."— [Mr Murphy (The Minister of Finance).]

No 36: In clause 10, page 4, line 24, leave out ", civil servant".— [Mr Allister.]

No 37: In clause 10, page 4, line 24, leave out from ", civil servant" to end of line 26 and insert -

"or special adviser to communicate official information to another for the financial benefit or other improper advantage of any person or third party, except for a communication arising in the course of liaison with the Minister's political party."— [Mr O'Toole.]

No 38: In clause 10, page 4, line 25, leave out ", directly or indirectly,".— [Mr Murphy (The Minister of Finance).]

No 39: In clause 10, page 4, line 26, leave out "financial or other improper" and insert "improper (financial or other)".— [Mr Murphy (The Minister of Finance).]

No 40: In clause 10, page 4, line 26, leave out "or third party".— [Mr Murphy (The Minister of Finance).]

No 41: In clause 10, page 4, line 38, at end insert -

"(5) In this section 'civil servant' means a person serving in the Northern Ireland Civil Service who is not a special adviser."— [Mr Murphy (The Minister of Finance).]

No 42: In clause 10, page 4, line 38, at end insert -

*"(6) In this section 'statutory obligation' means—*

*(a) an obligation under a statutory provision, as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954, or*

*(b) an obligation under any legislation for the time being in force in any part of Great Britain or in any country or territory outside the United Kingdom."— [Mr Murphy (The Minister of Finance).]*

No 43: In clause 11, page 4, line 40, leave out "Ministers and their departments" and insert -

*"A Minister and their department".— [Mr Murphy (The Minister of Finance).]*

No 44: In clause 13, page 5, line 16, leave out "Ministers and their officials" and insert -

*"The Minister in charge of a Northern Ireland department, or the department,"— [Mr Murphy (The Minister of Finance).]*

No 45: In clause 13, page 5, line 18, leave out "in advance of it being submitted" and insert -

*"no longer than 7 days following submission".— [Mr O'Toole.]*

No 46: In clause 13, page 5, line 20, leave out "Ministerial approval being granted" and insert -

*"its being approved by the Executive Committee of the Assembly".— [Mr Murphy (The Minister of Finance).]*

No 47: In clause 13, page 5, line 22, leave out "(1)" and insert "(2)".— [Mr Murphy (The Minister of Finance).]

No 54: In clause 15, page 5, line 41, at end insert -

*"close family members' means—*

*(a) parent or parent-in-law;*

*(b) child;*

*(c) brother or sister; and*

*(d) spouse or partner of any person set out in paragraphs (b) or (c)."— [Mr Allister.]*

No 55: In clause 15, page 6, leave out lines 1 to 4.— [Mr Murphy (The Minister of Finance).]

**Mr Murphy:** The second group of amendments is concerned with the role of Ministers, in particular, and administrative matters in Departments, more widely. It is worth reiterating my belief that the legislation is unnecessary. The effect of the Bill becoming law will be that administrative practice becomes a matter of lawfulness and unlawfulness.

The Bill would increase bureaucracy and reduce the scope to operate on the basis of professional judgement and good sense. Government, which is often already risk-averse, would become more defensive rather than responsive. Therefore, I cannot support the legislation, but I will seek to ensure that it does no more damage than it must.

### 3.00 pm

I will take each of the amendments in turn. Amendment No 18 would make a small technical amendment to clause 5 that would amend section 17(1)(a) of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011. It would cover not only complaints but referrals made under Assembly Standing Orders. The amendment clarifies that the amendment to section 17(1)(a) relates only to complaints.

Amendment No 19 would clarify the reference to the ministerial code in clause 5. The definition of "Ministerial Code" inserted by subsection (6) refers to the existing ministerial code, although section 1 of the code includes the Pledge of Office. There would be questions about what was intended if a future revision of the code were restructured so that a new section 1 was not the relevant section.

Amendment No 20 is a technical amendment to clause 5 to use the usual words for amending a definition.

Amendment No 22 is an attempt to provide a more effective and precise clause to replace clause 6. It would require the permanent secretary of a Department to ensure that that Department has arrangements for recording meetings and decisions and for records to be kept in line with existing policies. The clause that is currently in the Bill applies a blanket approach and leaves the key term "meeting" undefined. As a consequence, it would render

unlawful any minutes that did not contain specific details, however irrelevant those details might be, and would render unlawful the actions of an official who failed to record something that might or might not be a meeting. It would risk real problems of data protection and clashes with the principles of good records management.

My amendment attempts to make the provision workable. It defines a relevant meeting and a relevant decision in order to capture organised meetings and decisions that are taken outside organised meetings. It would require that an appropriate written record is made, allowing reference to good practice and guidance and to what constitutes an appropriate record. It would ensure that records are kept in line with the existing policy on the retention of records rather than conflicting with existing public records legislation. It would achieve what, I hope, the Bill intends to achieve, which is to prevent ministerial decision-making going unrecorded. I still believe that the provision would require Departments to erect and police bureaucratic structures rather than encourage good practice and engender professionalism and confidence in the Civil Service. That is precisely why such statutory provisions are inappropriate and counterproductive.

Amendment No 23 would replace clause 7 and needs to be read alongside amendment No 22 in the same way as clauses 6 and 7 are closely connected. It would place a duty on the Minister and special adviser to ensure that a civil servant attends every meeting about official business. The civil servant would then record that meeting, as set out in the previous clause. The amendment expresses how reasonable steps should be taken to ensure that a civil servant is present. That is to ensure that the legislation does not render unlawful a situation in which a civil servant could not reasonably be expected to attend, where no civil servant was available to do so, where IT links fail or where planned travel became impossible. Those circumstances may be rare, but the legislation has to take account of them.

The original clause acknowledges that there are occasions where Ministers and their special advisers meet in a wholly political context with their party colleagues. It would not be appropriate for civil servants to attend such meetings, both to preserve the Minister's right to private meetings of a political nature and to protect the political impartiality of the Civil Service. The Bill sponsor has recognised that principle in his amendment to extend the exemption to meetings with MLAs and other parties. My amendment extends that principle

so that it is possible but not necessary for Ministers and special advisers to have wholly private meetings of a political nature with other Ministers, legislatures and Assembly staff. It also extends to meetings with the Attorney General and their staff so that legally sensitive matters can be discussed in that context.

Amendment No 25 is intended to correct the drafting in clause 8(1).

Amendment No 26 would change the use of the term "earliest opportunity" in clause 8 to "as soon as reasonably practicable", which allows for appropriate discretion on what is reasonable. It would also ensure that the record of the lobbying was retained in line with the Department's existing policy.

Amendment No 27 is a technical amendment to clause 8 to reflect the fact that Departments do not make primary legislation but seek it. As Members made clear at Consideration Stage, clause 8 as currently drafted would have an immense impact on Ministers, special advisers and their offices, both departmental and constituency. It would require a huge bureaucratic machine to capture and record every communication on any matter in the Department's remit. It would, without doubt, hamper good government. I believe that the Bill sponsor has accepted that and tabled his own amendment to clause 29. I can see the benefits of his amendment, although it would be challenging for any Minister to decide that an issue of real importance to an individual member of the public was, in his words, inconsequential.

I have proposed two amendments likewise intended to limit the damage that the clause would have on good government. Amendment No 28 would remove from the scope of the clause any lobbying on issues that are not about legislation, policy, contracts, grants or licences. The functions of a Minister's Department are so diverse and can cover so many issues close to the interests of so many people that making "lobbying" refer to any communication about any function of a Department is too wide.

Amendment Nos 30, 32 and 33 are also intended to narrow the impact of the clause as drafted. They do so by extending the original list of communications excluded from the requirement on Ministers and special advisers to make a record. I propose that we add communications made in subcommittees of Assembly Committees and the Executive Committee, communications made in meetings with MLAs and meetings attended by a civil

servant. Those meetings will be recorded by Assembly staff and civil servants. The list at clause 8(4) would also be extended to include communications already received by a Minister's Department through private offices or otherwise.

The final exclusion in amendment No 33 is an attempt to reflect the real concerns of Members about Ministers and special advisers having to report to the Department every comment or approach by a member of the public that would otherwise be captured by the clause. It is intended to ensure that Ministers and special advisers are not required to report to the Department every casual remark, every comment at a public meeting and every call to a radio phone-in.

Amendment No 35 clarifies the meaning of "partner" in clause 9, which is otherwise ambiguous.

Amendment Nos 38, 39 and 40 attempt to address the language of clause 10. Amendment No 38 removes the phrase "directly or indirectly" from the clause. It is unnecessary, since the key factor is that the communication is made for improper benefit, however it is made. Amendment No 39 corrects the word order to make it clear that not every financial benefit is an improper benefit. As the clause is drafted, any financial benefit, whether improper or proper, would be captured, and that would render the clause wholly damaging to normal government business. Amendment No 40 removes words that add nothing to "any person".

Amendment No 41 clarifies the meaning of "civil servant" in the clause, and, in particular, excludes civil servants working in Whitehall Departments within the jurisdiction.

Amendment No 42 clarifies the meaning of "statutory obligation" in clause 10, and saves officials, when travelling or based in Brussels, Washington or Beijing, from having to rely on the reasonableness defence to justify having complied with local law.

Amendment No 43 is intended to achieve coherence between the opening words of clause 11 and the words in paragraph (b).

Amendment No 44 captures the drafting in clause 13 and ensures that duties are placed on Departments rather than unidentified individual officials.

Amendment No 46 addresses the ambiguity in the term "Ministerial" in the original clause 13,

as it could refer to approval by the Minister of Finance ahead of a submission to the Executive.

Amendment No 47 corrects an apparent typographical error in clause 13.

Amendment No 54 defines "close family members" in clause 15 as required for the purposes of registration of interests.

Amendment No 55 removes an unnecessary definition in clause 15. The definition of "department" is unnecessary because the Bill would refer to a Minister's Department, which would, necessarily, be an Executive Department, or expressly to an Executive Department.

**Dr Aiken (The Chairperson of the Committee for Finance):** My remarks as Chairperson of the Committee for Finance in relation to group 2 relate solely to clause 13. That is amendment Nos 44 to 47 for those of you who are following it in your paperwork.

As clause 13 was introduced at Consideration Stage, the Committee did not have the opportunity to express a view on it. However, the clause relates to an area within its remit on which the Committee has a very clear view.

The Department of Finance's strategic priority 5 is to:

*"Ensure government continues to work in an open and transparent way, by championing open government principles for transparency, accountability, good governance and citizen participation."*

One of the Committee for Finance's strategic objectives in our strategic plan is:

*"to have in place a Budget Process that supports full consultation by the Department of Finance with the Committee, robust scrutiny across all statutory committees; and open and transparent accountability to the Assembly by the Executive throughout the Budget Cycle."*

Guidance and in-year monitoring of public expenditure is issued by the Department of Finance each year, normally in advance of June monitoring.

The current guidance is quite clear about what is expected of Departments as they engage with Committees on monitoring rounds. It states:

*"departments must ensure that they engage fully with their Assembly Committees in respect of the In-year Monitoring process."*

It continues:

*"The extent and timing of this engagement is obviously a matter for individual Committees"*

rather than for Departments. That means that Committees should have the opportunity to receive oral evidence from their Department, including full details of proposed easements, movements and bids. That is an important part of the monitoring process, especially for bids for resources, in that it provides Committees with information on departmental pressures and the steps proposed to alleviate those pressures.

Generally speaking, the in-year monitoring process largely seems to have been working appropriately since the Assembly returned last year. The Committee has received only two complaints from Statutory Committees about Ministers failing to meet their responsibilities to provide complete and timely information to their Committee. As drafted, clause 13 would provide a legislative basis for what is currently happening in most cases, and it would ensure that, for in-year monitoring, the Committee's objective for openness, transparency and accountability is enshrined in legislation. Amendment No 45, however, would do away with that openness, transparency and accountability by removing the requirement for Departments to share information with their Committee prior to submitting returns to the Department of Finance.

In turn, that would mean that Committees would not receive information on where the pressures are in Departments and that they would have access only to information on successful reallocations to Departments. For example, the Committee for Health may welcome an allocation of £1 million in September monitoring to help support a particular need, but, if the Committee had not seen the original bid information, it would not know that the Department may have requested 10 times that amount, and it would never have known to ask the Department how it proposed to address the outstanding need in the absence of sufficient resources. Providing departmental bids to Committees is an essential part of the scrutiny process, as it is one of the few mechanisms for providing Committees with a detailed insight into the internal pressures in Departments. The Department of Finance's priorities and the Committee for Finance's strategic objectives focus, however, on the need for transparency

and accountability. Members may wish to consider whether amendment No 45 is in the spirit of those priorities and objectives. That concludes my remarks on the second group of amendments as the Chairperson of the Committee for Finance.

**Mr Frew:** Again, I welcome the debate and commentary so far from the Members who have taken part in the debate on the second group of amendments, as I did from those who spoke to the previous group before lunch.

I know that my colleague across the room Mr O'Dowd will not like me talking about reform again, but it is essential to do so, because this group deals with transparency. It deals with the transparency of the functions of government, which is transparency that allows members of our public and the media to light up the mechanisms and look into the structures, actions and decisions that are taken across all arms of government. That can only be a healthy thing and a healthy place in which to be. The more transparent that we can be, the better that it is for having good government. Transparency should not stop at any one sector, whether that be a ministerial post, a permanent secretary's post or a spad's post, or, indeed, the Civil Service in its entirety. For that matter, nor should it stop at ministerial decisions or Committee structures. Every single function of government should be as transparent as possible in order to allow information to flow, and, with that, scrutiny. It is important that we enhance the requirements of scrutiny in this place, whether that be through the House or through Committee structures. It is vital that we scrutinise every decision that is taken and ensure that those decisions are as solid as they can be and are in the appropriate direction of travel.

### 3.15 pm

Record-keeping is also critical to transparency and scrutiny. All of these things are linked; they are tied together. Ultimately, they lead to better functioning of government. With that in mind and all of those aspects coming together, maybe — just maybe — the people of Northern Ireland will have a Government that actually functions as best it can. Clearly, that has not been the case to date. Whilst there are many good things that happen because of the Executive, the Assembly, all the scrutiny Committees and everything that goes on, there have also been cases where there has been failure. There have sometimes been cases where there has been a failure to be transparent about failure. That is a road to no

town. That has to cease. When we make mistakes — and we all make mistakes — we have to be upfront and honest. We have to learn from our mistakes. That is how you will achieve better government, because we cannot get everything right. How could we?

It is important that all those aspects be enshrined in everything we do at every level of government. That is why my party supports reform in those areas. In fact, we always have. It has been in countless manifestos, year in and year out: reform of spad positions, reform of the numbers of spads, reform with regard to transparency and scrutiny. It is all there for anyone who cares to read DUP manifestos. This is a very consistent approach for my party to take. It is one that I will champion for as long as I stand here in the House. It is essential that we keep moving forward and endeavouring to change for the better. I welcome that, whatever guise or form it comes in or direction it comes from.

Here we are, scrutinising the Bill. I thank the Minister and the Department for coming forward with a raft of amendments that make the Bill even better by tidying up some of the wording and clarifying some places and positions that maybe needed to be tidied up. I welcome those, and I will support the Minister in his endeavours with regard to most of those amendments.

Amendment Nos 18, 19 and 20 are all very stylistic; they tidy up language and wording. That is to be welcomed. Amendment No 21 is from the SDLP and my colleagues Matthew O'Toole and Pat Catney; we share time together in the Committee. Amendment No 22 seeks to completely amend clause 6. If I recall correctly, the sponsor of the Bill tried to amend what is now clause 6 at an earlier stage, so that was always going to be a natural movement. I do not know what the SDLP's latest position is, but, whilst I have no problem with amendment No 21, the Minister's amendment contains a lot more clarification and detail.

**Mr O'Toole:** I thank the Member for giving way. When I speak, I will make clear that we will not be moving that particular amendment in favour of the one that the Minister has provided.

**Mr Frew:** I thank the Member for that clarification. It is very important. We probably all agree that that is the case with regard to the Minister's amendment No 22. It provides much more clarity for everyone involved, including the Civil Service. That should be welcomed.

On amendment No 23, the Minister stated that they all range together. I agree with him with

regard to clause 6, "Records of meetings"; clause 7, "Presence of civil servants"; and, if you like, clause 8, "Record of being lobbied". The Minister has had a stab at amending clause 7 in its entirety by adding all of these legislatures and other political arenas. When I first read that, I was a bit nervous about adding those, because surely when a Minister visits any of those legislatures there would always be civil servants present to support the Minister in his work or to keep a record of action points and matters that were debated or discussed with other Ministers or MPs.

I understand the need to amend clause 7. I am not, however, sure why we need to go into detail on all the different legislatures. I suppose that I am worried that we could leave something vital out. Just because it is in legislation in clause 7, if it is amended, does not mean that you do not have to have civil servants there; they should be there in most cases. I would just like a wee bit more clarity on why the Department of Finance and the Minister needed to list all the legislatures mentioned in amendment No 23.

I have no problems with amendment Nos 24 to —.

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

**Mr Frew:** Yes, I will.

**Mr Allister:** I suggest to the Member that, on amendment No 23, in addition to the concerns that he raised about the exemptions, there is perhaps a more fundamentally alarming thing about the Minister's amendment. The Member will be aware that, in clause 7, as approved at Consideration Stage, a record must be taken of such meetings and that the Department must retain the record. Strangely, the Minister's amendment removes entirely the need to make or to keep any record. Is that not a matter of considerable concern?

**Mr Frew:** The Member makes a very valid point. Whilst I did not have long to look at it, it was remiss of me not to mention it. I thank the Member for raising that issue; I am sure that he will speak to it in his contribution. I wait to hear what he has to say and then, hopefully, what the Minister has to say in winding up. It is a fundamental issue. We have not resolved to vote one way or the other on the amendment. I welcome the debate on amendment No 23.

I have no problems with either the Bill sponsor's amendment or the Minister's amendments from

amendment Nos 24 to 28. They are tidying-up and stylistic amendments.

Amendment No 33 amends clause 8. Paragraph (e) reads:

*"made to a Minister by a member of the public in their capacity as a member of the public, or in their capacity as a community representative, and relating to a matter in which the person making the communication has only the same interest as all other members of the public or all other members of a section of the public."*

I may not be reading that correctly, or perhaps my primitive mind cannot get round it, but I ask the Minister to elaborate on what exactly paragraph (e) is designed to do and what it means. I suspect that it has something to do with community groups, chairpersons of community groups, and that type of thing, but it would be good for the House to hear further clarification on it.

Amendment No 34 is the Bill sponsor's attempt to get back in the Bill a provision on the use of official systems, which was negated at Consideration Stage, albeit without the tariff and the offence. There was merit in the provision. I know that there were concerns in the House about the tariff and the sentencing, but there should be standards. I give the Bill sponsor credit: he moved from a position at the start of the Bill process and amended the clause, having taken regard of the work and the belief of the Committee at that stage. I think that we could support it.

I have no problems with amendment No 35, which is one of the Minister's.

Amendment No 37 is to clause 10. When I first read this, I chuckled to myself — I did not mean to do so — because of how it reads. I am sure that the Members did not mean to word it so that I would interpret it in this way, but it sounded as though it was OK to gain financial benefit and other improper advantages as long as you were liaising with your own party.

**Mr O'Toole:** Will the Member give way?

**Mr Frew:** I will give way, yes.

**Mr O'Toole:** I am grateful to the Member, not for giving way exactly but because he has prompted me to say that we will not move that amendment. In deference to other amendments from the Minister that capture the intention of amendment No 37, and, indeed, in deference to

amendment No 36 from the Bill sponsor, we will not move that particular amendment.

**Mr Frew:** Thanks for that very useful clarification, which has reminded me to go back to amendment No 36, in which the Bill sponsor proposes to leave out "civil servant". I know that the Member who has just intervened was very concerned about the Civil Service being encapsulated in clause 10. I do not share that concern, because I think that it has to be the case that there should be standards here for all, not least the Civil Service. However, I will not die in a ditch over it or divide the House on it. Ministers and spads should be held in the highest esteem, and their standards should be beyond all reproach. However, the same should and could be said for the Civil Service. I do not see the need to take "civil servant" out, but the Bill sponsor has moved in that direction, and I am sure that he did so after liaising with other parties and other members of the Finance Committee. I can only welcome that engagement, because it was very proactive and very important to the political process and the scrutiny of this place. I will not say any more on that.

I do not seem to have any other problems except for the amendment to clause 13 from Mr O'Toole and Mr Catney, which is similar to one that I tabled at Consideration Stage. I have great problems with this issue. The problem is not that Members are trying to amend it — absolutely not — but the impact and effect of it. Since we came back, I have not been 100% convinced that Departments treat Committees with respect. In fact, my experience is that the opposite is true and that Departments still treat Committees with a certain disdain. I wish that I did not have to say that but I believe that it is the case. When Committees ask questions, some are not answered, and other answers are delayed. Sometimes, our questions are only half answered and so much effort is then wasted trying to get to the truth. That is simply not good enough.

**Mr Humphrey:** I am grateful to the Member for giving way. I am Chair of the Public Accounts Committee. I am not sure that that Committee has encountered disdain but it has certainly encountered some withholding of information, whether deliberate or not. Therefore, our Committee policy is to ask witnesses who have not answered questions in a way that we would have liked or as fulsomely as we would have liked, to come back. That is one of the ways in which Committees can ensure that questions are answered and that they can deliver proper scrutiny, which is why they are there.

**Mr Frew:** I thank the Member for his intervention. He holds a very esteemed place and position, and he will know better than anyone how these things are dealt with.

It is not good enough for a Committee to have to ask repeatedly for the same information and for the Department to treat that as a new request rather than a repeat of the original request. That takes up a lot of time and effort that could be used by a Committee to support and advise the Department. If we are chasing the Department's tail for information that may not be of any great relevance except that the Committee wants to know, it becomes a major issue; a major story, even. That can erode confidence, not only among the population or the media but among members of the Committee who sit in the House. That is just not acceptable.

### 3.30 pm

This amendment strives to change clause 13 which, as it sits, states:

*"Ministers and their officials must provide the relevant Assembly committee with a written or oral briefing on the department's submission to each monitoring round in advance of it being submitted to the Department of Finance."*

What does that really mean? We had a bit of a debate the last time around, and Mr O'Toole said that it is not really for the Committee to change or make a Department do something to a bid to the Finance Minister. I agree 100% with that; it is not up to the Committee, nor do they have the vires, to do that. However, it is just good government for a Department, before submitting a bid to the Finance Department and the Finance Minister, to allow the Committee sight of that bid for the very reasons that my colleague, the Chairperson of the Finance Committee, raised, especially when it comes to financial matters. For example, it is all well and good if the Finance Minister declares, in a positive light, that Health or Education will receive £1 million. That sounds like a really good and positive story, but if the Health Department or Education Department had asked for £1 billion, it then becomes a very negative story. In that light, context is added to the bid. Remember, I am not asking for departmental officials to come before their relevant Committee before they submit a bid; I am asking for a written or oral briefing on a Department's submission in each monitoring round in advance of the bid being submitted to the Department of Finance.

Committees get oral briefings all the time, but we also get written briefings. Documents come to the Committee staff before going into a pack. Members then get the pack in advance of the meeting, at which we discuss the written briefings. If that is done in advance of any bid going to the Department of Finance, it means that the Committee will get good and timely sight of that bid. It does not mean that they can effect change or pressure the Minister or Department into changing the bid, nor does it mean that they have the power to change it; it just means that they get it in good time. It is about respect, more than anything, for the Committee. The Committee's role is not only to scrutinise but to support and advise. Amendment No 45 prolongs that information flow by at least seven days following submission. I really do not see the need for that delay after everything that I have outlined.

It is right that Departments submit their bids, in either written or oral form, to their Committee in advance of them going to the Department of Finance. Remember, some of those bids take weeks to formulate, and there will have been brainstorming throughout the Department on what it does and does not require and what it wants to do and pursue and what it does not. It will have taken weeks — months, in fact — to formulate a bid for a monitoring round, so there is no way that a Committee can just throw its size nine into the middle of that process; it just would not be right, nor would I want it to be the case. It is about transparency and respect, and surely every Department can give that.

Alas, that is not the case, because even the Finance Committee has received complaints from Chairpersons of Committees about late information flow from the Departments on monitoring rounds, no less.

That is why it is vital that, especially as we have a Budget process, albeit that it is consulted on, uniquely throughout the world, through the monitoring rounds — I think that there are three stages now — Committees for every Department get a grip of what is taking place. They need not only the information, the numbers, the noughts and the pound signs but the context. The Committee may say, "What did you bid for, Minister? You bid for £50 million, but what did you get? You got £1 million". That is a debate that is to be had, and it can be had only in the Committee. It is vital that scrutiny Committees are furnished with that information in advance.

I have said enough on that point, and I am sure that Members will agree. We will not support that amendment from the SDLP. I appreciate

that the Members have tried, in their eyes, to make the clause better, but I do not see that. That is not what the clause was designed for; it is prolonging it. I have spoken to all the Minister's amendments, and I seek clarification on some points. I look forward to the rest of the debate.

**Mr McGuigan:** It is always difficult to speak on any subject after my constituency colleague Paul Frew, because I stand up forgetting what we are talking about. The majority of his conversation had nothing to do with the Bill. In the midst of it, I went off into a wee daydream about warmer days and being out cycling. As people know, I am a keen cyclist. One of the skills of cycling in a bike race is to sit behind others who break the wind for you. You then have to account for only 60% of the energy, they say. The term for those who come to the front and shield the rest from the wind is "domestiques". As Mr Frew was speaking, I was thinking to myself that we really need a phrase for those in the Chamber who do the opposite of breaking the wind and create wind.

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

**Mr McGuigan:** Go ahead. He is going to come up with a French term for that.

**Mr Buckley:** I thank the Member for giving way. Does the Principal Deputy Speaker agree that, if the Member found it hard to follow Mr Frew's contribution, perhaps he could explain what he is talking about? It is certainly not what we are reading in the Bill today.

**Mr McGuigan:** I was making the point through jest.

**Mr Principal Deputy Speaker:** I was about to say that throughout the debate we have seen long and winding conversations on all sides of the House [*Laughter.*]

**Mr McGuigan:** I was just about to turn my bicycle around to get to the point.

Sinn Féin will support many of the amendments in group 2. In this morning's debate, we reiterated the point that the Bill is unnecessary and could constrain the work of government. To clarify, Mr Wells laboured on the point that I made about Mr Allister's opposition to the Good Friday Agreement and all that flowed from that, including power-sharing and this institution, and he said that that was the sole reason for Sinn Féin's opposition to the Bill. That is not the case. We said that at the time, and I reiterate it. I do not believe that Mr Allister has had a road

to Damascus transformation and suddenly wants Stormont to work. That said, Sinn Féin does. We want good government, and our opposition to the Bill is on that basis. I will just point out that Mr Allister and I, as constituency colleagues, have worked and agreed on plenty of issues. For example, we have agreed time and again on the scandalous behaviour of the DUP MP in North Antrim when he was found to have broken the Westminster code of conduct.

To reiterate a point made by the Minister, the Bill is not filling a vacuum in reform. Codes of practice have been strengthened. The Executive subcommittee has started its work on implementing the RHI recommendations. Let us not forget that at no stage did Justice Coghlin, after rigorous investigation of the issues that led to the DUP-led RHI scandal, recommend legislation in his report. It should also be said that legislation will not necessarily be the deterrent that the Bill sponsor hopes that it will be. Corrupt behaviour can be hard to police, as we saw in the RHI scandal. What is needed is an attitude change in which all those who are in positions of power have due regard for the office that they hold and respect for the people whom they represent.

I turn to the amendments at hand. Amendment No 22 deals with clause 6, which is flawed in its current state. The clause does not even define what a meeting is, and remember that there is no scope for interpretation once this becomes law. A meeting could be someone stopping you for a chat outside Mass or a supermarket and mentioning government business. The amendment sets the parameters of what constitutes a relevant meeting and tidies up clause 6 so that it is workable. The amendment also inserts a provision that requires that appropriate levels of detail are recorded when taking notes of meetings. Otherwise, civil servants could be found to have broken the law for not recording every level of detail in a relevant meeting, even if that information was inconsequential. Even in its fixed state, the clause will add much more bureaucracy than is needed. Departments will be required to police the new system.

Amendment Nos 38 to 42 relate to clause 10, which creates a new criminal offence of the unauthorised disclosure of official information for improper benefit. The clause is flawed and assumes that any kind of financial benefit must be improper. We know that that is not always the case. Amendment No 42 defines what a statutory obligation is and protects special advisers who, in carrying out their duty, may be required to carry out their work outside the jurisdiction. Again, even with the amendments,

the clause that creates the offence could have dire consequences for the workings of government.

I finish my remarks by once again asking that Members closely consider the consequences of enacting the Bill as it stands and asking whether we really need to bind ourselves in a straitjacket in that way.

**Mr O'Toole:** I will reflect on all the amendments in group 2 and will speak to the three amendments in my name and that of my colleague Pat Catney. As I indicated, we will not move two of those amendments. We will not move amendment No 21, which relates to clause 6 and record-keeping. We have talked about that already. We will defer to the Minister's amendment No 22, which, we think, serves the purpose more usefully and, in a sense, underlines the importance of having officials lend their drafting skills to the legislation. We will not move amendment No 21. Likewise, we will not move amendment No 37, because we think that a combination of amendment No 36, which is absolutely critical, and the Finance Minister's subsequent amendments from amendment No 38 onwards do some of the tidying up that we sought to do. I will come to the meat of why amendment No 36 is important and may well be the most important of today's amendments. We have always been extremely careful about the consequences of passing some of the criminalisation clauses into law. We saw more merit in this than in what was originally in clause 9. We did not think that that was an appropriate place to create a criminal offence. There is more merit in this one, but we want to see it sharpened and narrowed, to be perfectly honest. That is why I am pleased that the amendments are on the Marshalled List, and I very much hope that they pass. We will support amendment No 36 in the Bill sponsor's name and the subsequent amendments from the Minister and will not move our amendments.

I go back to the context for the group 2 amendments. Many of the amendments touch directly on the functioning of government. They will affect not only Ministers and special advisers but the Civil Service.

That is why we sought, with an open mind to the legislation, to get it right and to look at where there are useful and substantial things. Just to correct something that the Minister said earlier, the SDLP has not been supportive of elements of the Bill just because we think that the Bill is presentationally good. We think that there are substantial arguments for having parts of the reforms in legislation. That is clear. Not

all of the Bill has merit, and that is why we voted against significant parts of it.

### 3.45 pm

To answer the point that Philip McGuigan has just made, with respect, we do not think that the legislation will completely address everything that is in the Coghlin report. There are two things to say. I do not have the quotation to hand, but Patrick Coghlin did not state in his report that his recommendations marked the entirety of what Executive should do. He specifically stated that his report did not preclude or rule out any other reforms. Moreover, we are happy to look at further post-RHI and Civil Service reforms that the Finance Minister brings forward, and we look forward to his doing so.

On the broader context, as I said, we have always sought to approach the legislation with an open but critical mind. As I mentioned, our proposed new clause 6 on a record of meetings sought to address some of the concerns that we and others had about the burden that that would create for the Civil Service. As someone who was a civil servant for many years, I know the volume of meetings that are informal and short, involving a Minister signing off a piece of correspondence or having a chat with an official in a corridor. It was always going to be difficult to codify all that in legislation, and doing so risked adding an undue burden. Our amendment No 21 was designed to ameliorate that and to focus on what is important, which is ensuring proper record-keeping. Let us be honest: it was clear from the Coghlin report that there was a terrible failure of record-keeping in the Northern Ireland Civil Service. The Minister's amendment is better than ours, however, and I am more than happy to admit that and to defer to it. There is no conceit on our part, so we will not be moving amendment No 21, because amendment No 22 does it better than we did.

As I said, amendment No 23 will replace clause 7. The Minister touched a little bit on that. We are not necessarily wholly opposed to the amendment, but some of the concerns that Paul Frew outlined are the things that we would like to hear about. I see some merit in the specific exclusions for the various parliamentary bodies from these islands, so, when the Minister is wrapping up, it would be helpful if he could give a little more clarity on the purpose of the amendment. For example, can he explain whether, in his mind, the clause serves to create an exclusion, whereby Ministers can hold those meetings without civil servants or will it create a default position whereby civil

servants do not go to those meetings? I presume that it is the former and not the latter, but it would be helpful to understand what it means.

As I should have said, amendment Nos 18 to 20 are technical amendments. Again, they are a welcome tightening of the language. Amendment Nos 24 to 33 are broadly the same. We are happy with amendment No 33. I should go back and say that some of those amendments are not so much technical. There is a degree of substance in them, because they tighten up some of the exclusions on lobbying. It is important that they do that, and we welcome that.

Amendment No 34 is significant. It is a new clause. In a sense, it is a substitute for the previous clause 9, which created a criminal offence for the use of unofficial systems. For a couple of connected reasons, that gave us pause for thought. One was that, frankly, it seemed fairly draconian to make it into a criminal offence. We could not agree to it being a criminal offence for that reason. Secondly, it did not seem to reflect some of the realities of how not just civil servants but special advisers and Ministers do business, often in an entirely innocent way. The Bill's sponsor addressed some of that in the original clause and has changed some of it here, in the sense that there is a 48-hour period in which you can put information on official systems. However, there are two outstanding questions, and it would be helpful if the Bill's sponsor were to clarify them when he comes to speak. One is around devices. The amendment as currently drafted refers to:

*"anything other than devices issued by the department, systems used by the department and departmental email addresses."*

That seems to suggest to me that it will capture people, such as many of us in the Chamber, who use our Assembly email on our iPhones or personal phones. There are probably lots of civil servants in a similar position. The amendment, it seems to me, will capture that. I am sure that that is not what it is intended to do, but it would be helpful if the Bill's sponsor could clarify that. Secondly, there will be a significant amount of contact between Ministers of different Departments, and between Ministers and special advisers and other people, via text. Lots of that will be routine and not substantial departmental business. We have a concern that this amendment, as currently drafted, might capture that. It would be helpful if the Bill's sponsor could make clear, when he speaks, his

position on that and why he thinks it is or is not included.

I welcome amendment No 35, which is a tidying-up measure.

I am very pleased to see amendment No 36; as I said, we think that it is possibly the most important amendment that we are debating today, and I will explain why. Amendment No 36 removes civil servants from the scope of the criminal offence, which is that of unlawful disclosure. Let us be absolutely clear: as legislators, one of the biggest and most serious things that we can do is to create a criminal offence and, thereby, create a new possibility of someone being deprived of their liberty. It is really important that we are very careful about how we use that power. We felt that, not just in the context of RHI but more broadly, the Bill would be better narrowing the scope of that potential criminal offence to those people whose culpability is, naturally, higher than that of others. If you are a Minister or a special adviser, then your culpability — Mr Allister knows a lot more about the philosophy of sentencing in the criminal law framework than I ever will, but my understanding is that, the more culpable you are, the more serious the penalty should be. If you are a Minister or a special adviser, your culpability is automatically higher. There are more than 20,000 civil servants in Northern Ireland; to have all of them potentially caught up in a criminal offence would have a chilling effect.

Nevertheless, there is a very real public concern about some of the actions that were highlighted through RHI. There is a broader concern, frankly, that has permeated in the last decade or so around practices, around information being disclosed to certain parties and around levels of good governance and standards. There is a significant argument that, if we can get that criminal offence right, it might help answer some of that concern and create a specific deterrent — that is the word that I was looking for — to certain types of bad behaviour.

As I said, we are not going to move amendment No 37, because others have done it better. I mentioned the Bill sponsor's amendment No 36; the Minister's amendments from No 38 to No 42 are better than ours because they clarify and lead to a more focused clause 10, which will hopefully mean that the offence that will be created if the Bill is passed will be more focused on those whose culpability is highest and that activity that is not sought to be in the scope of the Bill will not be captured. Ideally, this offence would never be invoked and no one

ever prosecuted under it, because it improves behaviour.

We have no objection to amendment Nos 43 and 44.

I will move on to amendment No 45. This is the only one of our three amendments that we will move. It relates to clause 13, which is the Frew clause, as it were. It is about scrutiny by Committees. I have been in the Assembly a little over a year, and it is clear to me that the work of Committees is fundamental to the Assembly. It is where some, if not most, of the best work is done.

There are clearly inconsistencies in the information that Departments share with Committees and the level of information that Committees get. There is no doubt about that. Broadly speaking, there is merit in the clause, which is why we supported it at the previous stage. However, our amendment clarifies it. It makes more sense for the Department in question to share information. Statute should provide that the Department has to share its monitoring bid with the Committee within seven days of its having been submitted to the Department of Finance. We want to avoid a bidding war, or a bun fight, inside Committees, before something is submitted to the Department of Finance. There is no SDLP party or departmental interest in this. It is simply put on the basis that this provision would work better.

If this provision goes forward as it is, Departments will have to send stuff to Committees in advance of it going to the Department of Finance. There is nothing to stop a Department doing that if it wants. However, if it is in law that Departments have to share their bid with the Committee before they send it to the Department of Finance, surely that would be a strong political incentive for members of the Health, Education, or Communities Committee to say, "Hang on, why are you not bidding for this, in my constituency? Why are you bidding for that thing?". It is genuinely a straightforward question. Why create a perverse incentive? We are all politicians in this Chamber, apart from the officials who have to sit and listen to us.

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

**Mr O'Toole:** I will.

**Mr Wells:** Would it not be absolutely terrible if members of a Committee, having had that information released to them, used it as an

opportunity to push for deserving schemes for the benefit of the people of Northern Ireland or their constituency? We cannot have that going on in the Assembly. That would be terrible.

*[Laughter.]*

**Mr O'Toole:** There are a couple of things that I can say to that. There is nothing stopping anyone doing that, of course. The logical extension is that you get information, in live time, from the Department and you can check and second-guess every email sent out by a civil servant.

Personally, I do not think that that is a good way to do government or scrutiny. Our job is to scrutinise. Co-creation is a good thing, and, yes, we input into the policymaking process, but there is a limit to which it is constructive to have MLAs second-, third- and fourth-guessing information as it is being debated live in the Executive. There will be no shortage of opportunity for people to call for money to be spent on particular projects. I will be doing a lot more of it in the weeks to come, as we debate and scrutinise the Budget that was presented last night, the January monitoring round.

I worry that, if we create a provision in statute where a bid has to go, effectively before it has been finalised, to a Committee, what you are saying is, "Here is our draft. What do you think of it? Will you help us with our working out?".

Mr Frew is a great speaker and a very good collegiate Committee colleague. I have learnt that he is completely sincere in his belief in the importance of scrutiny. I agree with him on a lot of it. However, we have to be realistic: virtually all of us, with the possible exception of Mr Wells, are members of a political party. Even Mr Wells is not completely apolitical. We are politicians, and getting this information about how much the Health Minister has bid for in relation to a specific area of care or a specific development in a hospital in a particular area is of interest to us.

Not so long ago, Mr Wells convincingly pointed out the difficulty that he had as Health Minister in carrying out important health service reforms because of the tendency for MLAs to be very protective of their local patch and rather parochial about these things. I say this to him: clause 13 would deepen that challenge because it would create an incentive for MLAs to ask, "Why did the Communities Minister not bid for more 3D pitches? I want a 3D pitch in my area". I could go on.

**4.00 pm**

**Mr Frew:** I thank the Member for giving way. He is very gracious with his time.

Nowhere in clause 13(1) does it say that any Minister has to gain the approval of or get ratification from their respective Committee before submitting a bid to the centre, and I would not request or support that. It is not a Committee bid or a shared bid; it is the Department's bid. The officials will have spent months on these issues. One thing that I have learnt is that Committee members usually give due respect to the expertise of officials. It is not a Committee member's job to formulate or ratify a bid.

**Mr O'Toole:** I am grateful to the Member. What he said is true in a literal sense, but my argument is not that clause 13 creates a power for the Committee to say yea or nay to the bid; I am saying that it creates a political incentive for members of that Committee to second-guess and challenge. I am sure that I will challenge the Finance Minister about what is in the Budget before too long, and I will challenge other Ministers on how they have spent money. All I say is that the provision creates a specific unintended consequence. It is not about whether the Committee approves the monitoring bid, and I am not saying that. Unfortunately, it creates a fairly distorted political incentive.

I go back to something else that the Member said about amendment No 45. My Committee colleague Mr Frew said that Committees would never know whether the Department had asked for more money. Nothing is stopping the Committee getting that information. Nothing is stopping the Committee making the request and the Department giving its original bid. I am sure that, very often, it will be in the Department's political interest to say, "We bid for another £50 million, but Conor Murphy did not give it to us". The point that I make is that it is better to do that after the fact. If you insert a Committee process where you suggest, it will create unintended consequences. Therefore, amendment No 45 is the one amendment that we will move today.

Given that we have all spoken for so long on the Bill, I will keep my remarks brief, other than to say that I welcome the fact that we have made progress in particular areas. I am not in any way naive about the capacity of legislation to reform completely the culture of our politics, good practice in governance or standards in the Civil Service; nor am I saying that everything about our system of government is bust. We believe passionately and profoundly in the Good Friday institutions, and that belief is at the

core of our party. Given my previous life, I also believe in the role, function and work of special advisers. I believe that most politicians — even politicians in the Chamber with whom I profoundly disagree — want to deliver for their communities and for the people whom they represent. Civil servants do a huge amount of good work. I will never be found wanting when it comes to talking up the capacity of civil servants versus that of politicians because I know the difference between the two roles. Notwithstanding all that, the Bill has substantial merits. The SDLP still has specific reservations but is broadly supportive. As I said, I want a bit more clarity on specific areas, but my mind is not closed. Those areas are the Minister's amendment to clause 7 and the Bill sponsor's amendment No 34. At that, I wrap up my remarks.

**Mr Muir:** I rise on behalf of the Alliance Party to speak on the amendments in group 2.

My party will support amendment Nos 18 to 20, which are technical amendments to clause 5.

Amendment Nos 21 and 22 rewrite clause 6 on the requirement to maintain minutes of meetings. Both amendments improve the wording that was passed at Consideration Stage, as they tighten the definition so that it refers only to meetings where policy or spending decisions are taken. I note that the SDLP does not intend to move amendment No 21. Before we even knew that, my party's preference, on balance, was for amendment No 22, which places the requirement on permanent secretaries to put relevant arrangements in place and provides further detail regarding what is and is not a relevant meeting, as well as what constitutes a ministerial decision.

Moving on to clause 7, we support amendment No 23 proposed by the Finance Minister. It tightens the definition with regard to where the presence of a civil servant is required and includes meetings with elected representatives of another Parliament in the UK or Ireland. I know that there are different views on that amendment in the Chamber and welcome the debate. However, on balance, I feel that it is right to support the proposed changes.

We will support amendment Nos 25 to 33, which will help to ensure that clause 8 will not present an unrealistic burden on Ministers and special advisers by clarifying when they need to record lobbying. We maintain that additional specific legislation is required in that area, specifically on the creation of a register of lobbyists and to place more of the burden on the lobbyists. Some of the arguments that were

outlined at Consideration Stage still apply with regard to the appropriateness of some key elements of the legislation and whether it will add to the better functioning of government or detract from it.

We will oppose amendment No 34, the new clause 8A, which would reintroduce the provisions on the use of official email systems and devices that were rejected at Consideration Stage, this time without the criminal sanctions. Concerns were raised at Consideration Stage about how that law would work in practice, and they have not been addressed. I have my own iPad, laptop and iPhone; largely, I use my own devices. That is the way of the world nowadays, in 2021. By passing the amendment, we would pass bad, impractical law that would inhibit the functioning of government and would not reflect the reality of how communications occur at the moment. I urge Members not to support the amendment.

Proper record-keeping and the use of official systems by Ministers and spads are essential components of good governance. At this stage, we maintain that that is better dealt with through relevant codes than by inclusion in the legislation. We are passing legislation here — not codes — that places requirements on how government will work. We have to tread carefully.

Amendment No 35 addresses a concern that we raised at Consideration Stage regarding the register of interests and the definition of a "close family member". We note that amendment Nos 35 and 54 substantially attempt to achieve the same thing. We will support amendment No 35 with its definition of "partner" and tighter definition of "close family member".

Amendment Nos 36 to 42 deal with clause 10 on unauthorised disclosures. We raised concerns with clause 10 at Consideration Stage, including the overlap with the offence of misconduct in public office and the potential impact on lower-grade civil servants. The amendments will go some way to dealing with the latter point in particular, but they do not leave the legislation in any way perfect.

We will support the amendments relating to the monitoring rounds tabled by the Finance Minister and the SDLP. Our view is that those changes in relation to monitoring rounds should not be in legislation. We need to be practical about how that will operate. In some ways, the amendments make that more practical, but not passing them would make the issue around monitoring rounds and how they work and the

interface with Committees even more cumbersome.

Once again, I thank all those who contributed to the amendments and Members for the important debate. Whilst my party does not agree with everything in the Bill — there is a substantial amount that we do not agree with at all — many of the amendments will improve it before, potentially, it becomes the law of the land. That is why the debate is so important.

**Mr O'Dowd:** The amendments that are before us once again prove the weakness of the original piece of draft legislation. The original, as published by Mr Allister, had 15 clauses in a seven-page Bill, which is a very short piece of draft legislation. As a collective, we have tabled a total of 81 amendments to that 15-clause, seven-page Bill. That is 81 amendments to a piece of draft legislation that was published with great gusto as something that was going to cure all the ills of the Assembly and Executive and resolve the issues in the RHI report. Clearly, it was not capable of doing that in its original format. If the Assembly passes the Bill, it will go down in history as Jim Allister's private Members' Bill, but it is no longer Jim Allister's private Members' Bill; it is a Bill that has been brought together by a variety of resources and individuals who are trying to make bad legislation workable.

**Mr Frew:** I thank the Member for giving way. Does the Member realise that the way that he comes across makes it sound like a personal vendetta against the Bill's sponsor? Given the way the Bill was designed and notwithstanding the Minister's amendments, I was able to table an amendment that had nothing to do with previous clauses. I was able to add it on. Perhaps that is a positive, not a negative, for the Bill.

**Mr O'Dowd:** I do not know how it comes across to the Member. I have no strong personal feelings about Mr Allister either way. I am politically opposed to him. Like the Member, I try to make friends. I know that you spend a lot of time in Committees trying to make friends. I try to make friends too. I am maybe not always as successful as you are, but I do my best.

I want to give an example, and Mr Muir touched on this: we are making legislation, not passing a motion in the Assembly. Legislation has consequences, and the consequences of passing legislation here could have a very detrimental impact on the functioning of government. The purpose of the Bill is to —

allegedly — improve the functioning of government.

How will the clauses be implemented? If you look at amendment No 29, you see that it relates to clause 8 and, as we discussed at Consideration Stage, when a Minister is lobbied. How do you define that lobby? How do you manage what is and is not an important lobby? There was some discussion back and forth on that. We have now reached a point where Mr Allister has amended his Bill to say that it is a matter for the Minister to determine whether a matter is "inconsequential". Previously, we used an example of a Minister coming out of a supermarket, so I will stick with that. That Minister might be lobbied about street lighting. The Minister may walk away and say, "That's not important to me. That should not be reported". However, the member of the public thinks that it is important. Perhaps they did not declare that they were the chairperson of the local residents' group and were making a representation on behalf of the group in that area, or they did not declare that, as a result of poor street lighting in the area, someone had been knocked down and killed. The Minister, however, has made the decision in his or her head that it is not important so has not registered it. Six months later, the Minister might be pulled up on it and told, "Minister, you have breached the legislation. You were lobbied on an important issue — street lighting — and a person died as a result of poor street lighting. You did not register it". Who decides who is right or wrong there? The legislation does not give an arbitrator for that. Perhaps it is the courts; maybe that is Mr Allister's intention. It seems a bit extreme, but perhaps the most extreme circumstances would go to the courts.

It strikes me as poor legislation. I know that the Minister tabled amendments for the same clause in an attempt to tidy it up, but it shows that legislating for every incident is, if not impossible, almost impossible.

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

**Mr O'Dowd:** I will.

**Mr Allister:** Does the Member think that when the Copyright Act talks about not needing to do things that are incidental it too is bad legislation?

**Mr O'Dowd:** I tip my hat to the Member's knowledge of the Copyright Act. If you pay another barrister enough, I am sure that he or she would argue that point with you, hence the reason why we have so many barristers.

On the statute books, there are laws that are good, bad or unwieldy, but do we need to add other legislation that is the same? I will use this amendment as an example. Those who are genuine about the process are attempting to pass legislation for good governance, but the Bill will not achieve that goal because there are so many different aspects to it.

**4.15 pm**

In the Minister's winding-up speech on the last debate, he pointed out an important issue. The Bill, from the point of view of the sponsor and others, is about improving the functioning of government. Right? The Minister pointed out that there is an agreement in NDNA on how to deal with the recommendations in the RHI report, which is not to legislate. The Minister revealed that there is an Executive agreement — apologies if I am putting words into the Minister's mouth; he can correct me later if I am not exactly right on this — on how to deal with the RHI recommendations, and it did not involve legislation. To those supporting the legislation, tell me this: how can the functioning of government be improved if an agreement is breached? What does that do for the confidence of the parties sitting around the Executive table and working together if the legislation is in breach of an agreement? Think of the consequences of that, if you are not thinking of the consequences that this legislation will have in trying to administer good government.

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

**Mr O'Dowd:** I will.

**Mr Allister:** The basic tenet of the Member's contention is that legislation is not needed because all these things could be provided for in codes. The Member might have more credibility on the issue if he and his party had not voted in 2013, in my first private Member's Bill, on the necessity for codes. The Civil Service (Special Advisers) Act (Northern Ireland) 2013 provides that codes shall be in place. It was Sinn Féin that sought to vote that down. Now they tell us that codes are enough. Does the Member not think that he should take a look in the mirror before he makes that comment?

**Mr O'Dowd:** Again, the Member tries to cite an example as a blanket response to all scenarios. There will be scenarios in which codes or legislation, or a hybrid of both, are enough. You cannot say, "You said a, b or c once, so that is a definitive position on all". Mr Allister, the point

is that it was not Sinn Féin that said that codes were enough; the Executive said that codes were enough. A Bill to improve the functioning of government that is based on breaching an agreement from that Government is surely not getting off to a good start. I will end on that point.

**Mr Catney:** The group 2 amendments speak to the key reforms that are required in government. They concern reforms of how meetings take place, how they are recorded and how information is provided for those meetings. They address requirements on who must be in attendance at meetings so that there is optimal transparency. They also address reforms of lobbying so that the public can be assured of complete fairness in Ministers' decisions, reforms in how technology is used and provisions for the suitable use of computers and data. It is important, however, that we strike the right balance. The provisions must be effective in promoting reform and transparency, but they must not be cumbersome. The provisions must allow for the effective functioning of government and must not prevent that by creating an environment of restrictions, which require so much time and energy in order to adhere to noting those functions.

Most of the amendments strike that correct balance and will add to and improve the functioning of the Bill.

I welcome the Minister's amendment No 22 to replace clause 6 and thank him for the clarity that he has given. We must be clear about what constitutes a relevant meeting and an official ministerial decision. Ambiguity could lead to inaction, which goes against what the Bill is trying to achieve. The amendment gives clarity, so it is an improvement.

I am happy to support the amendments on lobbying. They allow for the reforms needed and set out how the provisions will operate in real-life terms. That should allow for better functioning of the provisions and an improvement in impact.

On the new clause proposed by amendment No 34, we welcome the movement that the Bill's sponsor has made on the criminal penalty. That was a sticking point for us as well as for the Northern Ireland Human Rights Commission. I am still concerned about the provision, as it will impact on the fast-paced way in which communication occurs in this day and age. I fear that it may be too easy to fall foul of the clause through zero fault. It therefore creates an undue burden.

I want to speak to the amendments standing in my name and that of Matthew, even though some of them will not be moved. Amendment No 21 is adequately covered by amendment No 22, which the Minister tabled, and therefore does not need to be moved. Amendment No 45 would allow for an extended timescale in clause 13. As I said at Consideration Stage, I understand the importance of clause 13 and the need for information to be provided to the House for scrutiny in a timely manner. We all have clear examples of what should not be done: for example, when we debate health regulations that are already a month out of date. This past year, however, has shown us that we can never be sure what is around the corner, and legislation must, as far as is possible, deal with all scenarios. Our amendment No 45 would allow for the scrutiny that is needed, as well as the flexibility. Again, this is about the Bill being able to allow for the normal functioning of political life while creating the reforms necessary.

**Mr Wells:** First, I congratulate Mr Allister, because I think that he is on the cusp of being the first MLA in the history of perhaps not just the Assembly but the Northern Ireland Parliament to have successfully steered two private Member's Bills through this Building. That is a remarkable achievement. Mr O'Dowd paid Mr Allister a backhanded compliment by saying that his Bill had attracted 81 amendments: that shows the scrutiny that Mr Allister has had to face to get his Bill through. I have listened to the contributions from Members, and it looks as though he will be successful in that respect; indeed, I understand that he will get a copy from the Palace of his private Member's Act after Her Majesty gives it Royal Assent. At least, Mr McCallister got one for his Caravans Act. He was delighted to have it, and I am sure that it is behind glass in a drawing room somewhere in South Down.

Mr Murphy seems to be somewhat confused about my status in the Building. I am a semi-detached member of the DUP. Outside the Building, I am the official DUP MLA for South Down; inside the Building, I am an independent unionist wandering in the political darkness and wilderness without the friendly advice of spads and Chief Whips. I miss them so much [*Laughter.*] I am therefore Whip-less and spad-less, and it is absolutely blissful. I am in exactly the same position as Mr Jeremy Corbyn, who is still a Labour MP, but, when he is inside Westminster, he is an independent. I know that Mr Murphy and Mr O'Dowd have been agonising over my status for many months, but it gives me the freedom to say that my experience of spads

has not been a happy one and I am delighted that Mr Allister's Bill has made so much progress.

Can there have been a Member who has bent further backwards to meet the concerns of Members about his Bill? In the corridors of the Building, I have many times heard, "That was wonderful, that was sensible, but it comes from Jim Allister. If it comes from Jim Allister, it must be suspect". How often do we hear people measure a Bill, a motion or a question not by its content or validity but by the person who is articulating the argument?

We come now to a crucial stage in the Bill. I am glad to say that there seems to be a coalescence, if I read the tea leaves correctly. Even on the second group of amendments, there is a fair degree of agreement, which surprises me. I told the people back at home not to expect to see me until 2.00 am: actually, it looks like they will see me at a sensible time. That shows that sense is prevailing.

I detect from Sinn Féin that it knows that it has lost the battle, that this is the endgame and that Mr Allister has been able to convince many MLAs of the benefit of the Bill. The one thing that neither Mr O'Dowd nor Mr Murphy, who are the two last big hitters left in Sinn Féin in the Building — big in both stature and political experience — has realised is that codes of conduct and legislation are not mutually exclusive. You can have both, and that is what Mr Allister's Bill, along with the amendments, is trying to achieve.

We all hope and pray that the legislation will never be needed. We hope that the great list of codes of conduct and gentlemen's agreements that Mr Murphy has been eulogising will keep the spads under control and that we will not have a repeat of the dreadful, awful situation that arose as a result of RHI, when spads from all parties broke every code of conduct, every rule in the book and every gentlemen's agreement that was possible. Therefore, we hope and pray that Mr Murphy is right. However, just in case he is not, it is good to have effective legislation to set the framework and to let the spads know that their cards have been marked and that, if they step out of line this time, we are taking it extremely seriously. Remember that, as a result of their activity, the Assembly was frozen in time for three years. Important decisions were not taken, and there was no control over the Executive of this country for an entire three years. That was a direct result of the misbehaviour of the spads.

I suppose that Mr O'Dowd and Mr Murphy are concerned that the one thing that the Bill will achieve when it is passed is that it will stop Connolly House becoming the fulcrum of power in this country, where decisions sat waiting to be made — maybe for many months — because shadowy figures in the darkened dungeon or basement of Connolly House decided —.

**Mr Principal Deputy Speaker:** Perhaps Mr Wells could speak to the specifics of the amendments that are being debated here. I noted his remark that he had warned his people that it might be 2.00 am before he got home, so I hope that he will not take it as a challenge to keep us here that long.

**Mr Wells:** I assure you, Mr Principal Deputy Speaker, that, as everybody else has been relatively brief this evening, it is incumbent on me to be the same. However, I still wanted to get one or two final digs in before the end of the debate, and time was running out.

If all we achieve is that we have reduced the number of spads, reduced their pay to a sensible level, stopped them operating out of Connolly House and made them think twice before they leak information to outside bodies, the Bill will have been a success.

**Mr Frew:** I thank the Member for giving way. Sinn Féin across the way here has said that the Bill should not go ahead and that the Executive parties should not support it, because of an agreement. However, a subcommittee was set up to review the RHI inquiry and its findings. Surely, if that is all that the Executive can come up with, we have been short-changed as a people. Surely, there has to be more reform from the Executive on the RHI inquiry that the Bill could be part of.

**Mr Wells:** The Minister and his permanent secretary, along with senior officials, came before the Committee on many occasions and talked to us about the agreement that had been made by the Executive. That basically indicated to us, as mere Committee members, that the Executive as a corporate body had decided that the legislation was not required and should be opposed.

That was very interesting because four of those parties allowed their members at Second Stage to eulogise Mr Allister's Bill and say that it was the best thing since sliced bread. The Chair of the Committee is the leader of the Ulster Unionist Party, but there was absolutely no indication during the Committee's scrutiny of the

Bill that he was tied to any decision that had been made at the Executive.

#### 4.30 pm

There have been some tweaks and minor amendments since then. Mr Muir, of course, is speaking the words of Mrs Long; if we want to hear what Mrs Long is thinking, we get it from Mr Muir. By the way, Mr Muir, you will be rewarded in heaven for what you have done today. I know that you are far too intelligent to believe what you said today, but you are following the advice of your leader. I understand that.

The point that I am making is that, even with that, it appears that four of the five parties around the table did not actually believe that they had signed up to that. Even today, the two remaining big hitters of Sinn Féin — the two big beasts in the jungle — believe that some mythical decision was taken to oppose the Bill. Where is the evidence of it? We will be having visions this evening that many of the members who signed up to that so-called Executive decision will vote in favour of Mr Allister's Bill. In fact, some of them will vote to strengthen it. I just do not get that.

The one area on which there has been some debate today is the use of official systems. Again, with Mr O'Toole, you do not get his words; you get those of Mr Eastwood. Mr Eastwood has told Mr O'Toole what to say. Your good work will be rewarded in heaven. You are on the fast track to greatness. I am on the fast track to obscurity; you are on the fast track to promotion.

He fails to read the amendment by Mr Allister. I accept what Mr O'Dowd said: when he goes to the supermarket, he gets lobbied about street lighting, and he takes down material on his personal iPhone. I have the oldest mobile phone in Northern Ireland and probably one of the oldest mobile phones in Europe; it is only 21 years old. We will soon reach the stage at which there will be MLAs in the Building who are younger than my mobile phone. Even I, when I was Minister, would have been caught by a constituent saying, "What are you going to do about that surgery?" or, "What are you going to do about that hospital waiting list?". I would have put the details on the little Dictaphone in my decrepit ancient phone. The amendment is quite reasonable; it states:

*"within 48 hours, or as soon thereafter as reasonably practicable,*

*... copy to the departmental system any written material generated during the use of non-departmental devices or systems".*

Mr O'Toole, you are half my age. You have many mobile phones, iPads etc. If you were a Minister — no doubt you will be some day — and got caught in Sainsbury's or, you could —.

**Mr Principal Deputy Speaker:** Mr Wells, all remarks go through the Chair. You are here long enough to know that.

**Mr Wells:** I was here before you were born, Mr Principal Deputy Speaker. *[Laughter.]* You were not born in 1982; I am certain of that.

**Mr Principal Deputy Speaker:** I was born in 1983.

**Mr Wells:** Exactly.

Mr O'Toole can go home to his palatial mansion at the top of the Malone Road and ask one of his domestic servants to download the material and transfer it to the departmental system. A time frame of 48 hours is perfectly reasonable. Why is it a dreadful imposition to ask people to do that?

He asked — it is a valid question — what is important and what is not. Download everything and then you have nothing to worry about; simply transpose everything to the departmental official system. If Mr O'Dowd's suggestion were to arise, in which, while walking through Lurgan, he meets a constituent who complains about street lighting and then, after that conversation, somebody gets killed, the precautionary principle is to send the details of the conversation to the departmental system. He, of all people, should know that; he was Minister of Education for many years. He was certainly an awful lot better than his predecessor, but I guarantee you that that is not a compliment. He would have known, with his vast experience, how to do that. As Minister of Health, I certainly would have known how to do it. Again, Mr Allister bent over backwards to make a reasonable amendment, and amendment No 34 is, in my opinion, more than reasonable.

This entire exercise has been good for the Assembly. It was good for the Finance Committee because there was a keenly fought interchange on the Bill between various Members of the Assembly. For the most part, the Bill has been improved as a result of that scrutiny. Members have articulated very well, often the views of their Minister, no doubt, or

the views of their party leader, but they have articulated those extremely well. I have listened to every minute of scrutiny in the Finance Committee and been here for every minute of the debate, and I think that the Assembly will be a much better place. Unfortunately, some of those who transgressed are still stalking the corridors of this Building. Should they ever think of transgressing again, they will think long and hard before doing so. The spectre of Jim Allister will haunt them for many years to come — long after he has left the Building. Yes, that is an awful thought; I realise that. That, to me, will make all of this worthwhile. I am very confident that, when the Division Lobbies are opened — I will be a Teller — Mr Allister will enjoy considerable success, and he is to be congratulated on his efforts.

**Mr Principal Deputy Speaker:** Mr Allister is to become a spectre, and Mr Muir and Mr O'Toole are on their way to heaven. I am reminded of the line in 'Fawlty Towers':

*"If the good Lord is mentioned one more time, I shall move you closer to him."*

That is not a threat, Mr Wells, I promise.

**Mr Carroll:** I will not comment on whether I will get through the gate of heaven. After this debate, it is unlikely.

I want to speak to the clauses behind the amendments in group 2. There is some important stuff in the amendments that my party and I oppose, and I will speak to that now. Recording minutes, having a register of interests and ensuring the presence of a civil servant at meetings are some of the most basic forms of accountability and transparency that should be expected of Ministers. That a Bill is needed to tighten up or, in some cases, introduce those measures is testament to the lack of accountability that we have seen from this Executive for too long.

To be honest, the legislation could go much further. Some amendments, in particular amendment Nos 23 and 28, would even water down transparency and accountability measures. Amendment No 23 would allow for a wide range of meetings about official business at which a civil servant did not need to be present. That could, undoubtedly, result in a meeting between a Minister from the Executive and a Minister from across the water, in which they talk about schemes involving public money, not being recorded and decisions not being registered. It would be a repeat of the lack of transparency that gave rise to the likes

of the RHI scheme being implemented. The Minister's reasoning was that asking civil servants to attend every meeting would be too tall a task. My response is that the risk of allowing the official business of Ministers to go unrecorded and unaccounted for is far greater, especially given the various botched schemes and previous scandals that, unfortunately, attest loudly to that.

I do not think that anyone would expect a civil servant to attend a meeting of his Minister's party or every meeting with an MLA in the House. However, when Ministers are acting in an official capacity or engaging in official business, one has to wonder what they would have to hide and why they would oppose a civil servant being in the room. Some time ago, David Sterling mused that records of meetings and recorded minutes might be embarrassing for some Ministers and their parties. Perhaps that is why there is some opposition to having civil servants in such meetings. Whatever the reason, we do not have any truck with it. If you are in official meetings, potentially discussing the expenditure of public funds and making decisions that impact on people in our communities, you should be prepared to be on the record and in the minute book, and you should be prepared to be totally honest about what is being said and, potentially, being agreed. If we expect people on universal credit to detail, in an online journal, every aspect of their life and how they spend it to get very meagre benefits, and if they do not, they are financially penalised, the least that we should expect from our Ministers, who are very well remunerated, is that they ensure that their meetings, especially those relating to their Department and actions taken by them, are recorded. We cannot have one rule for Ministers and another for everybody else.

Amendment No 28 seeks to curtail the need to record lobbying in some instances. Again, for me, this is unacceptable and not necessary. I have not heard a good explanation of the rationale for that either. In this case, the Bill reads:

*"'being lobbied' means to receive personally a communication ... relating to:*

*(d) the exercise of any other function of the department."*

Lobbying is lobbying is lobbying. If someone, or their party, potentially, sits to gain from that lobbying, it should be registered — simple as that. I cannot think of any function of any Department that should be free of registering lobbying, and I do not see here the justification

or rationale for that or the need for the amendment.

An aspect of amendment No 33 would give leeway in the recording of lobbying from community groups when the lobbying is done on an issue which is mutually beneficial to all sections of society. My concern here would be that the judgment of what benefits all of society could vary from Minister to Minister. Indeed, I argue for issues in this Chamber that community groups endorse and that I believe would benefit all aspects of society, but there are people here, probably on the Benches opposite, who would robustly disagree with me on those issues. In this case, I am unconvinced that a Minister could be totally unbiased about the impact of individual cases of lobbying when making a decision in that regard.

I want to speak briefly to amendment No 22, elements of which give concern to me and my party. For instance, in a totally hypothetical scenario, if a Minister and their spad were to hold a meeting with Moy Park as official business but a civil servant was not present, relevant arrangements would not have to be put in place to record an account of that meeting. I do not think that I need to explain to this Chamber why I think that such meetings should be recorded.

That is further reason for our opposition to amendment No 23, which would see vast exemptions to meetings where civil servants need to be present. Again, this is a basic function of transparency and accountability. I hope that, in his closing remarks, the Minister will provide some clarity on the outworkings of amendment No 23.

Finally, I wish to speak to amendment No 36, which we welcome. To lump civil servants in with Ministers and spads would be a mistake, and that was touched upon in the previous debate, many weeks ago. It is not only in the case of culpability, but, hopefully, this amendment can protect the many ordinary workers in the Civil Service who need to be protected by this Bill.

**Mr Principal Deputy Speaker:** Thank you. I call the sponsor of the Bill, Mr Jim Allister.

**Mr Allister:** In this group, there are a number of issues of non-controversy and some of some controversy. To begin on a non-controversial note, in respect of clause 5, amendment Nos 18 to 20, I take no issue.

In respect of clause 6, the only one now in play is amendment No 22. I want to get some

amplification from the Minister on a couple of aspects of his amendment. When it says:

*"The permanent secretary to a Northern Ireland department must ensure that relevant arrangements are put in place."*

and:

*"Relevant arrangements' are arrangements designed to ensure—*

*(a) that an appropriate written record of each relevant meeting is compiled by the civil servant ... attending the meeting."*

What is an "appropriate written record"? That, by its very nature, is wholly subjective. Is that an appropriate written record in the eyes of the Minister or of the civil servant or of someone else? Could it, within that ambit, be appropriate to have no record?

Is that within the ambit, or is it guaranteed to us that there will always be a record of some nature and that the appropriateness informs the extent and the content rather than the existence? I would like some amplification from the Minister on what we should understand by the phrase "an appropriate written record".

**4.45 pm**

The amendment then says:

*"the written records mentioned in paragraphs (a) and (b) are retained in accordance with the department's policy on the retention and disposal of records."*

A Department's policy on the retention and disposal of records can, of course, be a moveable feast in that over time, presumably, it can change. What may need to be retained today may not need to be retained tomorrow. So are we in that amendment subjecting ourselves to the whim of a particular Department to change what needs to be retained? I would like some insight into and undertaking on that.

*(Mr Speaker in the Chair)*

Is a Department's policy on the retention and disposal of records itself subject to Assembly scrutiny, or is it a policy that is made and changed internally in that Department without Assembly scrutiny? I would like some clarification on that before I agree to bind myself to amendment No 22.

The final point that I want clarity on is whether each Department can have a different policy on the retention and disposal of documents. The policy is Department-specific, but is there commonality today or tomorrow in Departments' policies on the retention and disposal of records? If the Minister could provide satisfactory responses in those regards, clause 6 as amended by amendment No 22 is something that I would probably be amenable to, but I want those clarifications.

I then want to come to clause —.

**Dr Aiken:** I thank the Member for respectfully giving way. There are concerns with the TRIM system, which is the Civil Service's record-retaining system, and how it retains and accounts for records. The Minister might in his remarks refer to how the systems would be recorded, because there is considerable disquiet with the TRIM system. That might colour the Assembly's view on voting for the amendment.

**Mr Allister:** I am grateful to the Member. I think that the terminology has changed of late from TRIM, but no doubt we will hear about that.

Of all the Minister's amendments, amendment No 23 is the one that gives me the greatest difficulty. In seeking to suggest to the House that it is not an amendment that is worthy of support, I ask it to consider the relative simplicity and intelligibility of the existing clause 7. That simply says:

*"A civil servant, other than a special adviser, must be present and take an accurate written record of every meeting held by a Minister or special adviser with non-departmental personnel about official business; except for liaison with the Minister's political party."*

To that I intend to add, out of deference to the point that Ms Sugden made:

*"or other Members of the Assembly".*

Clause 7(2) is very important in this situation. It states:

*"The department must retain the record made pursuant to subsection (1)."*

Clause 7 requires that a record be made about official business with non-departmental people, and clause 7(2) requires the retention of that record.

The first thing that alarms me about amendment No 23 is that it wishes to remove not clause 7(1) but all of clause 7, including clause 7(2). Therefore, the amendment changes the circumstances in which a note has to be made but obliterates entirely the obligation to retain a note. That is the fatal flaw in amendment No 23. Even when a note is kept, there is no requirement to retain it or to put it on the Department's system, as described in amendment No 22. There is no statutory obligation to keep a note.

Amendment No 23 does two critical things: it diminishes the circumstances in which a note should be taken, and it totally obliterates the need to keep any note that is taken. That is what alarms me most. Amendment No 23 also alarms me because of the scale of the exemptions that are written into it. We need to remember that amendment No 23 is about official business:

*"A Minister, or special adviser, who holds a meeting with a third party about official business must take such steps as are reasonable".*

We need to disabuse ourselves of the idea that this is anything to do with a supermarket meeting. This is about holding a meeting on official business and then taking such steps as are reasonable to ensure that meetings are attended by at least one person serving in the Civil Service who is not a special adviser. That subsection does not apply if the liaison is with the Minister's political party. Fair enough; common ground there. However, what it then goes on to do is to exempt a series of third parties, including Westminster, Scottish, Welsh and Dublin Ministers, and any Member of any legislative Assembly in the British Isles. What that means in practice is that if, for example, the Minister for Infrastructure, or the Minister for the Economy or whoever, was holding a meeting about the North/South interconnector with her counterpart in Dublin, under amendment No 23, there is no obligation to have a civil servant in attendance or to take or keep a note. If, for example, the Infrastructure Minister was holding a meeting about the A75 with her Scottish counterpart, under amendment No 23 as drafted, there is no need for a civil servant or a note.

Let us make the example a little more poignant.

If the Department for the Economy were working on a new RHI scheme and needed to go to talk to its counterpart in Westminster, no civil servant would be required and no note would be required. My, oh-my, was one of the

lessons out of the RHI inquiry not about the trouble that that gets you into? I therefore really do not understand amendment No 23 in the scope of the exemptions that the Minister wants to see.

He talked about excluding meetings with the Attorney General. That, I think, is a red herring. It is not that there should not be a note kept of a meeting with the Attorney General. The point is that professional privilege would attach, and that note would never be seen by anyone, unless the Minister chose to release it. Meetings with the Attorney General are not the issue here, but meetings with other Ministers in other jurisdictions most certainly are. I say to the House that, having come through the experience of RHI, it should view amendment No 23 as really being a charter for non-transparency and worse. It seems to me that amendment No 23 is not one that should be put before the House, nor is it one that should be accepted by it. I therefore give notice that I will oppose amendment No 23. I urge support for amendment No 24, which deals with the previously made Claire Sugden point.

I come now to clause 8 and the amendments affecting it. Amendment Nos 25 to 27 are stylistic and technical, and I have no difficulty with them whatsoever. Amendment No 28 does trouble me, however, because it seeks to diminish the ambit of lobbying. Members will be aware that clause 8(2), with language borrowed from the corresponding GB legislation, which goes under the wonderful title of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, deals with the definition of what it means to be lobbied. It is a lift, effectively, out of the 2014 Act. It includes therefore the line that the Minister wants to exclude, which is that at subsection (2)(d):

*"the exercise of any other function of the department."*

The only difference there is that, because I am making these obligations Department-specific, it changes the language that was in the 2014 Act of:

*"the exercise of any other function of the government"*

to:

*"the exercise of any other function of the department."*

If that is the language of the 2014 Act on what lobbying embraces, why would we want to change that? I do not yet understand the logic of amendment No 28. I suggest that the better answer to the supermarket encounter or the lobbying about the pothole is my amendment No 29, which bestows on the Minister the discretion to waive compliance with the need to register it if the subject matter is inconsequential. Obviously, that wording would not appear in this amendment if it were not wording that the Bill Office saw as tenable. I have already pointed out to Mr O'Dowd that language that some might say is imprecise, such as that, already appears in legislation such as the Copyright Act, where it indicates that things that are incidental need not be done.

We all understand what "incidental" and "inconsequential" mean. Certainly, if you were the Minister for Infrastructure or the Agriculture Minister and somebody lobbied you about the need to have a pothole fixed, you might well conclude that that is not something that needs to go into the departmental record. As a constituency Member, you would want to do something about that, but it is not something that you would feel compelled to, maybe, in your own discretion. Or if you met somebody who talked a lot of nonsense to you, as we all do, you might well decide that that was rather inconsequential.

**5.00 pm**

**Mr Wells:** Not in South Down.

**Mr Allister:** Not in South Down, I am sure. You might decide that that was rather inconsequential and did not need to go into the record. Therefore, I say to the House that, if we accept amendment No 29, there is no need for amendment No 28. I suggest that that is the way to go.

I accept amendment Nos 30 and 32 and am aware that amendment No 31 covers the Claire Sugden point about Members of the Assembly. I then come to amendment No 33. The aspect of amendment No 33 that troubles me — well, there are two points. If we reject amendment No 28 and accept amendment Nos 29, 30 and 32, we do not really need amendment No 33. In some ways, it is anodyne and does not make a huge amount of difference, except that I am struggling to understand proposed clause 8(3)(e):

*"made to a Minister by a member of the public in their capacity as a member of the public, or in their capacity as a community*

*representative, and relating to a matter in which the person making the communication has only the same interest as all other members of the public or all other members of a section of the public."*

What does that mean? The qualifier seems to be:

*"has only the same interest as all other members of the public".*

If that is the determinant, does that not make it a matter of public interest? Are we saying, therefore, that a matter of public interest should not be recorded? I am struggling to get my head around what proposed clause 8(3)(e) actually means in practical terms. I would certainly like some amplification on that from the Minister.

I then come to amendment No 34, which is a new clause. Yes, it has echoes of my failed attempt to insert a criminal offence at Consideration Stage, but my concern was that, in rejecting that, we had thrown the baby out with the bathwater, so to speak. I am trying to recover the baby with this amendment. I am not trying to make a criminal offence but to make it very clear in legislation what is expected of Ministers and special advisers. That is why amendment No 34 — the qualifying clause is again "official business" — states:

*"when communicating on official business by electronic means" —*

you cannot use —

*"anything other than devices issued by the department, systems used by the department and departmental email addresses" —*

and, if you do, you should copy it back.

If I understood him correctly, Mr O'Toole asked whether you could not simply use the departmental system on your personal phone. As far as I am concerned, it does not mean that. No matter where you have it, you are using a departmental system. I hope that that allays his concerns on the matter.

His other concern was whether that meant that you had to communicate every tittle-tattle of a text message into the official system. Well, no. The qualifier there is "official business". New clause 8A(2)(b) makes an express exemption that there has to be a record of "verbal communications of consequence". That goes

back to the value judgement that the Minister must properly make. It seems to me that the same spirit would apply to your text message — that it has to be something of consequence. It is not setting up a timing arrangement for a meeting or a cup of coffee; it is about doing official business. If you do official business of consequence, it seems to me that the right place for that to be recorded in perpetuity is on the departmental system. It is best if you can do it there and then by using the departmental system, but if, of necessity, you cannot, then the sole obligation of this clause is to advise you that:

*"within 48 hours, or as soon thereafter as reasonably practicable"*

you put it into the official system.

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

**Mr Allister:** Sure.

**Mr Muir:** Would the Member not consider that the inclusion of the words:

*"anything other than devices issued by the department"*

poses a significant issue? You could log into departmental systems using your own iPad or your home computer or laptop. This amendment has been specifically worded and does not take into account the reality of how civil servants, Ministers and spads work nowadays.

**Mr Allister:** I do not think that that is correct. If you are using your personal device to access the departmental system, I do not see a problem. That would not be thought to be a breach at all. I remind the Member that it is not a criminal sanction; it will not put anyone in trouble, in that sense. Rather, it is a timely reminder that RHI revealed that people were hiding emails.

I will remind the Member of some of the RHI evidence. There was a great search that arose from an issue about whether there was an email trail. There was, but it was not on the official system. Where was it? It was on a spad's DUP account. Eventually, through the actions of another spad, it was uncovered and, eventually, handed over to the RHI inquiry.

If we do not have something like this, how are we to discourage a continuation of that practice? That practice is for one purpose and one purpose only: to hide things. There is no

other reason not to want this other than to hide things. Having come through RHI, it is important that we set a standard of what is expected and put it in legislation so that we put up in lights that what went on in the past will not be tolerated and that that is the standard that is expected and which must be adhered to.

Amendment No 34 has merit, and I urge the Member, who intervened on behalf of his party, to consider that his choice in voting on amendment No 34 is whether he wants things as they were, where matters could be hidden, or whether he wants to put something in legislation that dissipates that risk. That is the real choice.

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

**Mr Allister:** Sure.

**Mr Muir:** I understand the Member's arguments. However, we have to decide whether what we are putting in law is right and proper. Once in law, the only way back is to repeal, and we all know the consequences of trying to do that. That is what we have to consider. I do not judge that putting this in law is the right way to go. If we are putting it in law just to send out a message, the question that has to be asked is this: what is the purpose of that? What is the purpose of this amendment? Is it just to send out a message?

**Mr Allister:** Legislation can be about messaging, and, my goodness, given what came out of RHI, do we not need messaging? I would have thought that we do. The other side of the coin on the issue that the Member raises is that, if you do nothing, you are endorsing the arrangements whereby that which previously happened — the hiding of information — is an OK thing to do.

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

**Mr Allister:** Yes.

**Mr Wells:** It is interesting to listen to the comments of various Members about amendment No 34. During Consideration Stage, their main reason for opposing it was the penal aspect: the fact that you could give someone a criminal record. Your amendment has removed that reason, and there is no criminal record. However, there is, of course, a code of conduct. As I have said, we do not place much store by codes of conduct. However, stepping outside the terms of this Bill would be a clear breach of a code of conduct, so we are sending out a message.

The problem is that neither Mr Muir nor Mr O'Toole was here during the RHI crisis. I do not think that they experienced the skulduggery behind the scenes from those using off-record messaging. The reality is that most of what happened to bring this place down was carried out outside official departmental systems. It was done on personal email accounts, and the information was never transposed to official accounts. It was fortuitous that one spad decided to blow the whistle, thereby opening the hornets' nest and exposing what was going on. Had he not done that, we would have been none the wiser.

Why, having had the issue of criminal sanction removed, does Mr Muir's party leader now feel that we cannot at least give a very clear signal that, when conducting official departmental business, you have to record it on departmental systems. I wonder why there is this opposition. It was not mentioned last time. Then, it was entirely the issue of criminal sanction.

**Mr Allister:** The Member makes fair enough points.

Members, what is the choice in this regard? Is there a problem? If the answer to that is yes, do we want to do anything about it? I say, gently, to Mr Muir, that amendment No 34 was tabled before Christmas. Had he thought that there were real issues with its drafting, he had the opportunity to engage and to seek to amend it. No such opportunity was taken, but that was his prerogative.

Moving on, I accept amendment No 35.

**Dr Aiken:** I thank the Member very much for giving way. Looking at amendment No 34 and the use of official systems, I recall that one of the issues raised during RHI was that of unofficial servers. There had been attempts to move beyond the control of government communication systems, which are provided at considerable expense. They are equipped with the means to prevent their being hacked and with added levels of security, which should be of concern to everybody in the Government at the moment. Not only is this a matter of increasing accountability and transparency, it is a matter of increasing security and ensuring that our official systems, which should be the avenue for official government business, are used exclusively for the protection of us all.

**Mr Allister:** The Member makes valid observations, which, I trust, others will listen to.

I can readily accept amendment No 35. My amendment, amendment No 54 will not therefore be necessary.

### 5.15 pm

I then come to Clause 10, the surviving criminal offence in this Bill. I have tabled amendment 36 for two reasons. I will be upfront with the House; I mentioned it this morning: when you are a single Member of the House trying to bring a private Members' Bill, you have to bend and reach an accommodation with others. The fact that the reach of the criminal offence included civil servants was an issue of particular concern to some Members. In principle, it is right that a civil servant who shares information for financial or improper advantage should not be immune from recourse about that. However, I accept the sincerity and the genuineness of those who raised that point.

After Consideration Stage concluded, I went back through my Bill and discovered that this was the only clause of the Bill that imposed a burden — never mind a criminal sanction — on a civil servant. The Bill is now about Ministers and special advisers. So I have been persuaded that it is appropriate, in that context, to remove civil servants from clause 10. The Minister has told us that the Executive are reviewing RHI. They have a subcommittee, and no doubt, they will labour and deliver something in that regard. If that is included, either separately or in tandem with reform of the Civil Service, I presume that that will manifest itself in legislation at some point. If it does, and if the ambit of the Bill permits, I put the Minister on notice that I will be minded at that stage — if it is not already in the Bill — to include some parallel criminal offence for inappropriate leaking by civil servants. However, that is for another day. Today, I am making the concession that some asked for on clause 10, not just because they asked, but because I have come to be persuaded that there is some logic and merit in what they have said.

We are told that amendment 37 is not being moved. I readily accept amendment Nos 38 to 40, and that will cause amendment 41 to fall, if accepted. I accept amendments 42 to 44.

On clause 13 and the interesting debate between Paul Frew and Matthew O'Toole, I am more persuaded by Paul Frew's points than Matthew's. If the SDLP amendment is accepted, it will really neuter clause 13, but that is a matter for the House. It seems to me that clause 13 and clause 11 are, largely, complementary. Clause 11 was introduced for further accountability and puts the duty on

Departments to provide information requested. It seems that reads substantially and is compatible with clause 13, but the House will make its choice. I have indicated my view, for what it is worth.

I have covered all the amendments, but I want to make one final point. It has been suggested a couple of times in this debate that we do not need to do any of this, either because of codes or because something more is going to happen. Mr Wells made the very appropriate comment that there is nothing incompatible between codes and legislation. Indeed, we have codes usually only because legislation provides for them. So, it is not an either/or situation.

I do not believe that the Bill answers all the problems that are crying out from RHI. There is a definite piece of work to be done by the Executive, particularly on the Civil Service. I do not think that that was for me to do, but I think that that work exists for the Executive. I am disappointed that, one year on, we have not had any product there. I encourage the Minister to produce something in respect of civil servants so that the Civil Service arrangements can be examined properly by the House. The Bill is not a substitute or proxy for that, nor is it an impediment to it.

Having made those comments, I thank Members for their contributions. Once again, it has been a session where there were positive contributions from most Members. The beneficiaries of that are the House and its standing.

**Mr Speaker:** I call the Minister of Finance to wind on the debate.

**Mr Murphy:** We have given close consideration to a very long list of amendments that were tabled in order to improve the Bill. As I stated many times in all stages of debate in the passage of this legislation, I have considerable concerns about the wisdom of legislating in this way. I believe that others in the Chamber agree with that position. Obviously, there is still an opportunity for the Assembly to reject the Bill at Final Stage. That is a matter for the Assembly. In the meantime, it is imperative that we try to improve it as far as we can having not been able to prevent clauses being tabled and agreed at Consideration Stage.

Some of the issues that we addressed are drafting matters that might usefully have been identified and addressed before the Bill was introduced. Others are more substantive and are attempts on my part and that of other

Members to mitigate the negative effects of the Bill.

I am happy to address at this stage a number of issues that Members raised. Mr Frew raised a question about what clause 8(4)(e) would actually mean. It would ensure that a member of the public expressing a view to a Minister or special adviser would not be counted as lobbying. "Lobbying" implies that someone is seeking personal or organisational advantage, but a member of the public or community representative setting out their views, which they may share with other members of the public, should not be considered lobbying. It means that the clause would not catch a constituent buttonholing a Minister in a high street about street lights — we talked about some of the examples of how that might be — or tweeting about the coronavirus restrictions that they do not like. It is to ensure that we are clear about what those things actually mean.

Questions were raised about amendment No 23, which is to clause 7, and whether records would properly be kept and how those things would go together. I must say that the greater proportion of meetings that a Minister holds with other Ministers and legislators are attended by at least one civil servant. Ministers and officials are well-served by that default position. However, there may be instances when a Minister will hold a wholly political discussion at which it would be inappropriate for a politically impartial official to be present. If a ministerial decision is taken at such a meeting, that will be conveyed to a civil servant and recorded under clause 6(2)(b) as I propose to amend it. The effect of a ministerial decision being taken has to be communicated to civil servants because there is no other way in which to implement it other than to put it into the system. The Minister cannot take a decision at a whim in some private meeting that can be given effect without going through the Civil Service system. That is as it should be.

Any meeting under clause 7 would either be recorded by a civil servant under clause 6 as amended by my amendment or by the Minister and special adviser under clause 8. That addresses the point that Mr Allister raised about wholly doing away with the requirement for records and retention of records.

Reading the three clauses together should reassure Members that clause 7 does not need to refer to making and retaining a record. It is covered in the additional clauses; it does not stand alone.

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

**Mr Murphy:** Yes.

**Mr Allister:** I disagree with the Minister. Clause 6 is about departmental meetings, and clause 7 is about meeting third parties, so the obligation under clause 6 to make and keep a note does not extend in its purview to clause 7. Clause 7 is about something else: it is about meeting third parties on official business. Clause 7 is not crafted with regard to protecting political discussions. That does not appear in it. It covers all discussions with Ministers from anywhere else. That is its flaw. Furthermore, there are no notes.

**Mr Murphy:** If a decision is taken by a Minister as a consequence of any meeting, that requires that decision to be put into the departmental system and recorded accordingly.

**Mr Wells:** Will the Minister give way?

**Mr Murphy:** I will give way.

**Mr Wells:** Mr Allister raised the issue of the Minister for Infrastructure, for example, meeting her counterpart from the Irish Republic to discuss a road scheme or bridge. The Minister indicates that we will have no record of the discussions. We may have a record of the decision to spend x amount on a new bridge or a new road, but he is saying that a civil servant might not be required to be present, and we will never know what happened in the discussions that led to that decision. What is wrong with keeping a record of that meeting? Why is it excluded?

**Mr Murphy:** Ordinarily, the default position is that a civil servant is present and a record is kept. However, when a political meeting leads to some action by a Minister, that action has to come back into the Department and, therefore, be captured in proper recording processes. A Minister cannot decide to strengthen the Dublin-Belfast railway line and go off and do it on their own. It has to go back to the Department for Infrastructure to be assessed by Translink, for one, and, I am sure, departmental officials, and Iarnród Éireann on the other side. If Ministers meet for a political chat around North/South arrangements and how they might work, and a consequence of that is a decision in relation to a proposal for a decision on the railway, it has to come back through both Departments. It cannot be enacted in any other way.

Mr Allister asked what an "appropriate written record" is. It allows the record to be proportionate to the nature of the meeting. It will be informed by good practice, particularly the

guidance of the Information Commissioner and the advice of records management professionals in the Civil Service. If it is based on guidance from the Information Commissioner and the Civil Service records management professionals, that deals with the issue of consistency.

The Chair of the Committee asked about the TRIM system. The records management professionals in the Civil Service have initiated an impartial review of its functionality and taken on board issues raised by the RHI inquiry and issues raised in engagement with staff on their experience of the system. It is important that officials are familiar with TRIM and confident in its use, and it is not an obstacle to good record management. Questions were raised about the TRIM system, and we have to make sure that a proper system is in place for the retention of records.

Other questions were raised in relation to decision-making as a consequence of meetings. I think that I have dealt with them.

Mr Allister also asked about the clause that relates to lobbying and, I think, amendment No 28. He asked why it differs from the language of the 2014 Act. The 2014 Act is predicated on the recording of lobbying by registered lobbyists. This Bill places a duty on the Minister to record all lobbying. It is a completely different scenario and has serious consequences for the management of government business.

I have addressed quite a few of the points. Our attempt to put a framework around what a Minister may or may not consider to be a lobby is much more consistent than Mr Allister's proposition of inconsequential guidance that a Minister would present and provide. I do not think that that would lead to consistency in any way. Let us cast our minds back to some of the meetings and discussions of which records were even changed. A get-out clause for a Minister to decide what is inconsequential means that there would be too much chance of an inconsistent approach being taken, which, in itself, would be detrimental.

### 5.30 pm

Questions were raised about the subcommittee and what else the Executive are doing. I note that Mr Allister wished us well. The work of the RHI subcommittee is all but done. A report will go very shortly to the Executive. In the interim, as they were being developed, we brought a range of policy matters and codes to the Executive for approval, but the final work of the RHI subcommittee is all but done. As with most

Executive business, the speed of conclusion has been impacted on by the pandemic. Nonetheless, it has been done in accordance with the report from Judge Coghlin to try to bring those matters to a close. I am sure that it will be a matter for debate in the Chamber in the not-too-distant future.

In closing the debate, I want to reiterate the importance of good government. Anyone who has worked on organisational change will attest to the fact that changing the rules never works by itself. We certainly need to have the right rules in order to provide a framework for new behaviours, but new behaviours grow in a context in which good practice is expected, encouraged and rewarded. Instead, the Bill creates a context in which good practice is demanded, dictated and enforced in law. It risks making administration a matter of defensive compliance and bureaucratic box-ticking, not that of professional competence and sound judgement. It risks undermining, rather than strengthening, good governance.

Amendment No 45 to clause 13 is a matter between Mr Frew and the SDLP. Mr O'Toole's argument is that one of the unforeseen consequences is that people will put forward pet projects. Another unforeseen consequence that I see, and that anyone else with ministerial experience will see, is that Departments will now be obliged to put in all bids from monitoring. The question from Committees will be this: why were bids not put in? To keep themselves right, you will find a glut of bids being put in, rather than reasoned bids that have been properly thought through and that have a genuine expectation of being met. In a back-covering exercise, officials will put forward bids for everything that they wish for, and we will have a much more congested monitoring process. I speak as the Finance Minister, who is on the receiving end of departmental bids. There are discussions with officials to make sure that bids are sensible, are reasonable and have a realistic chance of meeting some outcome. If Departments are obliged to justify their bids to a Committee — even if the Committee does not have a say and an approval role, the Department is still obliged to present them — my suspicion is that Departments will put in the kitchen sink to justify their own position. As an unintended consequence, it is one —.

**Mr Frew:** Will the Minister give way?

**Mr Murphy:** I will. I am just saying that, from a Department of Finance perspective, I expect that the consequence of the new clause that Mr Frew put forward at Consideration Stage is that

it will make the monitoring round a much more complex and lengthy process for Departments.

**Mr Frew:** The Minister will argue that, but I argue that it will lead to a more transparent process. Does the Minister think that it is beyond the remit and capacity of a Committee to realise what are unrealistic bids and then assess that?

**Mr Murphy:** It is not beyond your capacity, if that is what you want to occupy yourself with. If departmental officials feel that they are going to be criticised for not bidding for things that a Committee or its individual members might consider important, their likely response, without being too cynical about the Civil Service, will be to put in everything so that they cannot be criticised for leaving something out. All those bids will go to the Department of Finance, and that will lead to a much more lengthy process as a result of officials having to sift through them and trying to draft up a monitoring round proposition. I speak from experience, having dealt with a number of monitoring rounds in the past year, for which we try to get reasonable bids in: bids that have a chance of success and that match the amount of funding that we have. Of course, there are bids in every monitoring round that are not met. If we have every single thing coming from every single Department, I predict a much more lengthy and unnecessarily complex process.

As we vote on the amendments, I ask Members to remember the value of improving the Bill and the serious consequences of letting the text as currently drafted reach the statute book.

It is our duty to the community, as legislators, not to make flawed legislation, and our responsibility as elected representatives not to undermine the effectiveness of government. Mr Allister made the point that nothing was incompatible in having both codes and legislation. Of course, he is correct, if it is good legislation. What we want, if legislation is required, is legislation that complements codes, not legislation that cuts across and contradicts the intent behind those codes.

As I said, the RHI subcommittee will shortly be reporting to the Executive, and I look forward —

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

**Mr Murphy:** I was about to finish, but I will give way for one last time.

**Mr Allister:** Surely, in the pecking order, it is not that legislation should not cut across codes, it is that codes that are lesser in their status should not cut across legislation.

**Mr Murphy:** If things are incompatible, I think that they should be complementary. As I say, there is nothing to say that codes and legislation are not compatible, but we have to ensure that it is the right legislation and good legislation. In my view, this legislation is bad legislation, it is unnecessary legislation, and we have had to put a substantial amount of time and effort into trying to straighten out some of the worst elements of it. I hope that those amendments do achieve some success. They will not undo some of the damage that this legislation will do to governance but they will try to mitigate some of the bad effects of it.

**Mr Speaker:** I propose, by leave of the Assembly, to suspend the sitting for 10 minutes for a comfort break.

*The sitting was suspended at 5.36 pm and resumed at 5.49 pm.*

**Mr Speaker:** Please take your seats. Thank you.

**Clause 5 (Amendment of the Assembly Members (Independent Financial Review and Standards) Act (Northern Ireland) 2011)**

*Amendment No 18 made:*

In page 2, line 41, leave out "the complaint" and insert -

*"in the case of a complaint that it".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 19 made:*

In page 3, line 6, leave out subsection (6) and insert -

*"(6) In section 17(3), at the appropriate place insert—*

*'the Ministerial Code' means the Ministerial Code of Conduct set out in Schedule 4 to the 1998 Act;."— [Mr Murphy (The Minister of Finance).]*

*Amendment No 20 made:*

In page 3, line 9, leave out "for the purposes of defining 'relevant time'" and insert -

" , in the definition of 'relevant time' ,".— [Mr Murphy (The Minister of Finance).]

Amendment No 21 not moved.

### **Clause 6 (Records of meetings)**

Amendment No 22 made:

Leave out clause 6 and insert -

#### **"Records of meetings**

**6.—(1)** *The permanent secretary to a Northern Ireland department must ensure that relevant arrangements are put in place.*

**(2)** *'Relevant arrangements' are arrangements designed to ensure—*

*(a) that an appropriate written record of each relevant meeting is compiled by the civil servant, or one of the civil servants, attending the meeting,*

*(b) that, where an official Ministerial decision is made at a meeting other than a relevant meeting, an appropriate written record of the decision is compiled by a civil servant as soon as reasonably practicable after the decision is first communicated to a civil servant, and*

*(c) that the written records mentioned in paragraphs (a) and (b) are retained in accordance with the department's policy on the retention and disposal of records.*

**(3)** *A 'relevant meeting' is a pre-arranged meeting set up to conduct official business—*

*(a) where those attending include—*

*(i) at least one Minister, and*

*(ii) at least one civil servant serving in the department, or*

*(b) where those attending include—*

*(i) at least one special adviser,*

*(ii) at least one civil servant serving in the department, and*

*(iii) at least one person who is not a Minister, is not a special adviser and is not a civil servant,*

*but this is subject to subsection (4).*

**(4)** *The following are not relevant meetings—*

*(a) a meeting of the Assembly;*

*(b) a meeting of any committee of the Assembly other than the Executive Committee of the Assembly;*

*(c) a meeting of any sub-committee of the Assembly other than a sub-committee of the Executive Committee of the Assembly;*

*(d) a meeting within subsection (3)(a) where the official business does not include anything other than the presence of, or a presentation by, the Minister.*

**(5)** *An 'official Ministerial decision' is a decision made by a Minister—*

*(a) under any statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954),*

*(b) in exercising any of the prerogative or other executive powers of Her Majesty in relation to Northern Ireland, or*

*(c) otherwise in the course of official business.*

**(6)** *In this section 'civil servant' means a person serving in the Northern Ireland Civil Service who is not a special adviser."— [Mr Murphy (The Minister of Finance).]*

### **Clause 7 (Presence of civil servants)**

Amendment No 23 proposed: No 23: Leave out clause 7 and insert -

#### **"Presence of civil servants**

**7.—(1)** *A Minister, or special adviser, who holds a meeting with a third party about official business must take such steps as are reasonable to ensure that the meeting is attended by at least one person serving in the Northern Ireland Civil Service who is not a special adviser.*

**(2)** *Subsection (1) does not apply if the meeting is for liaison with the Minister's political party.*

**(3)** *In this section 'third party' means a person who is not acting in the person's capacity as—*

*(a) a Minister or a Minister of the Crown or a member of the Scottish or Welsh Government or a junior Scottish Minister,*

(b) a Minister of the Government of Ireland,

Ayes 47; Noes 36.

(c) a member of—

### AYES

(i) the Assembly,

Ms Anderson, Dr Archibald, Ms Armstrong, Ms Bailey, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Catney, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McCrossan, Mr McGlone, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Ms Rogan, Mr Sheehan, Ms Sheerin, Miss Woods.

(ii) the House of Commons,

(iii) the House of Lords,

(iv) the Scottish Parliament,

(v) Senedd Cymru,

(vi) Dáil Éireann, or

Tellers for the Ayes: Ms Ennis and Mr McGuigan

(vii) Seanad Éireann,

(d) a member of the Assembly's staff,

### NOES

(e) a person serving in any part of the civil service of the State,

Dr Aiken, Mr Allen, Mr Allister, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stewart, Mr Storey, Mr Swann, Mr Weir, Mr Wells.

(f) the Attorney General, or

(g) a member of the Attorney General's staff.

Tellers for the Noes: Mr Allister and Mr Wells.

(4) The duty under subsection (1) applies only so far as it is exercisable in or as regards Northern Ireland.— [Mr Murphy (The Minister of Finance).]

The following Member voted in both Lobbies and is therefore not counted in the result: Mr Easton

Question put, That amendment No 23 be made.

**Some Members:** Aye.

The following Members' votes were cast by their notified proxy in this Division:

**Some Members:** No.

**Mr Speaker:** Clear the Lobbies. The Question will be put again in three minutes. I remind Members to continue to observe social distancing in the Chamber.

Mr Aiken voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Butler, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Before the Assembly divides, I remind you that, as per Standing Order 112, the Assembly has proxy voting arrangements in place. Members who have authorised another Member to vote on their behalf are not entitled to vote in person and should not enter the Lobbies. I also remind you to ensure that social distancing continues to be observed whilst the Division is taking place.

Ms Bailey voted for Miss Woods.

Question, that the amendment be made, put a second time.

Mr K Buchanan voted for Ms P Bradley, Mr T Buchanan, Mr Buckley, Mrs Cameron, Mrs Dodds, Mr Dunne, Mr Easton, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Newton, Mr Poots, Mr Robinson, Mr Storey and Mr Weir.

The Assembly divided.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Ayes], Ms Flynn, Mr

*Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Ayes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.*

*Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGlone, Mr McGrath, Ms McLaughlin and Mr McNulty.*

*Question accordingly agreed to.*

**Mr Speaker:** I will not call amendment no 24 as it is consequential to amendment No 23, which has been made.

**Clause 8 (Record of being lobbied)**

*Amendment No 25 made:*

*In page 3, line 25, leave out from ", other" to "then," on line 26 and insert "being lobbied,".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 26 made:*

*In page 3, line 27, leave out from "provide" to end of line 28 and insert -*

*"as soon as reasonably practicable provide their department with a written record of the lobbying; and the department must retain the record in accordance with its policy on the retention and disposal of records."— [Mr Murphy (The Minister of Finance).]*

*Amendment No 27 made:*

*In page 3, line 33, after "to" insert "seek,".— [Mr Murphy (The Minister of Finance).]*

*Amendment No 28 proposed: In page 3, line 40, leave out from second "or" to end of line 41.— [Mr Murphy (The Minister of Finance).]*

*Question put, That amendment No 28 be made.*

**Some Members:** Aye.

**Some Members:** No.

**Mr Speaker:** Members, I have been advised by the party Whips that, in accordance with Standing Order 1(13)(5)(b), there is agreement to dispense with the three minutes and move straight to the Division. Again, I remind all Members to follow the instructions of the Lobby

Clerks and to respect the need for social distancing.

*Question, that the amendment be made, put a second time.*

*The Assembly divided.*

*Ayes 71; Noes 13.*

**AYES**

*Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Mr M Bradley, Ms P Bradley, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mrs Cameron, Mr Catney, Mr Clarke, Mr Dickson, Ms Dillon, Mrs Dodds, Ms Dolan, Mr Dunne, Mr Durkan, Mr Easton, Ms Ennis, Ms Flynn, Mrs Foster, Mr Frew, Mr Gildernew, Mr Givan, Ms Hargey, Mr Harvey, Mr Hilditch, Mr Humphrey, Ms Hunter, Mr Irwin, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyons, Mr Lyttle, Mr McAleer, Mr McCann, Mr McCrossan, Mr McGlone, Mr McGrath, Mr McGuigan, Mr McHugh, Miss McIlveen, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Middleton, Mr Muir, Ms Mullan, Mr Murphy, Mr Newton, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Mr Poots, Mr Robinson, Ms Rogan, Mr Sheehan, Ms Sheerin, Mr Storey, Mr Weir.*

*Tellers for the Ayes: Ms Ennis and Mr McGuigan*

**NOES**

*Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr Butler, Mr Carroll, Mr Chambers, Mr Nesbitt, Mr Stewart, Mr Swann, Mr Wells.*

*Tellers for the Noes: Mr Allister and Mr Wells*

*The following Members' votes were cast by their notified proxy in this Division:*

*Mr Aiken voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Butler, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.*

*Mr K Buchanan voted for Ms P Bradley, Mr T Buchanan, Mr Buckley, Mrs Cameron, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Newton, Mr Poots, Mr Robinson, Mr Storey and Mr Weir.*

*Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.*

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Ayes], Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Ayes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGlone, Mr McGrath, Ms McLaughlin and Mr McNulty.

Question accordingly agreed to.

Amendment No 29 not moved.

Amendment No 30 made:

In page 4, line 5, after "Committee" insert -

"of the Assembly or any sub-committee of that Committee or any other committee or sub-committee of the Assembly".— [Mr Murphy (The Minister of Finance).]

Amendment No 31 not moved.

**Mr Speaker:** Just pause for a wee second.

**6.30 pm**

Amendment No 32 made:

In page 4, line 6, after "party" insert -

"or members of the Assembly".— [Mr Murphy (The Minister of Finance).]

Amendment No 33 made:

In page 4, line 6, at end insert - "(c) made at a meeting attended by a person serving in the Northern Ireland Civil Service who is not a special adviser,

(d) received personally by a Minister or special adviser after having been first received and recorded by a person serving in the Northern Ireland Civil Service who is not a special adviser, or

(e) made to a Minister by a member of the public in their capacity as a member of the public, or in their capacity as a community representative, and relating to a matter in which the person making the communication has only

the same interest as all other members of the public or all other members of a section of the public."— [Mr Murphy (The Minister of Finance).]

### **New Clause**

Amendment No 34 proposed: After clause 8 insert -

### **"Use of official systems**

**8A.**—(1) A Minister or special adviser when communicating on official business by electronic means should not use personal accounts or anything other than devices issued by the department, systems used by the department and departmental email addresses.

(2) If out of necessity it is not possible to comply with the requirements of subsection (1) the Minister or (as the case may be) special adviser must within 48 hours, or as soon thereafter as reasonably practicable,

(a) copy to the departmental system any written material generated during the use of non-departmental devices or systems; and

(b) make an accurate record on the departmental system of any verbal communications of consequence relating to departmental matters."— [Mr Allister.]

Question put, That amendment No 34 be made.

The Assembly divided:

Ayes 40; Noes 45.

### **AYES**

Dr Aiken, Mr Allen, Mr Allister, Ms Bailey, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stewart, Mr Storey, Mr Swann, Mr Weir, Mr Wells, Miss Woods.

Tellers for the Ayes: Mr Allister and Mr Wells

### **NOES**

Ms Anderson, Dr Archibald, Ms Armstrong, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw,

Ms Brogan, Mr Catney, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr McCann, Mr McCrossan, Mr McGlone, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Ms Rogan, Mr Sheehan, Ms Sheerin.

Tellers for the Noes: Ms Ennis and Mr McGuigan

The following Members' votes were cast by their notified proxy in this division:

Mr Aiken voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Butler, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Ms Bailey voted for Miss Woods.

Mr K Buchanan voted for Ms P Bradley, Mr T Buchanan, Mr Buckley, Mrs Cameron, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Newton, Mr Poots, Mr Robinson, Mr Storey and Mr Weir.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Noes], Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Noes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGlone, Mr McGrath, Ms McLaughlin and Mr McNulty.

Question accordingly negatived.

### **Clause 9 (Register of interests)**

Amendment No 35 made:

In page 4, line 20, at end insert

"(4) For the purposes of subsection (3)(a), two people are partners if—

(a) they are civil partners of each other, or

(b) they are not married to, or civil partners of, each other but are living together as if spouses of each other.

(5) For the purposes of subsection (3)(a) 'close family member', in relation to a person, means someone who is—

(a) a parent, or parent-in-law, of the person,

(b) a child of the person,

(c) a whole-blood sibling of the person, or

(d) the spouse or civil partner of someone within paragraph (b) or (c).— [Mr Murphy (The Minister of Finance).]

### **Clause 10 (Offence of unauthorised disclosure)**

Amendment No 36 made:

In page 4, line 24, leave out ", civil servant".— [Mr Allister.]

**Mr Speaker:** I will not call amendment No 37, as it is consequential to amendment No 36, which has been made.

Amendment No 38 made:

In page 4, line 25, leave out ", directly or indirectly,".— [Mr Murphy (The Minister of Finance).]

Amendment No 39 made:

In page 4, line 26, leave out "financial or other improper" and insert "improper (financial or other)".— [Mr Murphy (The Minister of Finance).]

**6.45 pm**

Amendment No 40 made:

In page 4, line 26, leave out "or third party".— [Mr Murphy (The Minister of Finance).]

**Mr Speaker:** I will not call amendment No 41, as it is consequential to amendment Nos 36 and 37, one of which has been made.

Amendment No 42 made:

In page 4, line 38, at end insert -

"(6) In this section 'statutory obligation' means—

(a) an obligation under a statutory provision, as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954, or

(b) an obligation under any legislation for the time being in force in any part of Great Britain or in any country or territory outside the United Kingdom."— [Mr Murphy (The Minister of Finance).]

**Clause 11 (Accountability to the Assembly; provision of information)**

Amendment No 43 made:

In page 4, line 40, leave out "Ministers and their departments" and insert -

"A Minister and their department".— [Mr Murphy (The Minister of Finance).]

**Clause 13 (Assembly scrutiny of the Executive's in-year monitoring process)**

Amendment No 44 made:

In page 5, line 16, leave out "Ministers and their officials" and insert -

"The Minister in charge of a Northern Ireland department, or the department,".— [Mr Murphy (The Minister of Finance).]

Amendment No 45 proposed:

In page 5, line 18, leave out "in advance of it being submitted" and insert -

"no longer than 7 days following submission".— [Mr O'Toole.]

Question put, That the amendment be made.

The Assembly divided:

Ayes 47; Noes 38.

**AYES**

Ms Anderson, Dr Archibald, Ms Armstrong, Ms Bailey, Mr Blair, Mr Boylan, Ms S Bradley, Ms Bradshaw, Ms Brogan, Mr Catney, Mr Dickson, Ms Dillon, Ms Dolan, Mr Durkan, Ms Ennis, Ms Flynn, Mr Gildernew, Ms Hargey, Ms Hunter, Mr Kearney, Mrs D Kelly, Mr G Kelly, Ms Kimmins, Mrs Long, Mr Lynch, Mr Lyttle, Mr McAleer, Mr

McCann, Mr McCrossan, Mr McGlone, Mr McGrath, Mr McGuigan, Mr McHugh, Ms McLaughlin, Mr McNulty, Ms Mallon, Mr Muir, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mr O'Dowd, Mrs O'Neill, Mr O'Toole, Ms Rogan, Mr Sheehan, Ms Sheerin, Miss Woods.

Tellers for the Ayes: Ms Ennis and Mr McGuigan

**NOES**

Dr Aiken, Mr Allen, Mr Allister, Mrs Barton, Mr Beattie, Mr M Bradley, Ms P Bradley, Mr K Buchanan, Mr T Buchanan, Mr Buckley, Ms Bunting, Mr Butler, Mrs Cameron, Mr Carroll, Mr Chambers, Mr Clarke, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Frew, Mr Givan, Mr Harvey, Mr Hilditch, Mr Humphrey, Mr Irwin, Mr Lyons, Miss McIlveen, Mr Middleton, Mr Nesbitt, Mr Newton, Mr Poots, Mr Robinson, Mr Stewart, Mr Storey, Mr Swann, Mr Weir, Mr Wells.

Tellers for the Noes: Mr Frew and Mr Middleton

The following Members' votes were cast by their notified proxy in this Division:

Mr Aiken voted for Mr Allen, Mrs Barton, Mr Beattie, Mr Butler, Mr Chambers, Mr Nesbitt, Mr Stewart and Mr Swann.

Ms Bailey voted for Miss Woods.

Mr K Buchanan voted for Ms P Bradley, Mr T Buchanan, Mr Buckley, Mrs Cameron, Mrs Dodds, Mr Dunne, Mr Easton, Mrs Foster, Mr Givan, Mr Harvey, Mr Hilditch, Mr Irwin, Mr Lyons, Mr Newton, Mr Poots, Mr Robinson, Mr Storey and Mr Weir.

Mr Muir voted for Ms Armstrong, Mr Blair, Ms Bradshaw, Mr Dickson, Mrs Long and Mr Lyttle.

Mr O'Dowd voted for Ms Anderson, Dr Archibald, Mr Boylan, Ms Brogan, Ms Dillon, Ms Dolan, Ms Ennis [Teller, Ayes], Ms Flynn, Mr Gildernew, Ms Hargey, Mr Kearney, Mr G Kelly, Ms Kimmins, Mr Lynch, Mr McAleer, Mr McCann, Mr McGuigan [Teller, Ayes], Mr McHugh, Ms Mullan, Mr Murphy, Ms Ní Chuilín, Mrs O'Neill, Ms Rogan, Mr Sheehan and Ms Sheerin.

Mr O'Toole voted for Ms S Bradley, Mr Catney, Mr Durkan, Ms Hunter, Mrs D Kelly, Ms Mallon, Mr McCrossan, Mr McGlone, Mr McGrath, Ms McLaughlin and Mr McNulty.

Question accordingly agreed to.

*Amendment No 46 made:*

In page 5, line 20, leave out "Ministerial approval being granted" and insert – "its being approved by the Executive Committee of the Assembly".— [Mr Murphy (The Minister of Finance).]

*Amendment No 47 made:*

In page 5, line 22, leave out "(1)" and insert "(2)".— [Mr Murphy (The Minister of Finance).]

**Clause 14 (Commencement)**

*Amendment No 48 made:*

In page 5, line 26, at the beginning insert –

"(A1) Section 1(3) comes into operation at the end of the period of 6 months beginning with the end of the day on which this Act receives Royal Assent."— [Mr Murphy (The Minister of Finance).]

*Amendment No 49 made:*

In page 5, line 26, leave out subsection (1).— [Mr Allister.]

**Mr Speaker:** I will not call amendment No 50 as it is consequential to amendment Nos 15 and 49.

*Amendment No 51 not moved.*

**Clause 15 (Interpretation)**

*Amendment No 52 made:*

In page 5, leave out lines 34 and 35.— [Mr Murphy (The Minister of Finance).]

*Amendment No 53 made:*

In page 5, line 36, leave out "the Minister" and insert "Minister".— [Mr Murphy (The Minister of Finance).]

**Mr Speaker:** I will not call amendment No 54 as it is mutually exclusive with amendment No 35, which has been made.

*Amendment No 55 made:*

In page 6, leave out lines 1 to 4.— [Mr Murphy (The Minister of Finance).]

**Long Title**

*Amendment No 56 made:*

Leave out from "and Article 3" to "section 17" and insert -

", repeal the Civil Service Commissioners (Amendment) (Northern Ireland) Order in Council 2007, repeal the Civil Service Commissioners (Amendment) Order (Northern Ireland) 2016, amend sections 17 and 27".— [Mr Allister.]

**Mr Speaker:** That concludes the Further Consideration Stage of the Functioning of Government (Miscellaneous Provisions) Bill. The Bill stands referred to the Speaker.

*Adjourned at 7.02 pm.*

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**934**